

Ct. 05
Item No.02
11.02.2022
(suvendu)

WPA 16062 of 2021

[Via Video Conference]

Dr. Habil Subhendu Bikash Hazra
Vs.
The State of West Bengal & Ors.

Mr. Indranath Mitra
Mr. Bikash Goswami
Mr. Subhankar Das
.....for the petitioner

Mr. Probal Kumar Mukherjee
Mr. Suhrid Sur
.....for the respondent nos. 3 to 10

Mr. Rajat Dutta
.....for the State

The petitioner is a Professor of Mathematics in Bankura University and was confirmed in the post on 24th August, 2015. The prayer of the petitioner is for cancellation of several decisions of the Executive Council of the University and orders passed by the University by which the petitioner's salary was stopped and the petitioner was disallowed from joining the University. The dispute arises from the petitioner being offered the position as Head of a Research Group in a Technical University at Darmstadt, Germany in October, 2016 leading to a series of communications disclosing disputes between the petitioner and the University in relation

to the leave entitlement of the petitioner. An interim order was passed by this Court on 1st December, 2021 by which the University was directed not to act in terms of a communication dated 14th December, 2020 by which the petitioner's salary was stopped with effect from 1st December, 2020 along with other punitive measures. The parties have filed their affidavits and the matter is now being considered on a complete set of pleadings.

The stated position of the parties after considering affidavits is that the petitioner seeks his salary from 1st January, 2021 to 2nd December, 2021 along with a direction that the University should not act in a manner so as to cause a break in the petitioner's service. The position of the University, on the other hand, is that the University is yet to take a decision on whether the petitioner's leave would fall under Study Leave or Earned Leave and that the University is unable to decide the issue in the absence of a complete answer from the petitioner in respect of the queries made by the University.

The admitted fact is that the University approved the prayer for leave of the petitioner from 2nd January, 2017 to 31st January, 2017 for the petitioner's project in Germany with pay but sanctioned the next period of leave from 1st February, 2017 to 19th February, 2017 without pay. The

petitioner was, however, constrained to extend the leave on account of his continuing commitments in Germany. The innumerable communications exchanged between the parties indicate that the University sought for answers to certain queries which were given by the petitioner, the petitioner raised certain clarifications from the University which were not given by the latter and the University initiated certain action against the petitioner in unexplained haste.

The University's letter of 20th October, 2020 records the Resolution of the Executive Council dated 16th October, 2020 which resolved that sixty days Earned Leave would be granted to the petitioner subject to the fulfillment of four conditions outlined in the letter. The conditions include questions on whether the financial benefits received by the petitioner are equal or more to the salary received by the petitioner from the University. The Leave Rules, as evident from a Memorandum of the State Higher Education Department dated 28th January, 2008, however indicate that the concerned leave is earned by a teacher in discharge of duties for a certain period and shall be admissible to a teacher on the proportion of the periods mentioned in Sub-clause (b) of Clause 17 of the Memorandum. Clause 17 does not indicate any conditions, particularly in the

nature of those stated in the University's letter dated 20th October, 2020 which should be fulfilled by the person seeking Earned Leave. This letter is important since the University, in derogation of the petitioner's rights as a Professor of the University, has taken the subsequent actions pursuant to the alleged non-compliance of the conditions contained in the letter dated 20th October, 2020. There are at least five letters from the petitioner from 18th January, 2021 onwards which indicate the petitioner's responses to the queries raised by the University.

The petitioner's letter of 18th January, 2021 in reply to the University's email of 11th January, 2021 and a further email of 18th January, 2021 to the University's letter of 30th November, 2020 indicate that the petitioner had responded to the communications of the University. Even if, a few of the responses of the petitioner are taken as non-specific, the points taken by the petitioner is relatable to the Leave Rules of the University under which the University cannot ask for information or impose conditions on the petitioner.

This Court is also of the view that the punitive measures taken against the petitioner by the University are disproportionate to the petitioner's alleged conduct. The decisions of the Executive

Council show that the petitioner was not only deprived of his salary but was also prevented from joining the University after his stint in Germany, classes were withdrawn from the petitioner and the petitioner was also divested from his position as the Director of the Internal Quality Assurance Cell (IQSC) of the University. Even after passing of the interim order, the petitioner's salary for the months of 1st January, 2021 to 2nd December, 2021 have not been paid and there is a threat of a break in the continuity of the petitioner's service. This break would have a direct bearing on the petitioner's pensionary and retirement benefits. The reasons for passing the interim order on 1st December, 2021 remain the same even after the affidavits of the parties have been considered. The actions of the University are arbitrary and in breach of all principles of equity and fair play. The Resolution of the Executive Council in its meeting held on 1st February, 2021 was taken after the University decided to stop the petitioner's salary on 14th December, 2020. The decision to withdraw all assignments from the petitioner was taken on 1st February, 2021 before the University constituted an Fact-Finding Committee to look into the alleged aspect of the petitioner's entitlement to leave. It is clear that the University acted in unexplained haste and without waiting for a

crystallized report of any proved dereliction of duty on the part of the petitioner. Even the Report of the Fact Finding Committee dated 29th January, 2021 indicates that the only conclusion is that the written submission of the petitioner “seems ineffectual and insufficient”.

In the factual conspectus as stated above, the indecision of the University, as would appear from the submissions of learned counsel, as to whether the petitioner was entitled to Earned Leave or Study Leave is completely vexatious and contrary to the records.

As stated above, as far back as on 20th October, 2020, the Executive Council had taken a decision that the petitioner would be granted Earned Leave and subsequent documents indicate that the parties proceeded on such basis. The issue of Study Leave is in any event irrelevant since Study Leave by definition, is leave for a determined period with pay. That period, in any event has long passed which would appear from a letter of the University dated 30th December, 2016.

In view of the above reasons, this Court finds no basis for the University to initiate punitive action against the petitioner on various counts or to continue with such action non-complying with the

principles of natural justice or the relevant statutory Notification.

The interim order dated 1st December, 2021 is confirmed.

All the impugned decisions taken against the petitioner as would appear from the prayers in the writ petition including those of 29th January, 2021 and 24th November, 2021 are cancelled and set aside.

The University is directed to pay the salary of the petitioner from 1st January, 2021 to 2nd December, 2021 within a period of four weeks from date and ensure that there is no break in the petitioner's service for that or any other period.

WPA 16062 of 2021 is allowed and disposed of in terms of the above.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Moushumi Bhattacharya, J.)