

08 16.10.2023

Ct-08

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FMA 2042 of 2016
with
I.A No. CAN 1 of 2016(Old CAN No. 5228 of 2016)

Subhabrata Pal
Vs.
State of West Bengal & Ors.

Ms. Debjani Sengupta
Mr. Abhijit Chatterjee
Ms. Jonaki Khan
... For the Vidyasagar
University

1. The appellant is not represented nor any accommodation is prayed for on behalf of the appellant.

2. The appeal had appeared in the warning list of cases on and from 19th September, 2023 with a clear indication that the said matter shall be transferred to the Regular Bench on 6.10.2023. The appeal was appeared on 6.10.2023 and is again listed today. All the parties have sufficient notice about the listing of the matter before the Regular Bench on and from 6th October, 2023.

3. The appeal was filed on 28.4.2016. The record shows that no attempt has been made to move this appeal after it was filed. No step has been taken to serve notice and prepare paper books. It clearly shows that the appellant is not interested to proceed with the appeal.

4. The appellant has applied for study leave. He was a junior peon of the University. He wanted to pursue a course in M. Tech. He already holds a degree in M.C.A. His application for study leave was rejected by the University. In an earlier proceeding the order of rejection of study leave was set aside. The University authorities were directed to consider the application for study leave afresh in terms of the Vidyasagar University First Ordinances, 1985. Thereafter the University considered the application for study leave and the same was rejected by the impugned order dated 22nd December, 2015.

5. The petitioner contended that the said impugned order was not in consonance with the judgment and order dated 19th November, 2015 by which the University was directed to consider the application for study leave afresh after taking into consideration the provisions of the Ordinances of 1985.

6. The learned Single Judge had summarized the contentions of both the parties. The main contention of the University appears to be as follows:-

“It is next submitted on behalf of the University authorities that the instances of

grant of study leave have to be looked at through the particular perspective of the benefit accruing to the University by grant of such leave. A lecturer being granted study leave means that such lecturer becomes enriched with further knowledge and on his resumption of duties at the University after completion his study, he imparts that amount of knowledge to the students. The academic atmosphere as well as the University itself gets enriched by such a process. The petitioner here is a junior peon. He holds a Master degree. The impugned order finds that the promotional avenues of the petitioner will not stand affected by the non-grant of the study leave. In fact, the petitioner would have nothing to impart or to contribute by the knowledge acquired by the study leave. The nature of job required to be discharged by the petitioner does not require any higher qualification. In fact, the petitioner is already over qualified.

The grant of study leave to the petitioner will affect the functioning of the department. He is the only junior peon in the department. Granting him leave for two years would mean that the department has to function on a casual worker basis. Over a period time, the petitioner has acquired some experience, which the University authority wishes to take advantage of.”

7. On considering the rival submissions of the University, the learned Single Judge considered the Rule 112 and 122 under Part-V of the Ordinances of 1985 and observed as follows:-

“ Rule 112 prescribes that leave cannot be claimed as of right. It goes on to say that even if the leave has been granted or is under consideration, exigencies of the service may be a governing factor for the authorities to refuse or revoke the leave.

Rule 122 provides for grant of study leave on the satisfaction of the criteria as specified therein. Rule 122 is also discretionary.

In the present case, the petitioner’s application for grant of study leave was initially rejected. The initial rejection was set aside by the judgment and order dated November 19, 2015. The University authorities has passed the impugned order dated December 22, 2015 rejecting the application of study leave. Five reasons have been given for such rejection.

None of the five reasons given for rejection can be said to be arbitrary or illegal.”

8. Learned Senior Counsel on behalf of the University has reiterated the stand taken by the University before the learned Single Judge.

9. The reason for not granting study leave, in our view, cannot be arbitrary or illegal. Having considered the relevant Rules the learned Single was justified in dismissing the writ petition.

10. In view of the above, the appeal is accordingly dismissed along with the connected application.

(Uday Kumar,J.)

(Soumen Sen, J.)