

05.07.2024
Item No.10
Court No.11
Avijit Mitra

WP.ST 190 of 2023

In re: An application under Article 226 of the Constitution of India;

And

Malay Sarkar
- Versus -
State of West Bengal & ors.

Mr. Surajit Samanta,
Mr. Biswajit Samanta,
Ms. Sohini Samanta

... for the petitioner

Mr. Tapan Kumar Mukherjee, Ld. A.G.P.,
Ms. Sangeeta Roy

...for the State respondents

Mr. Mukherjee, learned Additional Government Pleader appearing for the State respondents files an affidavit-in-opposition. Let the same be kept on record.

The present writ petition has been instituted to question the tenability of the order dated 5th December, 2003 passed by the learned Tribunal in O.A. 764 of 2023

Sans unnecessary details, the facts for resolving the issue in the petition are that the petitioner, a Junior Lecturer in Electrical Engineering at BPC Institute of Technology in Krishnanagar, Nadia, took study leave to pursue a three-year B.E. course in Electrical Engineering at Dumkol Institute of Engineering and Technology.

He started his course on August 27, 2009, and received his salary until October 30, 2011. However, his salary from November 2011 onwards was withheld, citing

Rule 197 of the West Bengal Service Rules Part-I, which stipulates that a government employee can avail of study leave up to two years during their entire service tenure.

Thus being the position, the petitioner then approached the learned Tribunal with an original application being OA 243 of 2013. The original application and its connected application being M.A. 42 of 2015 were disposed of by an order dated 17th February, 2017. The operative part of the order dated 17th February, 2017 is as follows :

‘Having regard to the various aspects of the case described in the foregoing paragraphs, we are of the view that in the particular circumstances, the entire period of study of the applicant should be treated as deputation on training and he should be paid full pay and allowances accordingly for the entire period. This benefit should be allowed in lieu of study leave, in other words, the applicant should not be allowed nay study leave in future separately. We accordingly direct the respondents, in particular respondent no.1, the Principal Secretary, Technical Education and Training Department to issue appropriate Government order strictly in accordance with the aforesaid view. The applicant shall be paid full pay and allowances for the entire period of study along with other consequential benefits. This direction has to be complied with within a period of 12 weeks from the date of communication of this judgment.’

In deference to the order dated 17th February, 2017, the petitioner’s salary, as withheld was released, and the period exceeding the two years’ study leave was regularized with a specific note that the same should not set a precedent.

The petitioner again presented a petition before the respondent no.2 requesting further study leave to pursue a Master’s Degree in Electrical Engineering and seeking relaxation of the rules pertaining to the study leave in

invocation of Rule 3A of the West Bengal Service Rules, Part-I. As his petition received no response, the petitioner again approached the learned Tribunal with another original application being O.A. 694 of 2023, which was disposed of by an order dated 10.10.2023 directing the respondent no. 2 to consider the petitioner's representation within a specific time frame.

Vide. an order dated 13.10.2023, the respondent no.2 denied the petitioner's request for further study leave citing a reason that as per Rule 197 of the West Bengal Service Rules, Part-I, the petitioner is not entitled to further study leave.

The petitioner impugned the order dated 13.10.2023 in O.A. no. 764 of 2023, which was disposed of by an order dated 5.12.2023 upholding the decision of the respondent no.2. Hence, the writ petition.

Mr. Samanta, the advocate representing the petitioner, contends that the petitioner cited Rule 3A of the West Bengal Service Rules, Part-I (in short, WBSR, Part-I) in both his representation and original application. The petitioner requested the concerned respondent to refer the matter to the Hon'ble Governor, proposing relaxation of the rules to grant further study leave. However, despite this request, respondent no. 2 denied the petitioner's plea.

He further argues that the petitioner's pursuit of higher academic qualifications, as a lecturer at a college, would enhance his ability to impart quality education to students, particularly since the petitioner aims to advance his knowledge in the subject relevant to his teaching.

Quite apart from that, Mr. Samanta further argues that it is a Constitutional right of a person to acquire higher qualification and it would not be inappropriate to hinder any person aspiring to upgrade his academic qualification. He asserts that although these issues were raised before the learned Tribunal but it glossed over them without returning any finding, which warrants intervention of this Court.

In rebuttal, Mr. Mukherjee, learned Additional Government Pleader appearing for the State respondents argues that indisputably, in terms of Rule 197, WBSR, Part-I, a government employee can avail of study leave for a maximum period of two years throughout his entire service tenure. He points out that on earlier occasion, due to intervention by the learned Tribunal, the petitioner was granted study leave for three years as a special case.

The petitioner is seeking further study leave to pursue another course. According to him, power to relax the study leave in terms of Rule 3A of WBSR, Part-I is exercised by the respondent no.2 in name of the Hon'ble Governor. As the respondent no. 2 has already determined that the petitioner is not entitled to enjoy further study leave in terms of Rule 197 of WBSR, Part-I and in view of order dated 17.02.2017 passed in MA 42 of 2015 preferred in connection with O.A. no. 243 of 2015, there cannot be any basis to refer the issue to the Hon'ble Governor.

Heard the learned advocates appearing for the respective parties and perused the materials on record.

Admittedly, according to Rule 197 of the WBSR, Part-I, a government employee can take study leave for a maximum period of two years throughout his entire service tenure. Initially, the petitioner was granted study leave for two years, but the course he pursued had a duration of three years. Through the intervention of the learned Tribunal, the additional one year of study leave was approved, and the petitioner's salary for that period was also disbursed.

The petitioner now wants the Hon'ble Governor to invoke Rule 3A of WBSR, Part-I and relax the rules governing the study leave to enable him to enjoy study leave to pursue another course.

The Tribunal, in its order dated February 17, 2017, decided that the petitioner would not be granted any study leave in the future. The petitioner did not challenge this decision in any forum and instead enjoyed the benefits from such conditional order. Moreso, when the additional one-year period was regularized and salary falling due for that period was disbursed, the respondent no. 2 noted it as a special case. The petitioner accepted these benefits without objection. Now, he seeks relaxation of the rules from the Hon'ble Governor to obtain further study leave for pursuing another course.

In such conspectus, we are of the view that the petitioner is not entitled to further study leave as the order dated 17.02. 2017 has assumed binding implications for him. Therefore, we are of the opinion that the respondent no. 2 has appropriately denied the petitioner's request for

further study leave. For these reasons, he is also not eligible to claim relaxation of Rule 3A of WBSR, Part-I.

The learned Tribunal, after considering the materials presented before it, arrived at specific findings on the factual aspects. We do not find any infirmity or substantial miscarriage of justice that would warrant us to interfere with the order.

In view thereof, the writ petition lacks merits and accordingly, the same is dismissed.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)