



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-15486-2018 (O&M)

Reserved on:01.08.2024

Date of decision: 22.08.2024

Vikas Chaudhary

....Petitioner

Versus

Pt. B.D.Sharma University of Health Sciences (UHS), Rohtak and others

..Respondents

**CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present:- Mr. Gunjan Mehta, Advocate for the petitioner

Mr. G.S.Attariwala, Sr. Advocate with
Mr. Vansh Chawla, Advocate and
Mr. Amit Rao, Advocate for respondent no.1 to 3

Mr. Anil K. Sharma, Advocate for respondent no.4 and 5

ANIL KSHETARPAL, JUDGE

FACTUAL COMPASS:-

1.1 In this writ petition, the only surviving issue is “whether the petitioner is entitled to paid study leave for a period of three years or not?” He after completing his Doctorate in Medicine (Cardiology) from PGIMS, Rohtak, has joined back the respondent-Pt. B.D Sharma University of Health Sciences, Rohtak.

1.2 In order to comprehend the issues involved in the present case, some relevant facts, in brief, are required to be noticed.

1.3 The petitioner was appointed as Assistant Professor in the Department of Medicine on 27.12.2013, on regular basis, after a brief

two stints on contract and tenure basis for brief periods. In January, 2017, the petitioner applied for paid study leave for admission to DM (Cardiology) in AIIMS, Delhi. He filed a writ petition complaining that his application has not been forwarded. Vide interim order, directions were given to issue him roll number. He sat in the entrance exam but failed to qualify the same. On 07.09.2017, he again applied for admission to DM (Cardiology) for session starting from January, 2018. Thereafter, he filed a writ petition i.e. CWP-22836-2017 in which notice of motion was issued while directing AIIMS, Delhi to issue his roll number. Thereafter, he applied for course of DM (Cardiology) in PGIMER, Chandigarh. On 18.10.2017 he applied for sponsoring his name for paid study leave. He filed CWP 27664-2017 in which by an interim order, PGIMER, Chandigarh was restrained from cancelling his admission. On 05.04.2018, his request for sponsoring his candidature as paid study leave was rejected by the respondent- University on the ground that as per Regulation 27 of the University Employees Leave Regulations, the paid study leave can be granted only if 75% of the total strength of the teachers of the Department are available and working but at that point of time, if the petitioner's leave is sanctioned, the percentage would have fallen to 68.18%. There was shortage of faculty in the Department of Medicine and an inspection for recognizing MD (Medicine) Course was due during the next two weeks. There was risk of non-recognition of MD (Medicine) Course. However, as per interim order, passed from time to time, the petitioner was permitted to complete

his DM (Cardiology) as an open candidate, which has been successfully completed.

2. Arguments adduced by learned counsel representing the parties:-

2.1 Learned counsel representing the petitioner, while referring to Regulation 27 and decision dated 24.08.2011 of the Executive Council, submits that 75% of the total teachers recruited is required to be calculated and not 75% of the total strength. He submits that on 24.08.2011 paid study leave to Dr. Raj Mala Jaiswal was sanctioned while calculating 75% strength of the total filled up posts in the Department. He further submits that similar concession has been extended to Dr. Sandeep Goyal, who was allowed paid study leave in December, 2013. It is contended that the employees are entitled to paid study leave and the action of the respondent is discriminatory qua the petitioner.

2.2 Per contra, learned counsel representing the respondents has submitted that as per Regulation 27, 75% of the total sanctioned strength of the teachers in the Department is required to be calculated. The total sanctioned strength in the Department of Medicine is 22 out of which 16 are filled up. There are 7 units which are required to be manned by three teachers each. Hence, there is requirement of 21 teachers whereas only 16 are filled. If the petitioner would have been sanctioned paid study leave, the percentage would fall to 68.18%, which is far below the required number. Moreover, the institute does not require teacher with DM (Cardiology) as the aforesaid seat has already been filled up whereas in the case of Dr. Sandeep Goyal, he was selected

in DM (Gastroenterology) Department, where there is shortage. Moreover, Dr. Sandeep Goyal was relieved only when three vacant posts of teachers in the Department of Medicine were filled up as two joined on 27.12.2013 whereas one was expected to join on 22.01.2014.

3. Analysis & Conclusion:-

3.1 This Court has analysed, evaluated and considered the submissions of the learned counsel representing the parties.

3.2 Before proceeding further, it is appropriate to extract Regulation 27 of the University Employees (Leave) Regulations, which reads as under:-

“27. Study Leave:

(1) A permanent teacher of the University with minimum one year continuous service in the University may be granted study leave for purposes of higher studies (PG Diploma/PG Degree/ Super-speciality Courses) in India or abroad by the Executive Council on the recommendations of a Study Leave Committee consisting of:

(a) Vice-Chancellor;

(b) Director, PGIMS, Rohtak and

(c) One member of the Executive Council nominated by the Vice-Chancellor.

(2) The requisite length of the service shall be calculated as on the last date of submission of application for the relevant course.

(3) Study Leave shall not ordinarily be admissible to a teacher beyond the age of 55 years.

(4) 75% of the total strength of teachers in the concerned department should be present while allowing study leave to a teacher of that department.

(5) Study Leave shall ordinarily be not granted for more than two years. However, the Study Leave may be extended on the recommendations of the Study Leave Committee in exceptional circumstances by the Executive Council. The period of study leave shall in no case exceed three years.

(6) The period of higher studies, as admissible under the rules, shall count as service for all-purposes subject to the condition of successful completion of the course of study within the prescribed period.

(7) A teacher on study leave shall be treated as on duty with full pay last drawn, including allowances for two years and half pay and allowances as may be admissible on that amount, for the third year. But in case of a teacher who receives any financial assistance (like scholarship, fellowship etc.) during the study leave, then he/ she shall be paid pay and allowances as under:

(a) If the financial assistance is more than pay and allowances last drawn before proceeding on the leave, then the study leave will be without pay and allowances.

(b) If the financial assistance is equal to half of the pay and allowances, then he/ she shall be paid half the pay and allowances during the study leave.

(c) If the financial assistance is less than half the pay and allowances, then he/ she will be paid the salary after deducting the amount of financial assistance received by him/her.

(8) Study leave may be granted more than once provided that there is an interval of at least 5 years between the date of resumption of duty on return from the first study leave and date of application for the second study leave. Provided further that the total period of such leave shall not exceed a

period of three years during the entire service of a teacher in the University.

(9) A teacher who is granted study leave shall, on his/ her return and on rejoining the service of the University, be eligible to the benefit of the annual increment(s) which he/ she would have earned in the course of time if he/ she had not proceeded on study leave.

Note: The year would mean the financial year.

(10) No teacher shall proceed on study leave without executing, to the satisfaction of the University, an agreement bond failing which his/ her leave salary shall not be paid until the bond, duly executed, is received by the Registrar.

(11) It shall be the duty of the person, who is on study leave, to submit at the end of every six months to the Vice-Chancellor a report of his/ her work through the Head of the Department of the Institute/ University. If his/ her progress is unsatisfactory, study leave salary may be withheld or leave for the rest of the period may be cancelled.

(12) If a teacher, who is granted study leave, is permitted to receive and retain any remuneration in respect of part-time employment during the period of study leave, he/ she shall ordinarily not be granted any study leave salary but in cases where the amount of remuneration received in respect of part-time employment is not considered adequate, the Executive Council may determine the study leave salary payable in each case.

Note: It shall be the duty of the teacher, who is granted study leave, to communicate immediately to the University the amount of financial assistance in any form received by him/ her during the course of study leave from any person or Institution, whatsoever.

(13) Subject to the maximum period of absence from duty on leave not exceeding three years, study leave may be combined with earned leave, half pay leave, extra ordinary leave or vacation provided that the earned leave at the credit of the teacher shall be availed of at the commencement of the study leave. When study leave is taken in continuation of vacation, the period of study leave shall be deemed to begin to run on the expiry of the vacation.

(14) The period of study leave shall count as service for the purpose of retirement benefits provided that the teacher rejoins the University on the expiry of his/ her study leave and serves for the period for which the agreement bond has been executed,

(15) Study leave granted to a teacher shall be deemed to be cancelled in case it is not availed of within six months of its sanction. Provided that where study leave granted has been so cancelled, the teacher may apply again for such leave.

(16) A teacher availing of study leave, shall undertake that he/ she shall serve the University continuously for a period of five years from the date of his/her resuming duty after expiry of the study leave failing which he/ she will be required to pay an amount equal to one year salary in addition to the pay drawn during the study leave alongwith any other expenses incurred by the University.

(17) A teacher-

a) who is unable to complete his/ her studies within the period of study leave granted to him/her; or

b) who fails to rejoin the service of the University on the expiry of his/ her study leave; or

c) who rejoins the service of the University but leaves the service without completing the prescribed period of service after rejoining the service; or

d) who within the said period is dismissed or removed from the service by the University; shall be liable to refund to the University the amount of leave salary and allowances and other expenses incurred on the teacher or paid to him/ her in connection with the course of study alongwith one year salary:

Provided that if a teacher has served in the University for a period of not less than half the period of service under the agreement bond on return from study leave, he/ she shall refund to the University half of the amount calculated as above. In case the teacher has been granted study leave without pay and allowances, he/ she shall be liable to pay to the University an amount equivalent to his/ her six months pay and allowances last drawn as well as other expenses incurred by the University in connection with the course of study.

(18) If a teacher asks for extension in study leave and is not granted the extension but does not resume duty on the expiry of the leave originally sanctioned, he/she will be deemed to have failed to rejoin the service on the expiry of his/ her leave for the purpose of recovery of dues under these regulations.

(19) Notwithstanding the above, the Executive Council may order that nothing in these regulations shall apply to a teacher who within three years of return to duty from study leave is permitted to retire from service on medical grounds. Provided further that the Executive Council may, in any other exceptional case, waive or reduce, for reasons to be recorded, the amount refundable by a teacher under these regulations.

(20) In addition to executing a bond as aforesaid, the teacher shall have to provide two sureties when study leave is granted to him/ her on full pay and one surety when study

leave is granted to him/ her on half pay or no pay and give security of immovable property to the satisfaction of the University or Fidelity Bond of an Insurance Company or a guarantee by a Scheduled Bank. The sureties furnished should be acceptable to the University. Where the two sureties or the one surety, as the case may be, provided by the teacher are those who are permanent teachers of the Institution to which the teacher belongs, the University may, in its discretion, waive the additional requirement of getting security of immovable property or a Fidelity Bond of an Insurance Company or a Guarantee by a Scheduled Bank. The surety clause shall form part of the study leave bond and the persons giving surety shall be liable to pay to the University the amount recoverable from the teacher concerned on his/her failure to fulfill the obligations of the Bond.

Note: 1) The Haryana Govt. instructions on 'study leave with full pay' may be followed while allowing study leave to the employees except Medical/ Dental Teachers. They will not be deputed outside for pursuing those courses/training which are being offered by the UHS/PGIMS."

3.3 It is evident that the respondent-University has granted facility/privilege to its permanent teachers to apply for paid study leave for the purpose of higher studies in India or abroad. Under Regulation 27(4), it is provided that 75% of total strength of teachers in the concerned Department should be present while allowing paid study leave to a teacher of that Department. The maximum period for paid study leave is 3 years. During that period, a teacher is treated on duty with full pay last drawn including allowances for 2 years and half pay and allowances as may be admissible on that account for the third year.

It is a sort of facility given to the permanent teachers to improve their qualification provided they have already worked for a period of 1 year. The ultimate purpose for grant of study leave is for the purpose of utilizing one's knowledge for improvement of facilities for the period of next 5 years. As per Regulation 27(16), the employee, who is granted study leave, is required to give undertaking that he or she will continue to serve the University continuously for a period of 5 years from the date his or her resuming duty after expiry of period of paid study leave. The ultimate object of this is to utilize the services of an employee for a period of next 5 years after he improves his qualification. This rule does not lead to creation of corresponding right in favour of the employee or corresponding duty of the employer. It is only a concession or a benefit extended to the employee by the employer. In this case, the petitioner at the relevant time was working in the Department of Medicine in the respondent-University, which has sanctioned strength of 22 posts out of which 16 posts were filled at the relevant time. If the petitioner's leave would have been sanctioned, the working strength would come down to 68.18% of the total sanctioned strength. However, the petitioner claims that he has been discriminated vis-a-vis Dr. Sandeep Goyal and Dr. Raj Mala Jaiswal. With respect to Dr. Sandeep Goyal, the respondents have explained that he was relieved only on 15.01.2014, after filling up three vacant posts of teachers in the Department of Medicine. Previously, Dr. Sandeep Goyal's application was rejected on 17.10.2013, however, he again applied on 28.11.2013, which was allowed on 09.12.2013 but he was relieved only on 15.01.2014. It has been explained that there was

shortage of Assistant Professors in Department of Gastroenterology. Dr. Sandeep Goyal applied for leave to complete his DM in Gastroenterology whereas the petitioner applied for leave for completing DM (Cardiology), for which there was no requirement. Hence, the petitioner has failed to make out his case of discrimination vis-a-vis Dr. Sandeep Goyal.

3.4 The case of Dr. Raj Mala Jaiswal is again different. She was granted paid study leave for doing one year Post Doctoral Certificate course and not DM for a period of three years. At the relevant time, the Executive Council sanctioned her leave. However, there was no corresponding amendment in the University Employee Leave Regulations. In the peculiar facts of the case, one such decision by the Executive Council would not be sufficient to hold that the petitioner has been met with hostile discrimination. As already noticed, the prime object of sanction of paid study leave assesses the future requirement of the University. An employee, as a matter of right, cannot claim that he is entitled to the aforesaid concession. Reliance in this regard can be placed on **“Dr. P.Arunkumar vs. The Board of Governors and others”** W.P No.-33349-2013 decided on 06.08.2020, where the Madras High Court in identical case has rightly observed as follows:-

“19. Further, it is trite that leave is not a matter of right, as has been repeatedly held by the Courts and more so, sabbatical leave being given to a member of service, with all the benefits, it is for the employer to decide on whether to approve the said

leave applied by the employee. It is not open to the member of service to claim sabbatical leave as a matter of right, as the said leave is granted to the employee for sharpening his skills acquired over a period of years, which may enure to the benefit of the institution/employer.”

3.5 Concession of paid study leave is not a vested right of the employee. In fact, it is a privilege granted by the University to its permanent employees, who fulfil the requirements of the Regulations. Therefore, the petitioner cannot claim as a matter of vested right that he is entitled to paid study leave. There is a difference between right and privilege/concession. The privilege can be given on certain specific grounds, which can be refused or withdrawn, at any point of time. Once the benefit of this privilege is based on intelligible differentia and has a nexus to the object of the Regulation, the refusal will not be violate of Article 14 of the Constitution of India. In order to obtain a writ or order in the nature of Mandamus, the petitioner must show that he has legal and judicially enforceable right to the performance of a legal duty by the party against whom mandamus is sought and such right must subsist on the date of the petition. Once the concession or privilege is discretionary, the same cannot be claimed as a matter of right. On a careful reading of Regulation 27, it is evident that the employees may be granted the benefit of privilege by the employer. So, the discretion is with the employer to sanction the leave or not. Hence, the Court does not find it appropriate to interfere in the orders refusing to sanction paid study leave.

4. Decision:-

- 4.1Dismissed.
- 4.2All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)JUDGE

(SHEEL NAGU)CHIEF JUSTICE

22.08.2024

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No