

'Classic And Textbook Example Of Prejudice': Delhi High Court Raps JNU For Refusing To Relieve Officer For Deputation To Mozambique

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IN THE HIGH COURT OF DELHI AT NEW DELHI

JYOTI SINGH; J.

W.P.(C) 14527/2022; 1 December, 2022

UMESH BABU versus JAWAHARLAL NEHRU UNIVERSITY

Petitioner through: Abhik Chimni, Ch. Animes Prusty and Mukul Kuhari, Advocates.

Respondent through: Monika Arora, Yash Tyagi and Subhrodeep, Advocates.

J U D G M E N T

C.M. No. 51963/2022 (under Order VI Rule 17 CPC, by Petitioner)

1. Present application has been preferred under Order VI Rule 17 CPC for amending the writ petition, to lay a challenge to letter dated 17.10.2022, passed during the pendency of the writ petition, whereby Respondent has refused to relieve the Petitioner for joining the deputation post.
2. Issue notice.
3. Ms. Monika Arora, learned counsel accepts notice on behalf of the Respondent.
4. For the reasons stated in the application, the same is allowed.
5. Amended writ petition filed along with the application is taken on record.
6. Ms. Monika Arora, learned counsel for the Respondent submits that counter-affidavit filed to the unamended writ petition be read as a counter-affidavit to the amended writ petition.
7. Application stands disposed of.

W.P.(C) 14527/2022

8. This writ petition has been filed by the Petitioner seeking quashing of letter/order dated 17.10.2022, issued by the Respondent/ University, rejecting the request of the Petitioner to relieve him for joining the post of Teacher Indian Culture at the High Commission of India, Maputo, Mozambique, on short-term deputation for a period of 11 months and for issuance of a writ of mandamus, directing the Respondent to issue a relieving order.
9. The factual score, to the extent relevant for the purpose of adjudication of the issues the Court is in seisin and as captured in the writ petition, is as follows:
 - (a) Petitioner joined the Respondent/University on 05.02.1999 as a Yoga Instructor and was subsequently appointed as a Technical Assistant on 16.05.2012. On 24.10.2020, the Indian Council for Cultural Relations (ICCR) issued an advertisement for deployment of Indian Nationals on short-term deputation as Teachers at ICCR's Cultural Centers abroad.
 - (b) Being eligible, Petitioner applied for the post of Teacher, in accordance with the terms and conditions of the advertisement and preferred a communication to the Respondent on 05.11.2020, requesting to forward his application, through proper channel.

(c) On 17.11.2020, Respondent informed the Petitioner that his request was placed before the Chief Vigilance Officer, but was not acceded to, as major penalty charge-sheet in respect of fraudulent LTC claim was pending against him.

(d) On 08.11.2021, Petitioner attended the interview conducted by ICCR and on 15.11.2021, Respondent issued a 'No Objection Certificate' (NOC), *post facto*. It was stated in the NOC that in the event of Petitioner's selection, he will be relieved from the services of the University, subject to vigilance clearance and submission of 'no dues' at the time of joining. NOC was issued with the approval of the Competent Authority, which is mentioned on the document itself.

(e) On 07.04.2022, ICCR issued the Offer of Appointment for deputation on the post of Teacher Cultural Centre, at Mozambique, for a period of 11 months. Soon thereafter, on 11.04.2022, Petitioner wrote to the Respondent for issuing a relieving letter, permitting him to proceed for deputation. On 12.04.2022, Petitioner received a communication from ICCR to complete the necessary formalities on priority basis as well as to undergo a medical check-up. Pursuant thereto, Petitioner again wrote to the University on 26.04.2022, followed by reminders to issue the relieving letter, but to no avail.

(f) In the meantime, as a backdrop fact, *vide* order dated 04.01.2020, Respondent appointed an Inquiry Officer to enquire into the charges of fraudulent LTC claims, preferred by few non-teaching staff members of the Respondent, including the Petitioner, under Rule 55 of the 'Terms and Conditions of the Non-Teaching Staff of the Jawaharlal Nehru University'. The Inquiry Officer rendered his report on 16.11.2021, holding that the charges made out in the charge-sheets were 'not proved' *albeit* the charged officers were cautioned to be more circumspect while procuring the air tickets and it was also recommended that the charged officers including the Petitioner be debarred for two block years of LTC, prospectively. Petitioner preferred letters dated 16.09.2022 and 07.10.2022 to the Registrar of the University requesting to allow the Petitioner to take up the assignment at Mozambique, however, when there was no response, the present petition was filed.

(g) On 13.10.2022, Court issued notice to the Respondent. During the pendency of the writ petition, Respondent *vide* letter/order dated 17.10.2022, rejected the request of the Petitioner for relieving him to join the post of Teacher at Mozambique, in view of the LTC fraudulent case. Petitioner has amended the writ petition laying a challenge to the impugned letter/order.

10. Learned counsel appearing on behalf of the Petitioner contends that Respondent appointed an Inquiry Officer under Rule 55 of the 'Terms and Conditions of the Non-teaching staff of the University', to hold an inquiry into the charges and once the Inquiry Officer has rendered a finding in the report that the charges are not proved, Respondent ought to have taken the same into consideration, while passing the impugned order. There is total non-application of mind and even otherwise, after the inquiry officer has found that the Petitioner had no role in the alleged fraud and Respondent has even recovered the entire amount paid under the LTC claim with penal interest, the decision to withhold the relieving order is arbitrary and illegal and deserves to be quashed. It is a matter of record that a period of nearly 13 months has elapsed from the date of submission of the Inquiry Report on 16.11.2021, yet no decision has been taken by the Higher Authorities on the Report, despite knowing that

the Petitioner has a limited window to proceed for deputation to Mozambique and the deputation itself is for a short period of 11 months.

11. It is further contended that Respondent had granted an NOC, *albeit post facto*, for appearing in the interview, with the approval of the Competent Authority and it is stated therein that on selection, Petitioner shall be relieved to join the deputation post. Thus, the principle of legitimate expectation is squarely attracted in the present case and it is not open to the Respondent to reject Petitioner's legitimate request for being relieved, at this late stage.

12. It is also contended that deputation to the post in question, is a once in a life-time opportunity and failure of the Petitioner to join will bar him from taking up any assignment associated with ICCR in future, which is one of the conditions stipulated in the offer letter itself viz. '*if the candidate declines the offer of Appointment, his candidature for the post would be considered cancelled. No further offer will be given in future under any circumstances.*'

13. The last plank of the argument, though not wholly relevant to the present case is that despite a finding by the Inquiry Officer that the charges are not proved, Petitioner has been cautioned to be more circumspect and a penalty of debarment from utilizing LTC for two block years has been recommended, which is illegal and Petitioner reserves the right to challenge the same in appropriate proceedings. *Dehors* this, it is urged, even if the Inquiry Report is taken in its entirety, there is no reason to debar the Petitioner from proceeding on deputation for a short period of 11 months, besides the fact that the debarment is working as a punishment and double jeopardy.

14. Ms. Monika Arora, learned counsel appearing on behalf of the Respondent submits that Petitioner was given NOC for proceeding on deputation, subject to vigilance clearance. The Inquiry Officer has given his Report, which was supplied to some of the delinquent officials for making a representation, if any and two charged officers have already challenged the same in this Court and the matter is sub-judice. Competent Authority had constituted another Committee of three members for further investigation into the matter of LTC. The Inquiry Report and Report of the Three Members Committee were placed before the Competent Authority for directions, who after accepting the Inquiry Report, has issued directions to forward the same to the Higher Authority i.e. Ministry of Education, Government of India. Since there are serious allegations against the Petitioner regarding a fraudulent LTC claim, his request for a relieving order to proceed on deputation has been rightly declined.

15. It is further contended that deputation is not a matter of right and an employee against whom a major penalty charge-sheet has been issued, has no right to seek deputation to another organization without grant of vigilance clearance. Petitioner is not entitled to assert any right or claim to proceed on deputation and writ petition deserves to be dismissed.

16. I have heard learned counsels for the parties and examined their rival contentions.

17. It is not in dispute that Petitioner had applied for short-term deputation for 11 months as Teacher Indian Culture at ICCR's Cultural Centers abroad and had successfully cleared the interview conducted by ICCR on 08.11.2021. It is equally undisputed that an offer of appointment has been issued in favour of the Petitioner on 07.04.2022 and one of the conditions of the offer is that if the candidate declines the

Offer of Appointment, his candidature would be cancelled and no further offer will be given in future, under any circumstances.

18. Perusal of the impugned order shows that request of the Petitioner for a relieving order has been declined/rejected on the ground of alleged fraudulent LTC claim. It is a matter of record and thus, not disputed by the Respondent that the Inquiry Officer has rendered a finding that the charges levelled against the Petitioner have not been proved. For the sake of completeness, relevant paras of the Inquiry Officer's Report dated 16.11.2021 are extracted hereunder, for ready reference:

- *The COs played no part in generation of air tickets.*
- *Intention to defraud is not established and merely booking air tickets through private agent, mainly due to ignorance of rules and in absence of expressive instructions on LTC advance form and/or Sanction Orders, cannot tantamount to individual or group conspiracy.*
- *The COs merely received the tickets as given to them by the travel agent. Therefore, their role in production of alleged fictitious tickets is not established.*
- *Therefore, no charge of fraudulent claim and/or violation of Rule 3 of CCS(Conduct) Rules, Rule 16 of CCS (Leave Travel Concession) Rules, 1988 and various Rules of the CCS (Classification, Control and appeal), Rules, 1965, Rule 34(1) (1) or (c) of JNU Rules Governing the terms and conditions of services of non-teaching staff of the University, is established.*
- *The Finance Committee (FC) in its meeting held on 11.02.2020, and as approved by EC in its meeting held on 18.02.2020, resolved to recover the entire amount of LTC along with penal interest @ 10% per annum from the date of withdrawal to the date of refund from the concerned employees without issuing any further notice in this regard. Thus, the University recovered the amount in full with penal interest.*
- *Thus, based on records made available to the undersigned by the administration, facts and circumstances of the cases and evidence as available on records and the depositions/submissions made by the COs as above and taking a view in totality. I have come to the conclusion that the charges made out in the charge sheets are not proved.*
- *However, as responsible employee of the University the COs should have been more circumspect while procuring air ticket. Therefore, in view of the fact that University has recovered in full the amount of LTC along with the penal interest, I recommend that the COs may be debarred for two block years of LTC prospectively."*

19. From the relevant paras of the Inquiry Report, as extracted above, it is palpably clear that Inquiry Officer has found that: (a) charged officers have played no part in generation of air tickets and intent to fraud is not established; (b) merely booking air tickets through private agent, due to ignorance of rules and in absence of express instructions on LTC advance form and/or sanction orders, cannot tantamount to individual or group conspiracy; and (c) charged officer has merely received the ticket, as given to him by the travel agent and therefore, his role in production of alleged fictitious tickets is not established.

20. The Inquiry Officer has absolved the Petitioner from the alleged violations of Rule 3 of CCS(Conduct) Rules, 1964, Rule 16 of CCS (Leave Travel Concession) Rules, 1988 and provisions of CCS (Classification, Control and Appeal), Rules, 1965, as well as other Rules governing the terms and conditions of service of non-teaching staff of the University, invoked by the Respondent to charge-sheet the Petitioner. Inquiry Officer has arrived at a conclusion, based on records, facts and circumstances

as well as the evidence available on record, that the charges made out in the charge-sheet are 'not proved'.

21. Therefore, it is manifest that insofar as the Inquiry Report is concerned, charges levelled against the Petitioner pertaining to fraudulent LTC claims are 'not proved'. No doubt, the Inquiry Report has not attained finality, as the Disciplinary Authority may accept the same or disagree. However, it needs to be noted that the Inquiry Report was rendered on 16.11.2021 and till date, though 13 months have elapsed, no final decision has been taken, *albeit* it is averred in the counter-affidavit that the Competent Authority in the University has accepted the Inquiry Report and the same is being forwarded to the Higher Authority i.e. Ministry of Education, Government of India. Learned counsel for the Petitioner has rightly submitted that there are strict timelines prescribed from time to time in various Executive Instructions, including DoPT OMs, emphasizing and highlighting the need to conclude disciplinary proceedings expeditiously and the delay should not place the Petitioner in a disadvantageous position. Reliance is correctly placed by the Petitioner on the OM dated 11.11.1998, which prescribes a period of 3 months, within which ordinarily the Disciplinary Authority should take a decision on the Inquiry Report. Beyond a scintilla of doubt, these Guidelines are sacrosanct and must be adhered to scrupulously.

22. It needs no gainsaying that delay in conclusion of disciplinary proceedings not only works to the prejudice of the employee but also the employer and benefits none. Present case is a classic and text book example of prejudice to an employee, owing to delay in finalization of inquiry proceedings. Period of nearly 13 months has elapsed from the time when the Inquiry Officer rendered his Report in favour of the Petitioner and even today, there is no light at the end of the tunnel, as Respondent is unsure as to when the proceedings will attain finality.

23. In my view, therefore, it would be unfair and unjust to the Petitioner if he is not permitted to proceed for deputation, considering the fact that the Competent Authority empowered to take a decision on the Inquiry Report, has not so far either accepted the Report or disagreed with it. The Inquiry Officer has absolved the Petitioner of the charges and in the absence of any disagreement with the same, at this stage, in my view, there is no impediment in the Petitioner's path to proceed for deputation. Be it noted that the entire amount of LTC claim has been recovered along with penal interest @ 10% from the date of withdrawal and today, there is no financial loss to the Respondent.

24. Significantly, there is no whisper in the counter-affidavit and even today, Respondent is unable to render any acceptable or plausible explanation for the delay in acting on the Inquiry Report. In my view, facts of the case require that a balance must be struck between the competing interests of the litigating parties. It needs no emphasis that Petitioner is only proceeding to join the post of a Teacher on a short term deputation and is not permanently severing his relationships with the Respondent and/or proceeding to take up any private job and there is nothing that stops the concerned Authority from taking a decision on the Inquiry Report, one way or the other and consequences in law shall follow. However, if the Petitioner is not relieved to proceed for deputation, his chance for any future deputation with ICCR will be lost forever and even if he is finally exonerated, the harm done will be irretrievable.

25. Insofar as the argument of the Respondent that a Three Members Inquiry Committee has been constituted to investigate further into the LTC claims, is

concerned, suffice would it be to state, at this stage, that this Court is unable to fathom and infer why and how a second Inquiry Committee has been constituted to investigate and inquire into the same charge, for which an Inquiry Report has already been rendered and is awaiting its logical conclusion.

26. Coming to the argument of the Respondent that deputation is not a matter of right, there can hardly be any debate on this proposition of law. However, an employee is entitled to a fair consideration and as a model employer, Respondent is under an obligation to show that the employee has been treated fairly. While on one hand, Respondent has refused to relieve the Petitioner on the ground of alleged fraudulent LTC claim, despite the inquiry officer's finding that there is no moral turpitude or fraudulent act and Petitioner had no role in issue of the tickets, on the other hand, no steps have been taken to ensure that the inquiry report, rendered way-back in November, 2021, is taken to its logical end, expeditiously. Respondent has already recovered the amounts with penal interest and this Court finds no justification, at this stage, for the Respondent to decline issuance of the relieving order. Petitioner continues to be an employee of the Respondent and being a parent department, there is no proscription in passing any further order in the inquiry proceedings, even if Petitioner is on deputation for a short period of 11 months. Therefore, this Court sees no impediment in the Petitioner proceeding on deputation.

27. Writ petition is accordingly allowed, directing the Respondent to issue the relieving order forthwith, enabling the Petitioner to proceed on deputation.

28. It is made clear that this Court has not expressed any opinion on any issue concerning the Inquiry proceeding or the charges levelled against the Petitioner. The above narrative is only for the purpose of deciding the present writ petition, limited to issuance of relieving order for deputation to Mozambique.

29. Petition is disposed of, with no order as to costs.

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