

A SANT LONGOWAL INSTT. OF ENGG. & TECH. & ANR.

v.

SURESH CHANDRA VERMA  
(Civil Appeal No. 5828 of 2013)

JULY 18, 2013

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[K.S. RADHAKRISHNAN AND  
PINAKI CHANDRA GHOSE, JJ.]

**SERVICE LAW:**

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*Study leave - Availed by Lecturer to pursue Ph.D. course - Certificate for completion of study course not produced - Recovery of salary and other benefits paid during the period of study leave - Held: A candidate who avails of leave but takes no interest to complete the course and does not furnish the certificate to that effect, is doing a disservice to the institute as well as its students - Public money cannot be spent unless there is mutual benefit - However, in the instant case, considering the fact that the bond executed by respondent is found to be vague, there is no reason for appellant-institute to recover the balance amount from him -- But the amount already recovered be not refunded, since public interest has suffered due to non-obtaining of Ph.D by respondent after availing of entire salary and other benefits - This order is made taking into consideration all aspects of the matter and to do complete justice between the parties - Constitution of India, 1950 - Art. 142 - Central Civil Services (Leave) Rules, 1972 - rr.53(5) and 63.*

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*Granting of study leave - Object of - Explained.*

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**The respondent, a Lecturer in the appellant Institute, after availing of study leave for three years to pursue Ph.D. course, resumed his duties as Lecturer in the Institute, but failed to produce the certificate of obtaining**

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the Ph.D. for which study leave was granted. The appellant-Institute took steps to recover the amount of Rs.12,32,126/- paid to the respondent during the period of study leave. The writ petition filed by the respondent was allowed by the single Judge of the High Court and the Institute was directed to refund with interest the amount already recovered from him. The appeal of the Institute was dismissed by the Division Bench of the High Court.

Allowing the appeal in part, the Court

HELD: 1.1 The specific case of the appellant before this Court is that the respondent is governed by the provisions of the Central Civil Services (Leave) Rules, 1972 forming part of the Fundamental Rules and Supplementary Rules, though the question as to whether r. 63 of the 1972 Rules is also applicable to the respondent was not specifically urged by the appellant-institute before the High Court. [para 10 and 13] [124-D; 128-B]

1.2 Rule 63 of the Central Civil Services (Leave) Rules 1972 mandates that if a Government servant resigns or retires from service or otherwise quits service without returning to duty after a period of study leave or within a period of three years after such return to duty or fails to complete the course of study and is, thus, unable to furnish the certificates as required under sub-rule (5) of Rule 53, he shall be required to refund the actual amount of leave salary, study allowance, cost of fees, travelling and other expenses, if any, incurred by the Government of India. The provision has a laudable object to achieve. The purpose of granting study leave with salary and other benefits is for the interest of the Institution and also the person concerned so that once he comes back and joins the institute, the students will be benefited by the knowledge and expertise acquired by the person at the expense of the institute. [para 14-15] [129-G-H; 130-A-B, C-D]

A 1.3 A candidate who avails of leave but takes no  
interest to complete the course and does not furnish the  
certificate to that effect, is doing a disservice to the  
institute as well as to its students. Such a person only  
enjoys the period of study leave without doing any work  
B at the institute and, at the same time, enjoys the salary  
and other benefits, which is evidentially not in public  
interest. Public money cannot be spent unless there is  
mutual benefit. [para 15] [130-D-F]

C 1.4 In the instant case, there is no clear cut provision  
in the bond either expressly referring to Rule 63 or strictly  
imposing a condition that if a candidate fails to complete  
the course study during the period of sanctioned leave,  
he will have to refund to the Institute the total amount of  
leave, salary and other benefits availed of by him during  
D the period of study leave. However, such a specific  
provision was incorporated in bond by the Board of  
Governors of the appellant-institute in its 22nd meeting  
held on 28.06.2002. [para 10-11] [124-D-F]

E 1.5 The appellant-Institute has already recovered an  
amount of Rs.6.5 lacs from the salary and arrears of  
salary of the respondent and claims balance amount of  
Rs.6,18,000/-. Considering the facts and circumstances of  
the case and the fact that the bond executed by the  
respondent is found to be vague, there is no reason for  
F the appellant-Institute to recover the balance amount from  
him. But, the amount already recovered be not refunded,  
since public interest has definitely suffered due to non-  
obtaining of Ph.D by the respondent after availing of the  
entire salary and other benefits. This order is made taking  
G into consideration all aspects of the matter and to do  
complete justice between the parties. [para 16-17] [130-  
G-H; 131-A-C]

H CIVIL APPELLATE JURISDICTION : Civil Appeal No.  
5828 of 2013.

From the Judgment and Order dated 23.08.2012 of the High Court of Punjab & Haryana at Chandigarh in LPA No. 363 of 2012. A

Ajay Jain, B.N. Gaur, Jinendra Jain for the Appellants.

Himanshu Shekhar for the Respondent. B

The Judgment of the Court was delivered by

**K.S. RADHAKRISHNAN, J. 1.** Leave granted.

2. The question that has come up for consideration in this appeal is whether the appellant-institute is justified, in directing the respondent to refund the entire amount of Rs.12,32,126/- paid to him towards salary and other allowances for pursuing Ph.D studies at IIT, Kanpur, on failure to produce the certificate of obtaining the Ph.D, for which study leave was granted. C D

3. The appellant-institute was established by the Ministry of Human Resource & Development, Government of India in the year 1989 and has been fully funded by the Central Government. The respondent joined the service in the appellant-institute as Lecturer in Mechanical Engineering on 30.08.1993. He applied for grant of study leave for pursuing his Ph.D at IIT, Kanpur. The competent authority acceded to that request and granted three years study leave commencing from 24.07.1999 to 22.07.2002. The respondent after executing necessary bond proceeded on study leave on 24.07.1999 and three years period was completed on 24.07.2002. Due to various reasons, the respondent could not complete his Ph.D studies and he joined back in service as Lecturer in the Institute in November 2003. The respondent was asked to produce the completion certificate of the Ph.D course which respondent could not produce, hence, the appellant-institute demanded the refund of the amount of Rs. 12,32,126/- paid to him during the period of study for pursuing Ph.D as per the terms and conditions of bond executed by the respondent. E F G

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A 4. Aggrieved by the steps taken by the appellant-institute to recover the amount, the respondent filed Civil Writ Petition No. 12555 of 2010 before the High Court of Punjab and Haryana.

B Writ Petition was allowed by learned Single Judge vide judgment dated 02.02.2012 quashing the demand notice and also ordered refund of the amount already recovered with interest from the respondent.

C 5. Aggrieved by the same, the appellant preferred LPA No. 363 of 2012 before the Division Bench of the High Court of Punjab & Haryana and the High Court vide judgment dated 23.08.2012 took the view that the appellant could not point out any term in the bond executed by the respondent that he had to complete the Ph.D programme within a period of three years and that the only condition was that the respondent had to serve for a period of six years after joining service on the expiry of the study leave. The appeal was dismissed by the Division Bench of the High Court.

E 6. Aggrieved by the judgment of the Division Bench of the High Court, this appeal has been preferred.

F 7. Shri Ajay Jain, learned counsel appearing for the appellant submitted that the High Court has completely misunderstood terms and conditions on which the respondent was granted study leave which is reflected in the bond executed by the respondent on 5.05.1999. Learned counsel submitted that the High Court has completely ignored the salutary principle of "no work no pay" and that the respondent during the period of study not only not worked in the appellant-institute but also was not successful in obtaining the Ph.D. Consequently, neither the institute, the respondent nor the students have been benefited and public money has been spent for no use.

H 8. Shri Himanshu Shekhar, learned counsel for the respondent, on the other hand, submitted that he has completed

his course work required for the Ph.D programme, completed A  
comprehensive examination etc. but the thesis could not be  
completed due to retirement of the guide. Further, it was  
pointed out that the respondent had also made a written  
request on 24.05.2002 seeking extension of six months period  
so that the respondent could complete his thesis work. Another B  
representation was made on 04.06.2002 and all those  
representations left unattended. Under such circumstances, he  
had to join duty without obtaining Ph.D. Learned counsel also  
pointed out that similarly situated employee named Abanish C  
Kumar Singh was provided extension of time but the same was  
not done in the case of the respondent. Further, it was pointed  
out that there is no condition in the bond that if the respondent  
could not complete the Ph.D then the entire salary and other  
benefits could be recovered from the respondent. Learned  
counsel pointed out that the High Court has rightly interpreted D  
terms and conditions of bond, consequently the demand made  
for the reimbursement of the salary and other allowances is not  
justified.

9. We have gone through terms and conditions of the bond E  
executed by the respondent on 05.05.1999. Some of the  
relevant portions of the bond read as follows:

"Whereas I, Suresh Chandra Varma, am granted (kind of  
leave) by the Institute.

And whereas for the better protection of the Institute, I have F  
agreed to execute this Bond with such conditions as  
hereunder is written.

Now the condition of the above written obligation is that in G  
the event of my failing of resume duty, or resigning or  
retiring from service or otherwise quitting service without  
returning from duty after the expiry of termination of the  
period of study leave or at any time within a period of three  
years after my return to duty, I shall forthwith pay to the  
institute or as may be directed by the Institute, on demand, H

A pay & allowances received by me during study leave, the said amount of Rs.10,000/- (ten thousand only) together with interest thereon from the date of demand at Govt. rates for the time being in force on Govt. loan.

B And upon my making such payment the above written obligation shall be avoided and of no effect, otherwise I shall be and remain in full force and virtue.

C The bond shall in all respects be governed by the laws of India for the time being in force and the rights and liabilities hereunder shall, where necessary, be accordingly determined by the appropriate courts in India."

D 10. Further, it is the specific case of the appellant that the respondent herein is governed by the provisions of the Central Civil Services (Leave) Rules, 1972 forming part of the Fundamental Rules and Supplementary Rules, Part III framed by the Constitution of India. We notice there is no clear cut provision in the bond either expressly referring to Rule 63 or strictly imposing a condition that if a candidate fails to complete the course study during the period of sanctioned leave, he will have to refund to the appellant-institute the total amount of leave, salary and other benefits availed of by him during the period of study leave.

F 11. Of late, such a specific provision was incorporated in bond by the Board of Governors of the appellant-institute in its 22nd meeting held on 28.06.2002, which reads as follows:

G **TO APPROVE THE AMENDMENT IN BOND CONDITIONS TO BE EXECUTED BY THE FACULTY MEMBERS WHILE PROCEEDING ON STUDY LEAVE.**

H The Board of Governors of the Institute in its 22nd meeting held on 28.06.2002 decided that a faculty member, who is granted study leave for possessing higher education such as M.E./M.Tech. and Ph.D, he/she is required to

execute a bond to serve the Institute for double the period of study leave after returning from study leave. A

The conditions of the bond are silent on the point when a faculty member resume his/her duty but fails to produce the educational qualifying certificate for which he/she was sanctioned study leave. B

Following provision may kindly be allowed to be incorporated in the proforma of bond to be executed by a faculty member while proceeding on study leave / extra ordinary leave of study / special leave for training / sabbatical leave on the pattern of Central Government Rules to avoid legal complicity. C

**Proforma of bond presently filled by a faculty members while proceeding on study leave / extra ordinary leave of study/special leave for training/sabbatical leave**

**Proposed Proforma of bond to be filled by a faculty members while proceeding on study leave/extra ordinary leave of study / special leave for training / sabbatical leave.**

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KNOW ALL MEN BY THESE PRESENTS THAT I, \_\_\_\_\_ resident of \_\_\_\_\_ at present employed as \_\_\_\_\_ in the Sant Longowal Institute of Engineering & Technology, do hereby bind myself and my heirs, executors and administrators to pay to the Director, Sant Longowal Institute of Engineering & Technology (hereinafter called the Institute) on demand the sum \_\_\_\_\_ of Rs. \_\_\_\_\_ (Rs. \_\_\_\_\_ only)

KNOW ALL MEN BY THESE PRESENTS THAT I, \_\_\_\_\_ resident of \_\_\_\_\_ in the district of \_\_\_\_\_ at present employed as \_\_\_\_\_ in the Sant Longowal Institute of Engineering & Technology, do hereby bind myself and my heirs, executors and administrators to pay to the Director, Sant Longowal Institute of Engineering & Technology (hereinafter called the Institute) the total amount of leave salary and other

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A	together with interest thereon from the date of demand at Government rates for the time being in force on Government loans or, if payment is made	expenses incurred by the Institute, if any, along with bond money prescribed the Institute together with interest thereon from the date of demand at
B	in a country other than India, the equivalent of the said amount in the currency of that country converted at the official rate of exchange	Government Rates for the time being in force on Government loans or if payment is made in a country other than India, the equivalent of the said amount
C	between that country and India AND TOGETHER WITH all costs between attorney and client and all charges and expenses that shall/or may have incurred by the Institute.	in the currency of that country converted at the official rate of exchange between that country and India AND TOGETHER WITH all costs between attorney and client and all charges and expenses that shall/or may have incurred by the Institute.
D	WHEREAS I, _____, am granted _____ (kind of leave) by Institute.	AND TOGETHER WITH all costs between attorney and client and all charges and expenses that shall/or may have incurred by the Institute.
E	AND WHEREAS for the better protection of the Institute, I have agreed to execute this bond with such condition as hereunder is written	WHEREAS I, _____ am granted _____ (kind of leave) by Institute.
F	NOW THE CONDITION OF THE ABOVE WRITTEN OBLIGATION IS THAT in the event of my failing to resume duty, or resigning or retiring from service or otherwise quitting service without returning to duty after the expiry of termination of the period of study leave or at any time within a double the period	AND WHEREAS FOR THE BETTER protection of the Institute, I have agreed to execute this bond with such condition as hereunder is written.
G	from service or otherwise quitting service without returning to duty after the expiry of termination of the period of study leave or at any time within a double the period	AND WHEREAS for the better protection of the Institute, I have agreed to execute this bond with such condition as hereunder is written.
H	NOW THE CONDITION OF	NOW THE CONDITION OF

<p>of study leave after my return to duty, I shall forthwith pay to the Institute or as may be, directed by the Institute on demand, the said sum of Rs. _____ only together with interest thereon from the date of demand at Government Rates for the time being in force on Government loans.</p>	<p>THE ABOVE WRITTEN OBLIGATION IS THAT in the event of my failing to resume duty, or resigning or retiring from service or otherwise quitting service without returning to duty after the expiry or termination of the period of study leave or failing to complete the course of study or at any time within the period of sanctioned leave after my return to duty, I shall forthwith pay to the Institute the total amount of leave salary and other expenses incurred by the Institute, if any, along with bond money prescribed by the Institute together with interest thereon from the date of demand at Government Rates for the time being in force on Government loans.</p>	A
<p>AND upon my making such payment the above written obligation shall be void and of no effect, otherwise it shall be and remain in full force and virtue.</p>	<p>AND upon my making such payment the above written obligation shall be void and of no effect, otherwise it shall be and remain in full force and virtue.</p>	B
<p>The bond shall in all respects be governed by laws of India for the time being in force and the rights and liabilities hereunder shall, where necessary, be accordingly determined by the appropriate courts in India.</p>	<p>AND upon my making such payment the above written obligation shall be void and of no effect, otherwise it shall be and remain in full force and virtue.</p>	C
<p>The Institute has agreed to bear the stamp duty payable on this bond.</p>	<p>The bond shall in all respects be governed by the laws of India for the time being in force and the rights and liabilities hereunder shall, where necessary, be accordingly determined by the appropriate courts in India.</p>	D
<p>Signed and dated this _____ day of one thousand nine hundred and signed and delivered by in the presence of _____.</p>	<p>The bond shall in all respects be governed by the laws of India for the time being in force and the rights and liabilities hereunder shall, where necessary, be accordingly determined by the appropriate courts in India.</p>	E
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A 12. The above mentioned clause was inserted in the absence of a specific clause to that effect in the bond executed by the faculty members.

B 13. The question as to whether Rule 63 referred to above is also applicable to the respondent was not seen specifically urged by the appellant-institute either before the learned Single Judge or before the Division Bench, hence, the High Court had no occasion to examine its applicability. In this connection, we may refer to Rule 63 which reads as follows:

C **"63. Resignation or retirement after study leave or non-completion of the course of study.**

D (1) If a Government servant resigns or retires from service or otherwise quits service without returning to duty after a period of study leave or within a period of three years after such return to duty or fails to complete the course of study and is thus unable to furnish the certificate as required under sub-rule (5) of Rule 53 he shall be required to refund-

E (i) The actual amount of leave salary, study allowance, cost of fees, travelling and other expenses, if any, incurred by the Government of India; and

F (ii) The actual amount, if any, of the cost incurred by other agencies such as foreign Government, Foundations and Trusts in connection with the course of study, together with interest thereon at rates for the time being in force on Government loans from the date of demand, before his resignation is accepted or permission to retire is granted or his quitting service otherwise.:

G (iii) Provided that except in the case of employees who fail to complete the course of study nothing in this rule shall apply -

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(a) To a Government servant who, after return to duty from study leave, is permitted to retire from service on medical grounds; or A

(b) To a Government servant who, after return to duty from study leave, is deputed to serve in any Statutory or Autonomous Body or Institution under the control of the Government and is subsequently permitted to resign from service under the Government with a view to his permanent absorption in the said Statutory or Autonomous body or Institution in the public interest. B  
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(2) (a) The study leave availed of by such Government servant shall be converted into regular leave standing at his credit on the date on which the study leave commenced, any regular leave taken in continuation of study leave being suitably adjusted for the purpose and the balance of the period of study leave, if any, which cannot be so converted, treated as extraordinary leave. D

(b) In addition to the amount to be refunded by the Government servant under sub-rule (1), he shall be required to refund any excess of leave salary actually drawn over the leave salary admissible on conversion of the study leave. E

(3) Notwithstanding anything contained in this rule, the President may, if it is necessary or expedient to do so, either in public interest or having regard to the peculiar circumstances of the case or class of cases, by order, waive or reduce the amount required to be refunded under sub-rule(1) by the Government servant concerned or class of Government servant." F  
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14. If a Government servant resigns or retires from service or otherwise quits service without returning to duty after a period of study leave or within a period of three years after such return to duty or fails to complete the course of study and is thus H

A unable to furnish the certificates as required under sub-rule (5) of Rule 53, he shall be required to refund the actual amount of leave salary, study allowance, cost of fees, travelling and other expenses, if any, incurred by the Government of India.

B 15. The above mentioned provision has a laudable object  
 to achieve. A Government servant or person like the  
 respondent is given study leave with salary and allowances etc.  
 so as to enable him to complete the course of study and to  
 furnish the certificate of his successful completion, so that the  
 C institute which has sanctioned the study leave would achieve  
 the purpose and object for granting such study leave. The  
 purpose of granting study leave with salary and other benefits  
 is for the interest of the Institution and also the person  
 concerned so that once he comes back and joins the institute  
 D the students will be benefited by the knowledge and expertise  
 acquired by the person at the expense of the institute. A  
 candidate who avails of leave but takes no interest to complete  
 the course and does not furnish the certificate to that effect is  
 doing a disservice to the institute as well as the students of the  
 institute. In other words, such a person only enjoys the period  
 E of study leave without doing any work at the institute and, at the  
 same time, enjoys the salary and other benefits, which is  
 evidentially not in public interest. Public money cannot be spent  
 unless there is mutual benefit. Further, if the period of study  
 leave was not extended or no decision was taken on his  
 F representation, he could have raised his grievances at the  
 appropriate forum.

G 16. We notice that the appellant-institute has already  
 recovered an amount of Rs.6.5 lacs as monthly installments  
 from the salary of the respondent and the appellant-institute has  
 also recovered an amount of Rs.1,75,000/- from the salary of  
 the respondent and Rs.4,75,000/- from the arrears of revised  
 scales admissible to the respondent with effect from  
 01.01.2006 and as such approximately Rs.6,50,000/- has been

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recovered from the respondent. Now the appellant-institute claims balance amount of Rs.6,18,000/-.

17. Considering the facts and circumstances of the case and considering the fact that the bond executed by the respondent is found to be vague, we find no reason for the appellant-institute to recover the balance amount of Rs.6,18,000/- from the respondent but the amount already recovered be not refunded, since public interest has definitely suffered due to non-obtaining of Ph.D by the respondent after availing of the entire salary and other benefits. We do so taking into consideration all aspects of the matter and to do complete justice between the parties.

18. Appeal is allowed to the above extent and the judgment of the learned Single Judge and Division Bench is modified accordingly and no further amount be recovered by the appellant-institute from the respondent.

R.P.

Appeal partly allowed.