

JUDGMENT SHEET
IN THE PUNJAB SUBORDINATE JUDICIARY
SERVICE TRIBUNAL LAHORE

Service Appeal No. 15 of 2023

Syed Faizan e Rasool

Versus

The Lahore High Court, Lahore through its Registrar

J U D G M E N T

Date of hearing: 25.04.2024.

Appellant by: In person.

Respondent by: Mr. Muhammad Nauman Sarwar,
Advocate.

MUHAMMAD SAJID MEHMOOD SETHI, J. / CHAIRMAN:-

Through instant appeal, appellant has challenged letter dated 25.08.2023, issued by respondent, whereby his representation for permission to apply for a Master Degree in Law from a foreign university, was declined.

2. The appellant, in person, submits that impugned direction to approach a local university for admission in LLM is not in consonance with declared policy of this Court. He further submits that appellant has been subjected to gross discrimination in the matter as his other colleagues have been granted such permissions. Adds that appellant's submissions have not been dilated upon while deciding his representation. In support, he has placed reliance on Usman Ali Chhachhar v. Moula Bux Chachhar and others (2019 SCMR 2043), Muhammad Amin Muhammad Bashir Limited v. Government of Pakistan through Secretary Ministry of Finance, Central Secretariat, Islamabad and others (2015 SCMR 630), Abid Hassan and others v. P.I.A.C. and others (2005 SCMR 25), Chairman, Regional Transport Authority, Rawalpindi v. Pakistan Mutual Insurance Company Limited, Rawalpindi (PLD 1991 Supreme Court 14), Pakistan Medical and Dental Council through Authorized Representative v. Muhammad Junaid Alam and others (PLD 2019 Lahore 234), Ameer Afzal etc. v. Govt. of Punjab (NLR

2016 Service 34) and *Dr. Sikandar Ali v. Government College University, Lahore through Vice-Chancellor [2012 PLC (C.S.) 1119].*

3. On the other hand, learned counsel for respondent submits that appellant failed to provide reasons motivating him at this stage of service to get higher education from a foreign university and how the degree would play a pivotal role in his personal growth and add value to his job. He contends that the qualification / education i.e. Gender Sensitization, possessed by appellant and mentioned in the contents of his application / appeal, has no relevance with the duties and functions as a judicial officer. He argues that appellant's representation was decided after providing reasonable opportunity of hearing and attending all the grounds raised by him. He contends that question of discrimination does not arise in view of peculiar facts and circumstances of this case.

4. Heard. Available record perused.

5. Earlier, appellant's request for permission to apply for Fulbright Scholarship and Hubert H. Humphrey Fellowship Program 2024 was not acceded to vide letter dated 04.05.2024, however the same is not assailed through this appeal. Presently, the matter of declining permission to apply for a Master's Degree in Law from a Foreign University is before this Tribunal. Record shows that in response to appellant's request, the respondent-department, vide letter dated 14.06.2023, required appellant to justify his stance in the following manner:-

- a. to place on record his achievements at College/University/Local/National Level, in field of Law, prior to and after joining his service as Civil Judge, with documentary proofs in form of Certificates, Research work/papers, land-mark judgments etc. including distinctions he made during his trainings/courses at Federal/Punjab Judicial Academy(s), to support his keen interest in specific subjects for LLM from a foreign university.
- b. to submit that how much time he took to join his service as Civil Judge after his graduation in Law and what academic achievements he gained during that period specifically.
- c. to give reason(s) (at least three in number) that instigate/motivate him at this stage of service to get higher education from foreign university and how that particular degree will play a pivotal role in his personal growth and how his personal growth can add value in his work and ultimately to this institute.

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- d. to indicate the name(s) of the local university(s), he approached and how his desired foreign work/syllabus University(s)'s course superior to course work/syllabus of those local universities.
 - e. to state the tentative amounts of direct and indirect expenses involved for his foreign studies i.e. Tuition Fees, Accommodation expenses, Travelling expenses, meal expenses etc. and to pinpoint the sources, by which he intends to meet them all.
6. The stance of respondent, inter-alia, is that appellant could not satisfy the competent authority in answering the questions put to him whereas appellant vehemently contends that he is equipped with plausible reasons and material to justify his request coupled with the argument of discriminatory treatment. We are not inclined to enter into factual aspects of the matter, rather intend to decide the matter on legal plane.
7. As per law, grant of permission to apply for higher education and that too from a foreign university is not a rule of thumb for every judicial officer, and the same is also not backed by any express provisions of law or rules or policy instructions or prevalent practice and this legal position is not disputed by appellant. This matter pertains to discretion of the authority to be exercised in the light of attending facts and circumstances of each case, saddled with certain requirements / qualifications. In this case, the authority is not persuaded to exercise discretion for a number of reasons. The appellant, despite arguing the case at some length, could not convince us that the authority can be compelled to exercise the same in each and every case, especially when there is scarcity of Judicial Officers as compared to bulk of pending cases and in view of the prevalent policy of the authority circulated vide letter dated 25.03.2024.
8. In matters of grant of leave, it is well-settled that such discretion cannot be claimed as of right, but for seeking such relief the applicant must follow the proper procedure provided under the rules and he is not supposed to avail any kind of leave entirely in his discretion and choice in departure to the rules and service discipline. Reference can be made to Muhammad Ali Bukhari v Federation of Pakistan through Establishment Secretary, Islamabad and 2 others (2008 SCMR 214) and Allah Ditta v. Director of Education,

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Colleges, Bahawalpur Division, Bahawalpur and another [1992 PLC (C.S.) 571]

In Indian context, the Delhi High Court in the case reported as Anita Malik v. A.I.I.M.S. & another [2006(129) DLT 136] observed that *it is no doubt true that the rule talks of eligibility and enables the Government or the concerned employer to grant study leave if the employee desirous of such a facility, fulfills the conditions. However, the rule is not cast in imperative terms. It is only an enabling discretionary provision and necessarily has to be exercised having regard to the circumstances of the case.*

Furthermore, the High Court of Kerala in P. Geetha v. Kerala Livestock Development Board Ltd. And another (2015(1) Ker L.J. 494) while discussing the Kerala Livestock Development Board Limited Staff Rules & Regulations, 1993 opined that leave cannot be claimed as a matter of right, and that under exigent circumstances, the leave sanctioning authority has the discretion to refuse, postpone, curtail or revoke leave of any description and/or to recall to duty any employee on leave.

9. In view of the foregoing, we are not inclined to interfere in the impugned order. The case law, relied upon by appellant, is distinguishable and not applicable to the facts of this case.

10. Resultantly, this appeal being devoid of any merit is **dismissed**. However, appellant may apply again for such permission at an appropriate stage.

**(Muhammad Sajid Mehmood Sethi)
Chairman**

**(Abid Husain Chattha)
Member**

**(Rasaal Hasan Syed)
Member**

APPROVED FOR REPORTING

Chairman