



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 9th July, 2026

Pronounced on: 08th October, 2026

Uploaded on: 08th October, 2026

CNR No : DLHC010163502012

+ W.P.(C) 630/2012

Vinod Kumar Khurana

S/O Late Sh. D.D. Khurana

R/O - 15-A, Dhurva Appartment, Sector-13,

Rohini. New Delhi-110085.

.....Petitioner

Through:

Mr. Ravindra S. Garia and Mr. Shashank Singh, Advocates with Petitioner in person.

versus

1. University of Delhi,

Through It's Registrar

New Delhi-110007.

2. Deputy Registrar (Fin. II),

Pension Cell, University of Delhi

New Delhi-110007.

3. Principal,

Swami Shraddhanand College,

University of Delhi, Alipur,

Delhi-110036.

.....Respondents

Through:

Mr. Mohinder Rupal, Mr. Hardik Rupal, Ms. Aishwarya Malhotra and Ms. Tripta Sharma, Advs. for R-2.

CNR No : DLHC011791832012

+ W.P.(C) 6964/2012

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CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

1. The Writ Petition, **W.P.(C) 630/2012**, has been filed under Article 226 of the Constitution of India by the Petitioner, Vinod Kumar Khurana, seeking the issuance of an appropriate writ, order or direction for quashing and setting aside the communication dated 07.09.2011 of the University of Delhi (hereinafter referred to as the "University"), directing withdrawal of his notional increments for the study leave period, the consequent communication dated 23.01.2012 of Swami Shraddhanand College (hereinafter referred to as the "College") *re-fixing his pay, and the recoveries made from his retiral benefits, along with a Declaration that the Study Leave Bond is void as it is contrary to the Study Leave Rules.*

2. The connected Writ Petition, **W.P.(C) 6964/2012**, challenges the University's Circulars **dated 09.02.2012 and 19.10.2012** on study leave



availed by College teachers.

3. Since the issues raised in the two Writ Petitions arise from the same controversy concerning the applicability of the Study Leave Rules and the consequential action taken by the University in respect of the Petitioner, **they are being considered together and are disposed of by this common judgment.**

4. The **brief facts** are, that the Petitioner was **appointed as a Lecturer** in the Department of Sanskrit, Swami Shraddhanand College, in July 1971. Clause 11 of the Form of Agreement of Service for College Teachers, annexed to Ordinance XII of the University, provides that "*the teacher shall be entitled to leave according to the University Leave Rules as in force from time to time.*"

5. Clause (a) of Rule (xiii) of the Study Leave Rules of the University, as they stood prior to the amendment referred to hereinafter, made a teacher "*who is unable to complete his studies within the period of Study Leave granted to him*" liable to refund the leave salary, allowances and other expenses incurred on him during the study leave.

6. On 03.03.1979, a Committee constituted to examine the terms of the Study Leave Bond and the University Grants Commission guidelines on study leave, recommended that Clause (a) of Rule (xiii) be deleted, and that the Study Leave Bond be amended, accordingly.

7. The Executive Council of the University accepted the recommendation vide Resolution No. 208 dated 01.06.1979 and approved the Amended Revised Study Leave Rules. **Though approved on 01.06.1979, these Rules were expressly made effective retrospectively from 19.07.1977 (hereinafter referred to as the "Study Leave Rules, 1979").** Clause (a) of



Rule (xiii) thus stood deleted with effect from 19.07.1977.

8. On 28.04.1979, the Petitioner applied for admission to the Ph.D. course in Sanskrit on the topic "*A Study of Atharvaveda in the context of Changing Social Organisation and Norms*".

9. The Board of Research Studies for the Humanities, at its Meeting held on 04.05.1979, admitted him to the Ph.D. course, under the supervision of Dr. R.N. Sharma. This was conveyed to him vide Memorandum dated 28.06.1979.

10. The Petitioner paid the requisite fee, vide Receipt No. 114254 dated 19.07.1979. The receipt is endorsed on the copy of the Memorandum dated 28.06.1979 maintained in his personal file, with the College.

11. On 20.08.1983, the University approved the grant of study leave to the Petitioner. Vide Memorandum dated 14.09.1983, the College granted him study leave on full pay and allowances for one year, from 14.09.1983 to 13.09.1984, for research work leading to Ph.D.

12. **On 15.09.1983**, before proceeding on study leave, the Petitioner executed an Agreement with the College, along with two sureties, Dr. S.K. Dhingra and Sh. K.K. Gaur (*hereinafter referred to as the "Study Leave Bond"*). The Study Leave Bond recites that the study leave was granted on the terms and conditions of the Study Leave Rules adopted by the Executive Council, at its Meeting held on 15.09.1976.

13. The study leave was ***extended for a second year***, i.e. 1984-85.

14. On 14.08.1985, the Petitioner sought a further extension of one year. He stated that he had completed his source study and collected material, that the writing had commenced, and that it would take about a year. His Supervisor endorsed that "*his work is satisfactory*", and the Head of the



Department of Sanskrit recommended an extension of one year, to enable him to complete his thesis.

15. The Deputy Registrar (Colleges), vide letter dated 17.10.1985, called for a report on the progress of the Petitioner's research for the purpose of extension of study leave. The Acting Principal of the College forwarded the progress report, duly signed by the Supervisor, vide letter dated 26.12.1985. The Petitioner states that, on 21.01.1986, the Deputy Registrar (Colleges) conveyed to the Principal of the College the approval of the University for the extension of his study leave.

16. On completing three years of study leave, the Petitioner rejoined duty on 15.09.1986, 14.09.1986 being a Sunday. He did not submit his Ph.D. thesis during the study leave. ***He continued in service for about twenty-five years thereafter, and superannuated on 30.11.2011.***

17. About three months before his retirement, on 07.09.2011, the Pension Cell of the University returned the Petitioner's pension papers to the Principal of the College, for compliance on certain points. Point 14 read:

"It may be confirmed whether Sh. Vinod Kumar Khurana has completed his course of study for which he was granted study leave. If he has not completed, he should not be given notional increment during study leave period and accordingly entries to this effect may be made in the Service Book."

18. Dr. S.K. Kundra, Principal of the College, vide letter dated 14.09.2011, asked the Petitioner to confirm within ten days whether he had completed the course of study for which study leave was granted, and to produce evidence thereof.



19. On 19.09.2011, the Petitioner wrote to the Head of the Department of Sanskrit seeking permission to submit his Ph.D. thesis, under Clause 7 of Ordinance VI-B. He stated that he could not complete his study earlier owing to the vastness of the subject, that his guide had since retired, and that he had now completed it.

20. On 20.09.2011, the Petitioner informed Dr. S.K. Kundra, Principal, that he had not yet submitted his thesis, but would do so shortly.

21. The Departmental Research Committee (Sanskrit), at its Meeting held on 22.09.2011, recommended the Petitioner's request, and the Head of the Department forwarded it to the Board of Research Studies (Arts), on 26.09.2011. The Petitioner presented his pre-Ph.D. seminar, on 08.11.2011. On 11.11.2011, he applied to the Vice-Chancellor for permission to submit his thesis.

22. On 22.11.2011, the Petitioner filed **W.P.(C) 8255/2011** seeking permission to submit his thesis. On the same date, the Chairman, Board of Research Studies (Arts), informed him that his request "*has been considered by the University but it has not been found possible to accede*" to it. On 28.11.2011, **W.P.(C) 8255/2011 was dismissed as withdrawn.**

23. The Petitioner thereafter, filed **W.P.(C) 8360/2011**, seeking permission to submit his thesis and challenging the communication dated 22.11.2011.

24. The Petitioner **retired on 30.11.2011.**

25. On 23.01.2012, the Petitioner wrote to Dr. S.K. Kundra, Principal, asking about the status of the recovery reportedly initiated against his retiral benefits, and pointing out that W.P.(C) 8360/2011 was pending.

26. *Vide* letter of the same date, Dr. S.K. Kundra, Principal, replied that



his basic pay "*has been fixed as per the letter ... dated 07th September, 2011 of University of Delhi and sent to University of Delhi for approval*" (hereinafter referred to as the "*impugned Communication*").

27. The Petitioner filed **W.P.(C) 630/2012** on 28.01.2012, seeking quashing of Point 14 of the communication dated 07.09.2011 and the communication dated 23.01.2012, and a direction to release his pension on the basis of his last drawn salary. *Vide* Order dated 03.02.2012 in CM 1357/2012, this Court observed that the *pendency of W.P.(C) 8360/2011 could not be an impediment to releasing the Petitioner's pensionary dues and other retiral benefits, while presently excluding the disputed amount*. On the assurance of learned counsel for the University, the University was directed to process the Petitioner's service book and release the dues to which he was entitled as on date, within two weeks.

28. On 09.02.2012, the Registrar of the University issued a Circular to the Principals of Colleges, invoking para 19(xiii) of the Leave Rules, 2002. Under that provision, a teacher "*who is unable to complete his studies within the period of Study Leave granted to him*" is liable to refund the leave salary. The Circular directed the Colleges to strictly follow these conditions and to report within fifteen days, the cases where they had not been followed, along with the amount refundable in each case.

29. *Vide* letter dated 06.03.2012, the University informed the College that the Petitioner's pension had been fixed after deducting the notional increments for the period from 14.09.1983 to 13.09.1986.

30. *Vide* letter dated 14.03.2012, Dr. S.K. Kundra, Principal, informed the Dean of Colleges that the Petitioner's pension had been released with effect from 01.12.2011. He stated that his salary had been re-fixed "for not



submitting Ph.D. degree after availing study leave for three years w.e.f. 14.09.1983", and that *the net amount payable to him, after recoveries, was Rs. 5,29,104/-, to be released on his furnishing an undertaking.*

31. As per the calculation sheet prepared by the College, the Petitioner's basic pay at retirement was re-fixed at Rs. 50,600/- in place of Rs. 55,460/-, and his pension and leave encashment were computed on the re-fixed pay. His gross retiral dues were computed at Rs. 33,04,834/-.

32. From the gross retiral dues of Rs. 33,04,834/-, the following were deducted:

- (i) Rs. 11,40,537/- **as "salary recovery"**, which comprises the entire salary drawn during the study leave and the difference between the pay actually drawn and the re-fixed pay for every month from January 1986 till his retirement;
- (ii) Rs. 14,35,213.75 **as "Provident Fund recovery"**, being the provident fund credits for the period from 09.01.1983 to 09.01.1986, together with interest thereon up to November 2011;
- (iii) Rs. 1,700/- **towards LTC**; and
- (iv) **Rs. 1,98,279/- as tax on leave encashment.**

33. On 19.10.2012, the Deputy Registrar (Colleges) issued a further Circular in continuation of the Circular dated 09.02.2012, laying down two categories:

- (a) *cases of teachers granted study leave up to 2002, who were unable to complete their studies or failed to rejoin, may be decided by the Governing Bodies of the Colleges, in accordance with the conditions of the Study Leave Bond*



executed by them; and

(b) in cases of teachers granted study leave after 2002, the Governing Bodies may consider giving a one-time opportunity to submit the thesis or progress report within a maximum period of six months.

34. The Petitioner filed **W.P.(C) 6964/2012** on 31.10.2012, challenging the Circulars dated 09.02.2012 and 19.10.2012.

35. **W.P.(C) 8360/2011 was dismissed vide judgment dated 09.09.2014, by this Court by observing that the Ph.D. thesis had admittedly not been submitted despite a lapse of 32 years, and that the communication dated 22.11.2011 had not been impugned. It held that the Petitioner, having retired, could not take the benefit of Clause 7 of Ordinance VI-B, which applies only to serving teachers.**

36. In **W.P.(C) 630/2012**, it emerged at the rejoinder stage that the Petitioner had challenged neither the Study Leave Bond nor the deductions from his retiral benefits. Vide Order dated 19.12.2014, **he was granted liberty to amend the Writ Petition.**

37. The Petitioner accordingly, filed the amended Writ Petition, challenging **the re-fixation of his pay after retirement and** the deductions from his retiral benefits, and seeking a declaration that the Study Leave Bond, to the extent it is contrary to the Study Leave Rules, 1979, is void.

38. The **grounds of challenge** in **W.P.(C) 630/2012** are that the Petitioner's study leave is governed by the Study Leave Rules, 1979, under which non-completion of studies, is no longer a ground for refund. He had re-joined and served the College for about twenty-five years, and his salary during study leave was released, only on progress reports. No provision of



the Act, Statutes, Ordinances or Rules authorises the withdrawal of increments or recovery after retirement. *Clause 14 of Appendix 'A' to Statute 28-A permits recovery from pension, only upon a finding of grave misconduct or negligence.*

39. That the Study Leave Bond, executed on the format of the superseded 1976 Rules, is void to the extent it is contrary to the Study Leave Rules, 1979, as it defeats the deletion of the condition of completion of studies and is hit by Section 23 of the Indian Contract Act, 1872. The withdrawal of increments twenty-five years later, after retirement, is arbitrary and violative of Articles 14 and 300A of the Constitution of India, and no such recovery was made from other similarly placed teachers. Reliance is placed on *State of Punjab v. Rafiq Masih*, (2015) 4 SCC 334.

40. The **grounds in W.P.(C) 6964/2012** are that the Circular dated 09.02.2012 leaves scope for applying the Leave Rules, 2002, retrospectively. The Circular dated 19.10.2012 arbitrarily subjects teachers granted study leave up to 2002, to the conditions of the Study Leave Bond instead of the Rules then in force, while giving teachers granted study leave after 2002, an opportunity to submit their thesis.

41. The **University, the Respondents No. 1 and 2, in its replies**, contended that the Petitioner did not complete his Ph.D. during the study leave and thus, wrongly availed its benefit. Having admittedly executed the Study Leave Bond, he is bound by Clause 2, which renders the salary and allowances paid during study leave, recoverable in such a case. The communication dated 07.09.2011 was only for re-fixation of his basic pay, and the retiral benefits have been correctly computed on that basis. Reliance is placed on *Chandi Prasad Uniyal v. State of Uttarakhand*, (2012) 8 SCC



417.

42. That the Petitioner is not similarly placed to teachers granted study leave after 2002, and the Circulars do not affect him, as he retired in 2011. He is also seeking to circumvent the judgment dated 09.09.2014 in W.P.(C) 8360/2011, which has attained finality.

43. The **College, the Respondent No. 3**, stated that it has acted in terms of the directions of the University.

44. The **Petitioner, in his Rejoinders**, has reiterated his averments.

Submissions heard and record perused.

45. Briefly summarised, the Petitioner was granted study leave on full pay from 14.09.1983 to 13.09.1986 for his Ph.D., which he did not complete. He rejoined duty; served for over twenty-five years, and retired on 30.11.2011. After his retirement, on the basis of the communication dated 07.09.2011, the increments for the study leave period were withdrawn, his pay was re-fixed from 1983, and *Rs. 25,75,750.75 was recovered from his retiral benefits.*

46. The Petitioner contends that the Study Leave Rules, 1979 did not make non-completion of studies, a ground for any recovery. The University does not dispute this, but relies on *Clause 2 of the Study Leave Bond executed by the Petitioner.*

47. The principal issues that arise for consideration are:

- (i) *whether the Study Leave Rules, 1979 permitted the withdrawal of increments, or any recovery, for non-completion of studies;*
- (ii) *whether the University can enforce Clause 2 of the Study*



Leave Bond against the Petitioner;

(iii) whether the re-fixation of pay and the recoveries from the retiral benefits after retirement are sustainable; and

(iv) whether the Circulars dated 09.02.2012 and 19.10.2012 call for adjudication in W.P.(C) 6964/2012.

48. The question in the present Writ Petitions is not whether he completed his studies, but what consequence, if any, the applicable Rules attach to such non-completion.

I. Whether the Study Leave Rules, 1979 permitted the withdrawal of increments or any recovery for non-completion of studies:

49. The Petitioner availed study leave from 14.09.1983 to 13.09.1986. His study leave was governed by the Study Leave Rules, 1979, and the University does not contend otherwise. The Leave Rules, 2002 were framed sixteen years after he rejoined duty, and nothing has been shown to make them retrospective.

50. Rule (xiii) of the Study Leave Rules, as it stood prior to the amendment approved on 01.06.1979, listed four events attracting refund of the leave salary, the first of which was Clause (a):

"Who is unable to complete his studies within the period of Study Leave granted to him".

51. The Committee constituted to examine the *Study Leave Bond*, in its Meeting held on 03.03.1979, specifically recommended:

"(ii) That Sub-Clause (a) of Rule XIII ... be deleted and the subsequent Sub-Clauses (b), (c) and (d) be renumbered as



(a), (b) and (c) and that the provisions of Study Leave Bond be amended accordingly."

52. The Executive Council accepted this recommendation, *vide* Resolution No. 208 dated 01.06.1979. It specifically noted that this recommendation was one of only two deviations from the Model Study Leave Rules of the University Grants Commission. The deletion was thus, a conscious decision of the University, taken on a representation from teachers against this clause.

53. After the amendment, Rule (xiii) of the Study Leave Rules, 1979, as recommended by the Committee in Appendix X to Resolution No. 208, dated 01.06.1979 reads:

"(xiii) A teacher —

*(a) Who **fails to rejoin the service of the University** on the expiry of his study Leave; or*

*(b) Who rejoins the service of the University but **leaves the service** without completing the prescribed period of service after joining the service, or*

*(c) 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 on his behalf in connection with the course of study."

54. The "prescribed period of service" is fixed by Rule (xii):

"(xii) A teacher availing of Study Leave, shall undertake that he shall serve the University continuously for double



the period of Study Leave subject to a maximum of three years from the date of his resuming duty after expiry of the Study Leave."

55. The Petitioner rejoined on 15.09.1986 and served until 30.11.2011, a period of over twenty-five years, against the prescribed three years. The Petitioner thus neither failed to rejoin, nor left the service before completing the prescribed period, nor was dismissed or removed from service. None of the three events in the amended Rule (xiii) is attracted. Thus, with effect from 19.07.1977, non-completion of studies did not render a teacher liable to any refund. The Petitioner's study leave, granted in 1983, was squarely governed by the Study Leave Rules, 1979.

56. The Rules are equally clear, on increments. Rule (vi) provides:

*"(vi) The teachers granted Study Leave **would be entitled to continue to draw their total emoluments for the duration of the Study Leave ... The necessary increment will also be sanctioned as and when due.**"*

57. Rule (x) provides:

"(x) The period of Study Leave shall count as service for purposes of retirement benefits, provided that the teacher rejoins the University on the expiry of his Study Leave, and serve for the period for which the bond has been executed."

58. Neither Rule (vi) nor Rule (x) makes increments, or the reckoning of study leave for retiral benefits, conditional on completion of studies. The only conditions are that the teacher rejoins and serves the bond period, both of which the Petitioner had fulfilled.



59. The direction in Point 14 of the communication dated 07.09.2011, that the Petitioner "*should not be given notional increment during study leave period*" if he had not completed his course of study, thus has no foundation in the Study Leave Rules, 1979. No other provision of the Delhi University Act, 1922, the Statutes or the Ordinances has been shown to support it.

II. Whether the University can enforce Clause 2 of the Study Leave Bond against the Petitioner:

60. The Study Leave Bond is an Agreement dated 15.09.1983 between the College, the Petitioner, and two sureties, Dr. S.K. Dhingra and Sh. K.K. Gaur. It recites that the College had agreed to grant the Petitioner study leave on full pay and allowances from 14.09.1983 to 13.09.1984 "*on the terms and conditions contained in the Study Leave Rules adopted by the Executive Council of the University at its meeting held on 15.09.1976*". By Clause 4, its terms apply equally to any extension of the study leave. The sureties guarantee the Petitioner's obligations under it.

61. Clause 1 of the Study Leave Bond provides:

"1. Subject to the rules the whole of the period of Study Leave be treated as approved service and counted for all and any of the following purposes namely Provident Fund, annual increment, retiring gratuity benefits, superannuation benefits and to determining the length of service for any other purpose."

62. Clause 2 of the Study Leave Bond, **as quoted by the University in its counter affidavit in W.P.(C) 6964/2012, provides that**

"all sums that may be spent by the College in connection



with the course of study pursued by the teacher together with any amount paid to him as salary with all allowances shall be recoverable by the College from the teacher immediately upon happening of any of the following events".

The four events are:

- (a) the teacher is unable to complete his study during the study leave and no further leave of any kind is granted;*
- (b) the teacher resigns before rejoining, or fails to rejoin, on the expiry of the study leave;*
- (c) the teacher fails to serve the College continuously for double the period of study leave or for three years, whichever is less, from the date of resuming duty; or*
- (d) the teacher is dismissed or removed from service within that period. A proviso limits the recovery to half the amount where the teacher leaves after serving half of the stipulated period.*

63. A comparison of Clause 2 with Rule (xiii) is revealing. Events (b), (c) and (d) correspond to the three events retained in Rule (xiii) of the Study Leave Rules, 1979. Event (a), however, is the very clause which the Executive Council had deleted from Rule (xiii) with effect from 19.07.1977. The Study Leave Bond, executed in 1983, thus reproduced the Rule as it stood before the amendment, and recited the Rules of 1976 instead of the Study Leave Rules, 1979.

64. The University contends that the Study Leave Bond was a contract between the Petitioner and the College, that the College was at liberty to



stipulate conditions over and above the Study Leave Rules, that the Petitioner accepted these conditions by signing the Study Leave Bond, and that he cannot challenge it after thirty years.

65. The contention cannot be accepted. The Petitioner's terms of service are governed by the Form of Agreement of Service prescribed under Ordinance XII. Clause 11 of that Agreement provides that *"the teacher shall be entitled to leave according to the University Leave Rules as in force from time to time."* His entitlement to study leave, and its consequences, are therefore determined by the Study Leave Rules in force at the relevant time, and not by any condition the College may choose to add.

66. Pertinently, Resolution No. 208 did not merely delete Clause (a) of Rule (xiii). It directed that *"the provisions of Study Leave Bond be amended accordingly"*. Rule (xiv)(a) of the Study Leave Rules, 1979 prescribes the only undertaking the bond is to contain:

"(xiv)(a) After the leave has been sanctioned, the teacher shall before availing of the leave, execute a bond undertaking to serve the University for not less than double the period of Study Leave sanctioned to him on full, half or no pay subject to a maximum period of three years."

67. The deletion of the condition, and the direction to amend the Study Leave Bond accordingly, were made more than four years before the Petitioner's Study Leave Bond was executed. The College had no authority to revive, by way of a bond, a condition that the Executive Council had consciously removed from the Rules. The Petitioner's signature on a bond in a format which the College was itself bound to have amended cannot confer validity on such a condition. A term of a bond which is contrary to the Rules governing the very leave under which the bond is executed cannot be



enforced.

68. Significantly, the University has itself taken this very position in the cases of other teachers. In its letter of March 1980 to Ram Lal Anand College concerning G.R. Taneja, a Lecturer in English, the University acknowledged that *"the relevant clause regarding refund of salary etc., for not completing the studies for which the teacher was granted study leave stands deleted as per amendment dated 01.06.1979."* Again, vide letter dated 11.07.2012 in respect of the same teacher, the University stated that *"in the rules regarding governance of colleges pertaining to the period prior to 1985, there is no mention in rules to recover salary from the teacher who has failed to complete his studies (Ph.D.) within the period of study leave."* In its counter affidavit to the amended Writ Petition, the University accepts that this letter *"only clarifies the factual position of the prevailing Rules"*. The University was thus aware, as early as 1980, that the condition had been deleted.

69. The replies dated 18.08.2012 and 30.08.2012 under the Right to Information Act, 2005 further disclose that Vijay Singh of Satyawati College and S.N. Sharma of Sri Aurobindo College, who availed study leave in 1991-94 and 1997-2000 respectively and did not complete their Ph.D., were not subjected to any recovery. The recovery from the Petitioner stands in contrast to the University's own stand in the cases of other teachers.

70. Nor can the Petitioner be faulted for not challenging the Study Leave Bond earlier. Clause 2 was never invoked against him during his twenty-five years of service. It was invoked for the first time after his retirement, and he challenged it in these proceedings, pursuant to the liberty granted vide Order dated 19.12.2014.



71. In any event, the Study Leave Bond does not support what has been done. Clause 1 itself counts the period of study leave for "*annual increment*". Clause 2, at its highest, permits recovery of the salary and allowances paid *during the study leave*, and that too "*immediately upon happening*" of the event. It does not authorise withdrawal of increments, re-fixation of pay for twenty-five years, or recovery of provident fund contributions with interest.

72. The University itself, in reply to ground (d) of the amended Writ Petition, describes the "*pecuniary loss*" as the salary paid to the Petitioner "*for three years of study leave*". **The College's own salary statement shows this salary as Rs. 98,860/-. The amounts actually recovered as salary and provident fund total Rs. 25,75,750.75.**

73. The event under Clause 2(a), if at all, occurred on 13.09.1986. Neither the College nor the University invoked the Study Leave Bond for twenty-five years. Instead, they continued to sanction increments, count the study leave period as qualifying service, and promote the Petitioner as Reader on 21.07.1989. **The Study Leave Bond cannot be resurrected at the stage of retirement to justify what the Rules do not permit.**

III. Whether the re-fixation of pay and the recoveries from the retiral benefits after retirement, are sustainable:

74. The communication dated 07.09.2011 merely sought confirmation from the College. The actual re-fixation of pay and consequential computation of retiral benefits were undertaken thereafter, including after the Petitioner had retired on 30.11.2011. The University conveyed the fixation of pension on 06.03.2012, and the College communicated the



recoveries on 14.03.2012. None of these final actions was preceded by any notice to him.

75. Article 300A of the Constitution of India mandates that "no person shall be deprived of his property save by authority of law." The right to pension is not a bounty, but a valuable right in property.

76. A Constitution Bench of the Supreme Court so held in Deokinandan Prasad v. State of Bihar, (1971) 2 SCC 330, observing that pension *"is not to be treated as a bounty payable on the sweet will and pleasure of the Government and that the right to superannuation pension ... is a valuable right vesting in a Government servant."*

77. Relying on this, the Supreme Court in State of Jharkhand v. Jitendra Kumar Srivastava, (2013) 12 SCC 210, held that pension and gratuity are property under Article 300A of the Constitution of India, and that *"a person cannot be deprived of this pension without the authority of law."* It further held that *"the executive instructions are not having statutory character and, therefore, cannot be termed as 'law' within the meaning of aforesaid Article 300A."*

78. The only provision of the University for withholding or recovery from pension, is Clause 14 of Appendix 'A' to Statute 28-A, **sub-clause (1) and (2)(b) of which, read thus:**

"(1) The Vice-Chancellor reserves to himself the right of withholding for specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the University, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service ...



(2)(b) The departmental proceedings, if not instituted while the University employee was in service, whether before his retirement or during his re-employment:

(i) shall not be instituted save with the sanction of the Vice-Chancellor;

(ii) shall not be in respect of any event which took place more than four years before such institution ..."

79. No departmental or judicial proceedings were ever instituted against the Petitioner, and no finding of grave misconduct or negligence exists. *The only event invoked is non-completion of studies by 13.09.1986, which took place twenty-five years before his retirement; no proceedings in respect of it could have been instituted after his retirement in view of Clause 14(2)(b)(ii). The recoveries from the Petitioner's retiral benefits are, therefore, without authority of law.*

80. The reliance of the University on Chandi Prasad Uniyal v. State of Uttarakhand, (2012) 8 SCC 417, is misplaced. That decision concerns recovery of excess payments, arising from an erroneous fixation of pay. **In the present case, there was no such error:** the increments during study leave were sanctioned in terms of Rule (vi), and the pay drawn by the Petitioner, was the pay to which he was entitled under the Rules.

81. Even if the payments were to be treated as excess, the recovery would be impermissible. In State of Punjab v. Rafiq Masih, (2015) 4 SCC 334, the Supreme Court summarised the situations in which recovery by the employer is impermissible, which include:

"(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.



(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

...

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

82. Each of these situations, is squarely attracted here. The recovery was made after retirement, in respect of payments spanning twenty-eight years, and it reduced the Petitioner's gross retiral dues of Rs. 33,04,834/- to Rs. 5,29,104/-. No undertaking to refund was obtained from the Petitioner, when the increments were sanctioned. The undertaking sought by the College on 14.03.2012, was only a condition for releasing the net amount after his retirement.

83. In view of the foregoing discussion, the re-fixation of the Petitioner's pay and the recoveries of Rs. 11,40,537/- as salary and Rs. 14,35,213.75 as Provident Fund, are unsustainable. The tax on leave encashment has to be recomputed on the revised leave encashment. The recovery of Rs. 1,700/- towards LTC is not shown to have any connection with the study leave, and is not interfered with.

84. Since the impugned action fails on the Rules and for want of authority of law, the plea of discrimination is not required to be examined.

IV. Whether the Circulars dated 09.02.2012 and 19.10.2012 call for



adjudication in W.P.(C) 6964/2012:

85. W.P.(C) 6964/2012 challenges the Circular dated 09.02.2012, which directs the Colleges to enforce para 19(xiii) of the Leave Rules, 2002, and the Circular dated 19.10.2012, which leaves the cases of teachers granted study leave up to 2002, to be decided by the Governing Bodies in accordance with the conditions of the Study Leave Bond. **Neither Circular is the source of the action against the Petitioner. The recovery was set in motion by the communication dated 07.09.2011, before either Circular was issued.** The University has itself stated that the Circular dated 09.02.2012 *"is of no consequence so far as the Petitioner is concerned."*

86. **The Petitioner's grievance, namely the withdrawal of increments and the recovery from his retiral benefits on the strength of the Study Leave Bond, stands fully redressed by the findings and directions in W.P.(C) 630/2012.** The validity of the Circulars, insofar as they may affect other teachers who are not before this Court, does not call for adjudication at the instance of the Petitioner.

Conclusion:

W.P.(C) 630/2012:

87. In view of the above, the Writ Petition is allowed, and the following directions are issued:

(i) *Point 14 of the communication dated 07.09.2011, the communication dated 23.01.2012, and the consequent re-fixation of the Petitioner's pay and the recoveries from his retiral benefits, are quashed.*

(ii) *Clause 2 of the Study Leave Bond dated 15.09.1983, to the extent it makes non-completion of studies a ground for recovery, being contrary*



to the Study Leave Rules, 1979, cannot be enforced against the Petitioner.

(iii) The University and the College shall restore the Petitioner's pay as actually drawn, being basic pay of Rs. 55,460/- plus Grade Pay of Rs. 9,000/- at the time of retirement. They shall re-compute his pension, commuted value of pension and leave encashment on that basis, and pay the arrears of pension with effect from 01.12.2011.

(iv) The amounts of Rs. 11,40,537/- and Rs. 14,35,213.75 recovered from the Petitioner, along with the differential in the retiral benefits under direction (iii), shall be paid to him with simple interest at 6% per annum from 01.12.2011 till the date of payment.

(v) The above directions shall be complied with within sixteen weeks from today.

W.P.(C) 6964/2012:

88. The Writ Petition is disposed of, as the Petitioner's grievance stands redressed in W.P.(C) 630/2012, **without expressing any opinion on the validity of the Circulars dated 09.02.2012 and 19.10.2012.**

89. Pending application(s), if any, also stand disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

OCTOBER 8, 2026/va/RS