

**IN THE HIGH COURT OF MADHYA  
PRADESH  
AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**ON THE 23<sup>rd</sup> OF NOVEMBER, 2023**

**WRIT PETITION No. 19334 of 2022**

**BETWEEN:-**

**DR. K.K. GADGEY S/O LATE SHRI RAMLAL  
GADGEY, AGED ABOUT 47 YEARS,  
OCCUPATION: SERVICE 166-C, SURYADEV  
NAGAR INDORE (MADHYA PRADESH)**

**.....PETITIONER**

**(BY SHRI L. C. PATNE – ADVOCATE)**

**AND**

- 1. DEPARTMENT OF TECHNICAL  
EDUCATION AND SKILL DEVELOPMENT  
THROUGH THE PRINCIPAL SECRETARY  
VALLABH BHAWAN MANTRALAYA  
BHOPAL (MADHYA PRADESH)**
- 2. COMMISSIONER DEPARTMENT OF  
TECHNICAL EDUCATION AND SKILL  
DEVELOPMENT SATPURA BHAWAN,  
DISTRICT BHOPAL. (MADHYA PRADESH)**
- 3. THE COLLECTOR DISTRICT KHARGONE  
AND CHAIRMAN GOVERNING BODY,  
DISTRICT KHARGONE AND CHAIRMAN  
GOVERNING BODY, GOVERNMENT  
POLYTECHNIC COLLEGE. SANAWAD  
TEHSIL SANAWAD DISTRICT KHARGONE  
(MADHYA PRADESH)**

4. SHRI C.G. PRAKOLYA, IN CHARGE.  
OCCUPATION: IN CHARGE PRINCIPAL  
GOVERNMENT POLYTECHNIC COLLEGE,  
SANAWAD TEHSIL SANAWAD DISTRICT  
KHARGONE (MADHYA PRADESH)
5. THE JOINT DIRECTOR TREASURY AND  
ACCOUNTS INDORE DIVISION, MAHARAJA  
COMPLEX. KOTHARI MARKET, DISTRICT  
INDORE (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI AMAY BAJAJ- G.A./P.L.)

**WRIT PETITION No. 19337 of 2022**

**BETWEEN:-**

RAMESH JAMRE S/O LATE SHRI GANGARAM  
JAMRE, AGED ABOUT 45 YEARS, OCCUPATION:  
SERVICE H.NO. 46 VILLAGE AHEREAR POST  
KALI BAWDI TEHSIL MANAWAR (MADHYA  
PRADESH)

.....PETITIONER

(BY SHRI L. C. PATNE – ADVOCATE)

**AND**

1. THE STATE OF MADHYA PRADESH  
PRINCIPAL SECRETARY VALLABH  
BHAWAN DISTRICT BHOAPL (MADHYA  
PRADESH)
2. THE COMMISSIONER DEPARTMENT OF  
TECHNICAL EDUCATION AND SKILL  
DEVELOPMENT 2ND FLOOR SATPURA  
BHAWAN DISTRICT BHOPAL (MADHYA  
PRADESH)
3. THE COLLECTOR DISTRICT KHARGONE  
AND CHAIRMAN GOVERNING BODY,  
GOVERNMENT POLYTECHNIC COLLEGE  
SANAWAD TEHSIL SANAWAD DISTRICT

**KHARGONE (MADHYA PRADESH)**

4. **SHRI C.G. PRAKOLYA, IN CHARGE  
PRINCIPAL OCCUPATION: IN CHARGE  
PRINCIPAL GOVERNMENT COLLEGE  
SANAWAD TEHSIL SANAWAD DISTRICT  
KHARGONE (MADHYA PRADESH)**
  
5. **THE JOINT DIRECTOR DIRECTORATE OF  
TREASURY AND ACCOUNTS INDORE  
DIVISION MAHARAJA COMPLEX.  
KOTHARI MARKET, DISTRICT INDORE  
(MADHYA PRADESH)**

**.....RESPONDENTS**

*(BY SHRI AMAY BAJAJ – G.A./P.L.  
None for Respondent No.4 despite service of notice))*

.....  
*These petitions coming on for admission this day, the court  
passed the following:*

**ORDER**

This order shall also govern the disposal of W.P. No.19337 of 2022 as in both the petitions, identical orders dated 05.08.2022 and 17.08.2022 have been challenged. Vide order dated 05.08.2022, C.G. PRAKOLYA, the respondent No.4, has withdrawn the salary, increments and all the other benefits accrued to the petitioner during his study leave period of two years, and vide order dated 17.08.2022, recovery order of a sum of Rs.20,63,593/- has been issued.

2] For the sake of convenience, the facts as narrated in W.P. No.19334/2022 are being taken into consideration.

3] The case of the petitioner is that he was posted as Head of the Department, Mechanical Engineering, Government Polytechnic

College, Sanawad and had obtained study leave from the respondent No.3 Collector who is also the Chairman of the governing body of Government Polytechnic College, Sanawad and respondent No.4 Principal, Government Polytechnic College, Sanawad, District Khargone, who are the competent authorities, vide order dated 29.12.2015 and 14.01.2016 respectively. Subsequently, after completion of his Ph.D., he gave his joining on 15.01.2018. However, the in-charge Principal of the said college, the respondent no.4 herein, withdrew the benefits accrued to the petitioner during his study leave period vide impugned order dated 05.08.2022 and subsequently, a recovery order was also passed.

4] Counsel for the petitioner has submitted that the petitioner's study leave was granted by the competent authority under Rule 44 of the M.P. Civil Services (Leave) Rules, 1977 (hereinafter referred to as the Rules of 1977) and as per Rule 52 and 53, the petitioner was entitled to claim all the benefits as contained therein. Thus, it is submitted that the respondent No.4 who is arrayed in his personal capacity, could not have passed the aforesaid order wherein, it is held that there was no consent given by the competent authority under Rule 52 of the Rules of 1977 and thus, the petitioner would not be entitled to claim any benefit under Rule 42 and 44 of the Rules of 1977. Counsel has also drawn the attention of this Court to the order of sanction dated 29.12.2015 (Annexure-P/8) passed by the Chairman of the governing body of Government Polytechnic College, Sanawad, in which it is clearly stated that the petitioner is given study leave for a period of two years and he be released

forthwith whereas, vide order dated 14.01.2016, the then Principal of the Government Polytechnic College, Sanawad has also passed the order directing that the petitioner is released under the provisions of Rule 42 and 44 of Rules of 1977. Thus, it is submitted that merely because in the order dated 29.12.2015, no specific provisions of law are quoted by the competent authority, the order would not be considered as suffering from any infirmity or illegal, and the respondent No.4 has clearly erred in disallowing the benefits accrued to the petitioner during the period of two years, for which he was on study leave. Thus, it is submitted that the impugned order be set aside.

5] A reply has also been filed to the petition and counsel for the respondents has submitted that since there is no specific reference of Rule 52 of the Rules of 1977, in the impugned orders and hence the petitioner's benefits have rightly been withdrawn by the respondent No.4. Counsel has also drawn the attention of this Court to an order passed in favour of one R.C. Velekar, in which all the provisions of the Rules of 1977 have also been quoted while sanctioning the study leave to R.C. Velekar. Thus, it is submitted that the petition being devoid of merits is liable to be dismissed.

6] Heard. Having considered rival submissions and on perusal of the documents filed on record as also the provisions of Rules 47, 48, 49 and 52, this Court finds that non-mentioning of the aforesaid Rules would not make the order of sanction of study leave inoperative, illegal or defective as for all the practical purposes, the order itself has been passed by the competent authority under the

provisions of the Rules of 1977, and the petitioner has also completed his Ph.D. during this period and in such circumstances, the benefits already accrued to the petitioner under the Rules of 1977 could not have been withdrawn by the respondent No.4 vide impugned order dated 05.08.2022. It is also apparent that the order of sanction dated 29.12.2015 has never been recalled or challenged by any of the respondents, and thus, have attained the finality. And otherwise also, the doctrine of legitimate expectation would be applicable in full force in the present case, as the petitioner was led to believe by the sanction order dated 29.12.2015, that his study leave application has been accepted, on the basis of which he has pursued his Ph.D. without any fear of any adverse consequence, and yet, the impugned orders have been passed by the Respondent No.4.

7] Respondent No.4 C.G. Parkolya, the In-charge Principal, Government Polytechnic College, Sanawad has chosen not to file any return and has remained unrepresented despite service of notice. This Court also finds it surprising as to what was the occasion for the respondent No.4 who was only an in-charge Principal of Government Polytechnic College, Sanawad, to invalidate the orders passed by the Chairman of the governing body of Government Polytechnic College, Sanawad and the then Principal, Government Polytechnic College, Sanawad, who are the competent authorities, and had passed the orders on 29.12.2015 and 14.01.2016 respectively in favour of the petitioner.

8] The reasons for the respondent No.4 being made a party in his personal capacity is that the petitioner also alleged *mala fide* on the

part of the respondent No.4, C.G. Parkolya, In-charge, Principal Government Polytechnic College, Sanawad, who has also suspended the petitioner and against the order of suspension, the petitioner has also preferred W.P. No.16516/2020, in which a stay order has also been passed by this Court on 02.11.2020. Thus, the petitioner's contention is that the respondent No.4 is having a grudge against him. In the rejoinder filed by the petitioner, it is also stated that a sum of Rs.31,10,125/- has also been recovered from the petitioner illegally by the respondent No.4 from the arrears which were to be paid to him on account of revision of his pay as per the recommendations of the 7<sup>th</sup> Pay Commission. The petitioner has also stated in the rejoinder that he has taken a loan of Rs.30 lakhs for the re-payment of which, he is already paying a sum of Rs.25,000/- per month and his elder son is prosecuting B.Tech in Civil Engineering from G.S.I.T.S., Indore and the younger son is studying at Class V at Indore and all of them are also suffering because of the amount recovered from the petitioner's arrears.

9] In such circumstances, this Court is of the considered opinion that the respondent No.4 has acted with *mala fide* intentions and without jurisdiction, and thus, the petition deserves to be allowed with a cost of **Rs.25,000/- in respect of each of the petitions**, and out of these amounts, **a sum of Rs.15,000/- each shall be paid directly into each of the petitioners' Bank Accounts** which shall be shared by them with the respondent No.4 C.G. Parkolya within 60 days from today, whereas, **the remaining amount of Rs.10,000/- each shall be paid by the respondent No.4 Shri C.G.**

**Parkolya in the account of -President and Secretary H.C. Employees Union H.C. (Account No.63006406008, Branch Code No. 30528, IFSC No. SBIN0030528, CIF No. 73003108919) within a period of 60 days from today and obtain a receipt.**

10] Accordingly, the impugned orders dated 05.08.2022 and 17.08.2022 are hereby set aside and the present petitions are **allowed** with all the consequential benefits. The amount so recovered from the petitioners and the other benefits which have accrued to the petitioners, shall be paid to them within a further period of three months with interest at the rate of 6% per annum. If the amount is not paid within the aforesaid period of three months, the interest amount shall be liable to be paid at the rate of 9% p.a. from the date the amount was recovered/withheld till the date of realization, and the amount of excess interest shall be recovered from the Officer who is responsible for complying with this order passed by this Court.

With the aforesaid directions, the petitions stand **allowed** with costs.

**(Subodh Abhyankar)**  
**Judge**

**Bahar**