

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13639 of 2024

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Shikha Kumari, aged about 33 years, D/o Akhil Bhushan Prasad Presently residing at Magistrate Colony, Hajipur Adjacent Civil Court Hajipur, Bihar-844101, Permanently r/o Village Arilla Raghunathpur, P.O. Sarao P.S. Natwar, District -Rohtash, Bihar - 802218

... ... Petitioner/s

Versus

1. The Hon'ble High Court of Judicature at Patna through the Registrar General, Patna-800001, Bihar
2. The Registrar General, the Hon'ble High Court of Judicature at Patna, Bihar.
3. The State of Bihar through Chief Secretary, Main Secretary, Patna-800015, Bihar.

... ... Respondent/s

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Acts/Sections/Rules:

- *UGC Act, 1956*
- *Rules 204, 205, 212 and 243 of the Bihar Service Code*

Cases referred:

- *All India Judges Assn. vs. Union of India reported in 2024 SCC OnLine SC 27*
- *Dr. Anil Prasad Gara and Others vs. State of Bihar and Others reported in 1991 (2) PLJR 384*
- *Dr. Kaushal Kushum vs. The State of Bihar and Others in Patna High Court CWJC No. 10227 of 2007*

Writ petition - filed for quashing order whereby Petitioner's application seeking for study leave and permission, to pursue the LLM programme in Transnational Crime and Justice from Institute at Turin, Italy has been rejected.

The petitioner is a Judicial Officer who was selected and appointed in Bihar Judicial Service Competitive Examination for the post of Civil Judge (Junior Division) and she is governed by the Bihar Service Code and other relevant statutory provisions for the purpose of her service condition.

Core issue is whether petitioner is entitled for permission to pursue LLM in Transnational Crime and Justice from Institute at Turin, Italy and further, is she entitled to study leave from 18.11.2024 to 15.07.2025 or not?

Held - It is to be noticed that by virtue of interim order dated 01.10.2024, petitioner has already completed first phase of Distance Learning and she is undergoing second phase of Residential of the LL.M. course and it is not appropriate to distract her higher studies at this distance of time. In the light of these facts and circumstances, petitioner has made out a case so as to interfere with the impugned communication dated 14.08.2024 read with Standing Committee's Resolution dated 13.08.2024 and both are set aside. Consequently, the petitioner is entitled to have the benefit of study leave in accordance with the Bihar Service Code like study leave and other related ancillary issues. (Para 31)

Writ petition is allowed. (Para 32)

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- 1. The Hon’ble High Court of Judicature at Patna through the Registrar General, Patna-800001, Bihar
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- 3. The State of Bihar through Chief Secretary, Main Secretary, Patna-800015, Bihar.

... .. Respondent/s

Appearance :
For the Petitioner/s : Mrs. V. Mohana, Sr. Advocate
Ms. Vagisha Pragya Vacaknavi, Advocate
Ms. Bhavya Pandey, Advocate
Ms. Ankita Roy, Advocate
For the Respondent/s : Mr. Piyush Lal, Advocate
Mr. Raghwanand, GA 11
Mr. Prabhat Kumar, AC to GA 11

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 17-02-2025

In the instant writ petition, petitioner has prayed for the following relief/reliefs:

“a) Writ, order, or direction for quashing order of Respondent No. 1 as communicated by letter dated 14.08.2024 issued under the signature of Respondent No. 2 whereby Petitioner’s letters/application dated 01.07.2024 seeking for study leave and permission, to pursue the Masters



of Law (LL.M.) 2024-25 programme in Transnational Crime and Justice, from the United Nations Interregional Crime and Justice Research Institute (UNCRI) at Turin, Italy has been rejected. The petitioner has been communicated order or rejection of her aforesaid application only and no copy of such order has been made available to her. Therefore, it is humbly prayed that the respondents be directed to produce the copy of such order on record and thereafter, the Hon'ble Court be pleased to quash the same.

b) Writ of Mandamus or any other Writ, order, or direction in the nature of a Mandamus directing the Respondents to grant study leave (from 18.11.2024 to 15.07.2025) and permission to the Petitioner to pursue the Master of Laws (LL.M.) 2024-25 programme in Transnational Crime and Justice jointly organized by the United Nations Interregional Crime and Justice Research Institute (UNCRI) and the University for Peace (UPEACE) at Turin, Italy, and also the permission to undertake the foreign trip;

c) Pass such other writ, order or direction as the Hon'ble High Court may deem fit and proper in the facts and circumstances of the case, and in the interest of justice.

d) Quash the resolution dated 13-08-2024 produced as Annexure-R/2-A in the Counter Affidavit of Respondent No. 2 and direct Respondent No. 1 to grant study leave (from 18.11.2024 to 15.07.2025) and permission to the Petitioner to pursue the Master of Laws (LL.M.) 2024-25



programme in Transnational Crime and Justice jointly organized by the United Nations Interregional Crime and Justice Research Institute (UNCRI) and the University for Peace (UPEACE) at Turin, Italy and also the permission to undertake the foreign trip;

(d) In alternative, be pleased, to quash the impugned resolution dated 13-08-2024 and direct the Respondent No.1 to grant extraordinary leave to the petitioner (from 18.11.2024 to 15.07.2025) and permission to the Petitioner to pursue the Master of Laws (LL.M.) 2024-25 programme in Transnational Crime and Justice jointly organized by the United Nations Interregional Crime and Justice Research Institute (UNICRI) and the University for Peace (UPEACE) at Turin, Italy, and also the permission to undertake the foreign trip.”

(The aforementioned (d) and (d) is by way of I.A. No. 1 of 2024.)

Brief facts of the case

2. Petitioner is a graduate with B.A.LLB. (Hons.) degree. She was a practicing advocate during the period from December, 2014 to December, 2017. She had participated in 29th Bihar Judicial Service Competitive Examination for the post of Civil Judge (Junior Division). She was selected and appointed to the post of Civil Judge and posting was assigned on 24.02.2018. Consequently, she had joined as a Probationer Civil / Junior



Division at Kaimur (Bhabhua) on 27.02.2018. Thereafter, she was transferred and posted in Vaishali at Hazipur on 11.05.2022 and continued to discharge the duties of the post of Sub-Divisional Judicial Magistrate as on the date of filing of the present writ petition. In the meanwhile, petitioner's service was confirmed with effect from 10.04.2023 *vide* Notification dated 14.12.2023. In the light of Hon'ble Supreme Court decision dated 04.01.2024 in the case of *All India Judges Assn. vs. Union of India* reported in **2024 SCC OnLine SC 27**, petitioner was in receipt of arrears of pay to the tune of Rs. 12,49,000/-. This receipt of arrears has been revealed for the purpose of source of income to prosecute LL.M. course at Turin, Italy.

3. In this backdrop, petitioner intends to pursue her LL.M. course specifically LL.M. in Transnational Crime and Justice at Turin, Italy jointly organized by United Nations Interregional Crime and Justice Research Institute (UNICRI) and University of Peace (UPEACE) during the period from 18.11.2024 to 27.06.2025. This course has two phases *namely* Distance Learning from 18.11.2024 to 10.01.2025 and Residential from 29.01.2025 to 27.06.2025. The last date for submission of application was 28.07.2024 and later on it was extended up to 08.09.2024. Petitioner had applied for the aforementioned course



on 28.07.2024. The selection is on rolling basis. Candidates will be notified of the result of the selection process within seven working days of the submission of their application. If a candidate is offered a place, she/he will have to confirm within four days and after that ten days to complete payment. Candidate has to pay tuition fees to the tune of USD 13,000/- with a condition that tuition fees are non-refundable, can be refunded only if the course is cancelled and candidate cannot defer the offer to the following academic year. Graduation ceremony would take place on 11.07.2025.

4. On 22.10.2020, first respondent issued “*Guidelines for grant of permission to the Judicial Officers/Judges of the Subordinate Judiciary for Private Foreign Visit.*” Arising out of the aforementioned factual aspects of the matter, petitioner submitted application on 01.07.2024 to the first respondent through proper channel seeking permission for study leave from 18.11.2024 to 15.07.2025 for pursuing the LL.M. course at Turin, Italy. She had also indicated in her application relating to deadline for submission of application is 28.07.2024, while enclosing LL.M. application form, CV, motivation letter and course overview. She had also enclosed a separate application for foreign (study) trip as per 2020 Guidelines. Second respondent is of the



view that matter is to be placed before the Hon'ble Standing Committee and it was directed to be placed on 15.07.2024.

5. The petitioner's application for study leave was forwarded to respondent No. 2 by the District and Sessions Judge, Vaishali on 03.07.2024. On 26.07.2024, she had informed the second respondent that she would be sending her LL.M. application to UNICRI (Institute), in anticipation of second respondent's approval in the light of deadline. She had submitted her application on 28.07.2024 for her LL.M. course to UNICRI. Her application was accepted on 01.08.2024. On 05.08.2024, she had informed the second respondent that her LL.M. application had been accepted and prayed for consideration of her application for permission in the light of her earlier application dated 01.07.2024. On the same day, petitioner was in receipt of Financial Terms and Conditions for payment of tuition fees from UNICRI with the last date as 14.08.2024 for the purpose of payment of non-refundable tuition fees. On the last date for payment of non-refundable tuition fees *i.e.* on 14.08.2024, she had remitted a sum of Rs. 11,18,289.82/-. The petitioner was on leave with effect from 12.08.2024 to 14.08.2024. She had received Whatsapp message from an official from the office of the District and Sessions Judge, Vaishali at Hazipur which revealed that first respondent had



rejected the petitioner's application dated 01.07.2024. Later on, officially on 16.08.2024, petitioner received copy of the E-mail dated 14.08.2024 which was communicated to the District and Sessions Judge, Vaishali at Hazipur.

6. The petitioner, feeling aggrieved by the decision insofar as rejecting her study leave application without assigning any reason, she had filed Writ Petition (Civil) No. 525 of 2024 before the Hon'ble Supreme Court on 20.08.2024. The matter was listed on 23.08.2024, she had withdrawn with liberty to explore other legal options before the High Court. Hence the present writ petition. Respondents have filed counter affidavit and petitioner has filed I.A. for amendment of CWJC / writ petition insofar as challenge to Resolution of the Standing Committee dated 13.08.2024 and additional grounds. Thereafter, respondents have filed supplementary counter affidavit and petitioner has filed reply to the supplementary counter affidavit.

Submissions on behalf of petitioner

7. Learned Senior Counsel *Mrs. V. Mohana* submitted that perusal of the communication dated 14.08.2024 insofar as rejecting the petitioner's study leave application, petitioner is not in a position to file her effective writ petition. It is further submitted that the impugned letter dated 14.08.2024 is *in limine*



rejection and there is violation of principle of natural justice. Even for passing administrative order, principle of natural justice is to be adhered. It is also submitted that 14.08.2024 communication is not enclosed by any material information even though letter dated 14.08.2024 reveals enclosure of attachment.

8. It was further contended that having regard to the service records of the petitioner, petitioner is entitled to pursue her studies to enhance her knowledge based on subject of criminal justice which has direct bearing on the official duties in view of the fact that LL.M. programme covers topic such as organized crimes, emerging organized crimes, cyber crimes, atrocity crimes and these are the topics which are consequently and directly linked with the duties discharged by the petitioner as a Judicial Officer.

9. It is also submitted that in the light of Second National Judicial Pay Commission report, if a Judicial Officer acquires higher qualification, is entitled to certain service and monetary benefits. The same has been taken note of by the Hon'ble Supreme Court in the case of *All India Judges Assn.* (cited *supra*), Paragraph No. 43. It is also submitted that she had remitted a sum of Rs. 11,18,289.82/- on the last date of making payment for the LL.M. course *i.e.* on 14.08.2024. On the same day the first respondent has communicated rejection of her leave



application and permission to undergo LL.M. course. It is further submitted that impugned communication dated 14.08.2024 violates fundamental rights guarantees to the petitioner under Articles 14, 19 and 21 of the Constitution of India.

10. Learned senior counsel further submitted that while taking impugned decision by the first respondent, there is no reference or discussion to statutory provision like Rule 204 of the Bihar Service Code and it relates to grant of study leave for attaining higher qualification or specialization to in-service government servants. It is also submitted that in the counter affidavit filed on behalf of the first respondent, they have furnished Resolution of the Standing Committee dated 13.08.2024 and certain guidelines issued on 22.10.2020. In respect of “*Guidelines for grant of permission to the Judicial Officers/Judges of the Subordinate Judiciary for Private Foreign Visit.*” UGC Regulations or Schemes do not permit for the aforementioned LL.M. Guidelines cited on behalf of the first respondent has no bearing insofar as acquisition of higher qualification or study in a foreign country. Petitioner is a government servant, her service conditions are governed by the Bihar Service Code. Certain provisions like Rule 204 of the Bihar Service Code and ancillary provisions are relevant for the purpose of study leave within the



country and foreign. In the light of the Bihar Service Code provisions, it was bounden duty of the government or the first respondent to identify such of those educational courses which could be prosecuted by in-service candidate. First of all there is no identification of courses which are permissible and so also there is no prohibition to pursue higher studies like present LL.M. course in Transnational Crime and Justice jointly organized by the United Nations Interregional Crime and Justice Research Institute (UNICRI) and the University for Peace (UPEACE) at Turin, Italy, therefore, Resolution of the Standing Committee with reference to UGC Guidelines is not in the spirit of provisions of the Bihar Service Code. For permission and study leave within the country and foreign country, relevant provisions would be the Bihar Service Code and it is relevant to the case in hand, therefore, Guidelines dated 22.10.2020 read with the certain correspondence with the UGC has no bearing unless and until the Bihar Service Code provisions are invoked insofar as identification of course which could be prosecuted by in-service candidate within the country and foreign. On this issue, the impugned decision of the first respondent is liable to be set aside.

11. It is further submitted that rest of the contentions that certain officers sought permission and leave to prosecute higher



studies within the country in a private university has been turned down and the Bar Council of India (for short 'BCI') Rules and University Grants Commission (for short 'UGC') Regulations do not provide are immaterial to the petitioner's case unless the Bihar Service Code is appropriately amended. There are no identifications of courses by the State Government in consultation with the first respondent, BCI and UGC, therefore, earlier decisions of the first respondent was without reference to provisions of the Bihar Service Code and judicial pronouncements of this Court. Moreover, first and second respondents have not taken decision timely like Standing Committee decision was on 13.08.2024 and a communication to the petitioner was on 14.08.2024 without material information of the Standing Committee Resolution dated 13.08.2024 and it was made known only in the counter affidavit *vide* paragraph No. 9, therefore, petitioner was compelled to remit fees on 14.08.2024 in the institution. Counter affidavit is silent insofar as applicability of the Bihar Service Code. Remaining contentions of respondent Nos. 1 and 2 to the counter affidavit and supplementary counter affidavit are not tenable to the case in hand.

12. Learned counsel for the petitioner submitted that respondents have furnished copy of the Standing Committee



Resolution dated 13.08.2024 in their counter affidavit and it was made known to the petitioner for the first time only on 28.09.2024, therefore, I.A. No. 1 of 2024 has been filed seeking further relief insofar as quashing of the Standing Committee's Resolution dated 13.08.2024 and consequential relief in support of challenge to Resolution dated 13.08.2024, it is submitted that Standing Committee has committed error that petitioner intends to pursue her course is for online and regular, first six months on online mode and the second six months, when the candidate is obliged to attend on physical mode. On the other hand, course is for about seven months consisting of Distance Learning Phase from 18.11.2024 to 10.01.2025 and Residential Phase from 29.01.2025 to 27.06.2025. Perusal of earlier decisions of the Standing Committee and of the second respondent, those officials intend to prosecute higher studies within the country and that was verified from the various authorities and thereafter they have taken a decision that it was a private University and it is not permissible. In one of the case permission was granted in view of the fact that concerned official has already commenced the course. Similar view has not been taken into consideration in the present case. In other words, if the Standing Committee is of the opinion that petitioner cannot prosecute her higher studies in the foreign



country as it is not recognized by the UGC read with BCI Rules, therefore, there is no opportunity was granted to the petitioner or any clarification was sought from her regarding the recognition of LL.M. degree. Be that as it may, UGC Regulations and BCI Rules are not at all attracted in the present case unless and until State government in consultation with the High Court in identifying the courses for higher studies to such of those in-service candidates in the light of the Bihar Service Code.

13. It is further submitted that Section 2 (f) of the UGC Act, 1956 and deemed institution under Section 3 of the UGC Act, 1956 and that the instant University in question does not fall within the meaning of Section 2 (f) of the UGC Act, 1956 therefore, whatever the cited provisions in the impugned Resolution dated 13.08.2024 is not applicable to the course of the petitioner and overlooking its own Resolution dated 07.02.2008 which was passed as a matter of principle.

14. It is further submitted that the course which petitioner is undergoing is not available in any of the recognized institution in India so as to prosecute the course which petitioner is undergoing. Respondents have filed supplementary counter affidavit to overcome the petitioner's I.A. No. 1 of 2024, amendment of writ petition insofar as challenge to the Resolution



dated 13.08.2024. The respondents have reiterated relating to LL.M. course / UGC Regulation, BCI Rules and BCI has not been arrayed as necessary and proper party. List of foreign universities whose courses have been recognized by the BCI, these are all relating to Under Graduate level course. It is further submitted that in the absence of amendment to the Bihar Service Code, provisions insofar as identifying which are the higher studies courses to be prosecuted by an in-service candidate and any prohibition insofar as prosecuting higher studies, the list of foreign universities on the website of the Bar Council of India is not relevant. It is also submitted that a detailed interim order was passed on 01.10.2024 wherein the Co-ordinate Bench has taken note of Rules 204, 205, 212 and 243 of the Bihar Service Code read with two judicial pronouncements in the case of ***Dr. Anil Prasad Gara and Others vs. State of Bihar and Others*** reported in **1991 (2) PLJR 384, Paragraph Nos. 7 to 10** and the same principle has been followed in the case of ***Dr. Kaushal Kushum vs. The State of Bihar and Others*** in **CWJC No. 10227 of 2007** decided on 02.07.2010 and it was affirmed by the Division Bench in **LPA No. 365 of 2011** dated 07.09.2017. In the light of these facts and circumstances, the counter affidavit and supplementary counter affidavit in which respondents have not dealt with Rules



204, 205, 212 and 243 of the Bihar Service Code which are the relevant provisions of law. Time and again Courts have held that irrelevant materials cannot be relied and what is the relevant provision of law in a particular case is to be taken into consideration. In the present case, the cited Bihar Service Code provisions read with the judicial pronouncements of those provisions are relevant to the case in hand. On all these counts, CWJC No. 13639 of 2024 is to be allowed while quashing the impugned decision of the Standing Committee dated 13.08.2024 followed by communication dated 14.08.2024 and further, petitioner is entitled to consequential relief of grant of service condition in the light of the Bihar Service Code.

15. Learned Senior counsel, *Mrs. V. Mohana* submitted that petitioner had the benefit of interim order dated 01.10.2024, resultantly, she has completed first phase of Distance Learning from 18.11.2024 to 10.01.2025 and she is undergoing second phase of Residential from 29.01.2025 and it would be completed on 27.06.2025, therefore, half way through a course of study, petitioner shall not be disturbed and she is entitled for study leave and other service benefits in terms of the Bihar Service Code.



Submission on behalf of second respondent

16. Learned counsel for the second respondent is not disputing dates and events like calendar of events of the course that was to be pursued by the petitioner and correspondence among parties. It is submitted that petitioner's application for LL.M. programme had been accepted and the deadline to communicate her acceptance of the offer to take admission was on 04.08.2024. She had sent her e.mail dated 04.08.2024 intimated the said institute of her acceptance of the offer to pursue the said LL.M. programme but in her Letter No. 56 of 2024 dated 05.08.2024 addressed to the respondents on the next date, she made no mention of her having already communicated her acceptance to the offer to take admission. It is submitted that rejection of the petitioner's application *vide* Standing Committee Resolution dated 13.08.2024 could not be communicated and it is due to inadvertence and it should have been enclosed along with communication dated 14.08.2024 of the second respondent. It is submitted that Standing Committee rejected the petitioner's grievance insofar as seeking permission to pursue her LL.M. programme and leave and reasons are that Online course of the LL.M. programme is prohibited under UGC (Open and Distance Learning Programme and Online Programme) Regulations 2020



and State government permits study on leave half pay and increments to LL.M. qualified which make it imperative only for those courses which are recognized in India. The petitioner has not assailed the reasoning provided by the Hon'ble Standing Committee in its Resolution dated 13.08.2024. It is submitted that for the LL.M. programme of the foreign institution the petitioner is pursuing is not duly recognized in India.

17. It is also submitted that two of the Judicial Officers who sought permission to pursue LL.M. course in law from the Global Open University, *Nagaland* through distance mode was processed and placed before the Standing Committee. The Standing Committee refused to grant permission in view of the credentials of the University and LL.M. course through distance mode and it was a private university. After ascertaining credentials it has taken a decision not to grant permission not only for two Judicial Officers and for other 59 Judicial Officers who sought permission *vide* Resolution dated 03.05.2024. In yet another Standing Committee's decision dated 15.05.2024, similar stand has been taken and on 20.06.2024 about 20 Judicial Officers requested for permission and leave and it was turned down. Only in support of one Judicial Officer *namely* Ranjeet Kumar Sonu S.D.J.M., Benipatti, Madhubani permission was granted with certain



conditions on 26.09.2023 which is prior to later Resolutions in the year 2024.

18. On 07.02.2008, Standing Committee granted permission to one Shri. Pathak Alok Kaushik, Probationary Civil Judge (Junior Division) Bihar Sharif to pursue Ph.D. (Law course in India Law Institute, New Delhi). Resolution dated 07.02.2008 was modified with a rider that, *“However, no such permission shall be granted during the period an officer is undergoing induction training or a time bound training programme or is assigned any specific time bound project work.”*

19. Second respondent is relying on provisions of UGC Act, 1956 with reference to Section 22 (3), Section 26 (1) and (2) read with Section 12 (j) and University Grants Commission (Open and Distance Learning Programme and Online Programmes) Regulations, 2020 insofar as Clause 2 (v), 2 (u), Clause 2 (z) of Regulations 2020. Similarly the UGC Act, 1956 read with BCI issued Rules called Bar Council of India Legal Education (Post Graduation, Doctoral, Executive, Vocational, Clinical and other Continuing Education) Rules, 2020 and relevant Rule 1 (b) Rule 6, Rule 7 (a), Rule 7 (b), Rule 20 (3). In the light of these provisions, there is no infirmity in the impugned Resolution of the Standing



Committee dated 13.08.2024 read with letter dated 14.08.2024 of the second respondent.

20. Pursuant to petitioner's representation / letter dated 26.07.2024, she should not have proceeded with admission process unless approval was granted by the first respondent. She did not inform the respondent Nos. 1 and 2 in her letter dated 05.08.2024 and proceeded to make payment of dues fees on 13/14.08.2024. Respondents have filed supplementary counter affidavit while enclosing list of foreign universities whose degrees in law are recognized by the Bar Council of India as on 26.08.2020, certain communications dated 29.06.2024 and 12.07.2024, UGC (Institution of Eminence Deemed to be University) Regulation 2017 dated 04.11.2020 and letter dated 18.01.2013 of UGC, resolution of the Standing Committee dated 28.08.2024 followed by letters dated 03.09.2024 and 18.09.2024, letters dated 07.09.2024 and 30.10.2024. These are all relating to list of foreign universities whose degree in law recognized by the Bar Council of India. The petitioner is pursuing LL.M. course is not from one of the recognized university by the BCI. The other documents are relating to ancillary issues how the online / offline distance mode is not recognized LL.M. course. If these materials are taken into consideration, for the purpose of redressing the grievance of the



petitioner, petitioner is not entitled to permission to prosecute the aforementioned course of LL.M. and study leave, resultantly, petitioner has not made out a case. Hence, writ petition is liable to be dismissed.

21. Heard learned counsels for the respective parties.

Analysis

22. Core issue involved in the present *lis* is whether petitioner is entitled for permission to prosecute Master of Laws (LL.M.), 2024 – 2025 in Transnational Crime and Justice from the United Nations Interregional Crime and Justice Research Institute (UNICRI) at Turin, Italy and further is she entitled to study leave from 18.11.2024 to 15.07.2025 or not?

23. Before adverting to the contentions of the respective counsels, it is necessary to reproduce statutory provisions *namely* Rules 204, 205, 206 and 212 of the Bihar Service Code which are as under:

“204. (a) Subject to the conditions hereinafter specified, the State Government may grant special study leave to a Government servant to enable him to study scientific, technical or similar problems or to undergo a special course of instruction. Such leave is not debited against the leave account.

(b) These Rules relate to study leave only. They are not intended to meet the case of Government servants deputed to other countries at the instance of Government, either for the performance of special duties imposed on them



or for the investigation of specific problems connected with their technical duties. Such cases will be dealt with on their merits under the provisions of Rule 61. Such leave may be granted to a Government servant in the Public Health, Medical, Civil, Veterinary, Factory, Agricultural, Education, Public Works or Forest Department, or to any other Government servant to whom the State Government is of opinion that such leave should in the public interest be granted.

Underline Supplied

205. *Extra leave on half average pay for the purpose of study leave may be taken either, in or outside India. Study-leave will not ordinarily be granted to Government servant of less than five year's service or to Government servants within three years of the date at which they have the option of retiring or if they have the option of retiring after 20 years' service, within three years of the date at which they will complete 25 year's service.*

206. *The grant of study-leave will be made with due regard to the exigencies of the public service. In no case will the grant of this leave in combination with leave other than extraordinary leave or leave on medical certificate, involve an absence of over 28 months from a Government servant's regular duties or exceed two years in the whole period of a Government servant's service; nor will it be granted with such frequency as to remove him from contract with his regular work or to cause cadre difficulties owing to his absence on leave. A period of 12 months at one time will ordinarily be regarded as a suitable maximum, and will not be exceeded save for exceptional reasons.*

212. *No Course of study will be recognised as qualifying, for the grant of study allowance, or for study-leave for any other purpose, unless it has been approved in at least broad outline by the sanctioning authority in India, in accordance with Rules 210 and 211 above, and unless in*



cases where it has not been found possible to submit full particulars to the authorities in India, it has been approved in detail by the High Commissioner before it is begun.”

Underline Supplied

24. The petitioner is a Judicial Officer who was selected and appointed in 29th Bihar Judicial Service Competitive Examination for the post of Civil Judge (Junior Division) and she is governed by the Bihar Service Code and other relevant statutory provisions for the purpose of her service condition. Her grievance is relating to grant of permission to prosecute Master of Laws (LL.M.) read with grant of study leave. These two issues are required to be taken note of with reference to Rules 204, 206 and 212 of the Bihar Service Code. Resolution dated 13.08.2024 of the first respondent refers to UGC (Open and Distance Learning Programme and Online Programme) Regulations 2020 (for short ‘UGC, Regulations 2020’) which prohibits online course, since petitioner has to pursue Master of Laws (LL.M.), 2024 – 2025 programme in Transnational Crime and Justice from the UNICRI at Turin, Italy are in two phases : Distance Learning from 18.11.2024 to 10.01.2025 and Residential from 29.01.2025 to 27.06.2025, it is about seven months course, whereas inadvertently, first respondent in the Resolution taken note of first



six months of online mode and second six months, when the candidate is obliged to attend on physical mode.

25. Petitioner contended that the second respondent has not communicated the Resolution dated 13.08.2024 along with the letter dated 14.08.2024. This is not disputed by the second respondent as is evident from paragraph No. 9 of the counter affidavit, resultantly, petitioner was unable to file effective writ petition in the light of unreasoned communication dated 14.08.2024. On receipt of the counter affidavit, petitioner has filed I.A. for amendment of the writ petition insofar as challenge to the Resolution dated 13.08.2024 of the first respondent. It is also submitted that the first respondent has not apprised that petitioner pursuing Master of Laws (LL.M.) course has direct bearing on the official duties in view of the fact that LL.M. programme covers topic such as organized crimes, emerging organized crimes, cyber crimes, atrocity crimes and these are all topics which are directly linked with the duties discharged by the petitioner as a Judicial Officer. She has also apprised in her representation dated 01.07.2024 relating to calendar events of the LL.M. programme which contains submission of application, acceptance of payment mode and non-refundable of fees etc.



26. Learned counsel for the second respondent has taken contention that petitioner has failed to inform the second respondent insofar as remittance of payment (fees) to the concerned institution on 13/14.08.2024. Assuming that petitioner has not informed the second respondent insofar as remittance of course fees on 13/14.08.2024, the petitioner has made various correspondence during the intervening period from 01.07.2024 to 14.08.2024. In her first application dated 01.07.2024, she has highlighted calendar events of the course in which payment mode is also indicated. That apart, matter relates to academic issue and time bound matter, therefore, in the light of petitioner's application dated 01.07.2024, respondent Nos. 1 and 2 should have given priority insofar as consideration. If it is rejected prior to 13.08.2024, in that event, petitioner would have been prevented in remitting fees of Rs. 11,18,289.82/-. That apart, source of the aforementioned fees to the petitioner is that she has revealed that she is in receipt of lumpsum arrears of a sum of Rs. 12,49,000/- in the light of Hon'ble Supreme Court decision in the case of *All India Judges Assn.* (cited *supra*). Therefore, there is little delay on the part of the respondent Nos. 1 and 2 in rejecting her claim, in particularly, on the date of last date of submission of payment for the aforementioned course which is one day before of the last date



of submission of payment for the course. In other words, decision to reject petitioner's grievance was at eleventh hour and resulted in remitting course fees of Rs. 11,18,289.82/-.

27. Petitioner contended that first respondent while passing Resolution dated 13.08.2024 has committed error in not taking note of provisions of the Bihar Service Code like Rules 204, 205 and 206 of the Bihar Service Code. On the other hand, first respondent has relied on UGC Regulations, 2020 which prohibits for online course and High Court grants permission only for courses which are recognized in India or that is of similar nature and it is not supported by any statutory provision. The petitioner is governed by the Bihar Service Code for the purpose of certain service conditions, therefore, UGC Regulations 2020 cited in the Resolution has no strength in support of the Resolution insofar as rejecting the petitioner's claim.

28. Petitioner contended that under Rules 204, 205, 206 and 212 of the Bihar Service Code certain exercise is required to be undertaken insofar as identifying such of those educational courses which could be prosecuted by any in-service government servant. In this regard, there is no government notification or policy decision taken by the government in consultation with the High Court, therefore, provisions of UGC



Policies/Rules/Regulations of UGC / Bar Council of India are not applicable to the case in hand. Further, there is no prohibition to pursue higher studies like the present Master of Laws (LL.M.).

29. Petitioner contended that petitioner's case is squarely covered by the Co-ordinate Bench decision of this Court in the case of ***Dr. Anil Prasad Gara and Others*** (cited *supra*) and another judgment in the case of ***Dr. Kaushal Kusum*** (cites *supra*) which was affirmed in LPA No. 365 of 2011. It is also submitted that counter affidavit filed on behalf of the second respondent is silent in respect of applicability of statutory Rules of the Bihar Service Code read with the judgments cited *supra*, for the reasons that while granting interim order on 01.10.2024, this Court has taken note of the aforementioned material. Nodoubt, counter affidavit has been filed prior to passing of the interim order on 01.10.2024, however, second respondent has filed supplementary counter affidavit and in the supplementary counter affidavit, there is no whisper insofar as applicability of clauses and statutory provisions of the Bihar Service Code and cited decisions. The overall submission on behalf of second respondent is that the petitioner is not entitled to relief sought only on the score that UGC Act, 1956, UGC Regulations, 2020 and BCI Act read with Rules, these are all the irrelevant material for the purpose of the



issue involved in the present *lis*. On this point, learned counsel for the petitioner relied on the Hon'ble Supreme Court decision in the case of *Nair Service Society vs. T. Beermasthan* reported in **(2009) 5 SCC 545** in Para No. 48, to the extent that straightway judgments or statutory provisions cannot be taken into consideration unless it has bearing on the subject matter and if it is covered by different set of Regulations or Rules, in such an event, the relevant statutory provision is required to be taken into consideration for the purpose of subject in issue. Therefore, all other contentions which are narrated in the counter affidavit and supplementary counter affidavit filed on behalf of the second respondent are liable to be rejected while allowing the CWJC No. 13639 of 2024.

30. In identical matter, this Court has passed Resolution from time to time in which except in one incident in rest of the matters first respondent has rejected insofar as prosecuting higher studies by the Judicial Officers. These contentions are not appreciable for the reasons that UGC Act, 1956, UGC Regulations 2020 and BCI Act and Rules are not relevant for the purpose of present case in view of the fact that petitioner intends to prosecute her Master of Laws (LL.M.) 2024 – 2025, UNICRI at Turin, Italy. State of Bihar has not adopted insofar as identifying certain



courses like Master of Laws prescribed by the UGC read with the policy of the BCI. List of foreign universities recognized are also not assisting the respondents. UGC Act, BCI Act and Regulations and list of foreign universities recognized by the competent authority has no bearing and that apart the same has not been taken note of in the Resolution dated 13.08.2024. In fact, the petitioner should have been provided opportunity before rejecting her grievance, for the reasons that in identical matter one judicial officer intends to prosecute higher studies in the Global Open University, *Nagaland*, this Court has verified the credentials of the University and they have found that it was a private university. That apart, if any administrative order affecting a person's right, in such an event he or she should have been heard in the matter. If the petitioner had been given an opportunity of presenting her case to the extent that she is bound by the UGC Regulations, 2020 as narrated in the Resolution dated 13.08.2024, she would have explained how the UGC Regulations, 2020 is not attracted in the present case. Moreover, a detailed interim order was passed on 01.10.2024 which covers the subject matter to some extent, therefore, it is necessary to reproduce interim order dated 01.10.2024 and it reads as under :

“In the instant petition, petitioner has assailed the communication dated 14.08.2024 by which petitioner's



application dated 01.07.2024 seeking for study leave and permission to prosecute the Masters of Law (LLM) 2024-2025 Programme in Transnational Crime and Justice from United Nations Interregional Crime and Justice Research Institute, Turin, Italy (for short 'UNCRI at Turin, Italy') has been rejected.

2. Respondents have filed counter affidavit, in the counter affidavit they have furnished copy of the resolution passed by the Standing Committee dated 13.08.2024. In other words, pursuant to the Standing Committee resolution dated 13.08.2024, the impugned communication dated 14.08.2024 has been issued. Therefore, resolution dated 13.08.2024 merges with the impugned letter dated 14.08.2024. Petitioner – Shikha Kumari who is Judicial Officer is governed by Bihar Service Code insofar as grant of study leave is concerned and it is not disputed.

3. Learned counsel for the petitioner submitted that if the petitioner acquired the aforementioned Masters of Law (LLM), it has direct bearing on the function of the petitioner as a Judicial Officer. In effect, efficiency and in discharging the duties of the post of Judicial Officer would be benefited by the society at large and Judiciary - Institution.

*4. It is further submitted that reasons which are assigned in the resolution dated 13.08.2024 have no bearing in the light of Rule 205, 212 and 243 of Bihar Service Code and read with stated to be hardship rule – statutory rule vide no. 111/RT-2010/55A-11505 dated 28.11.1956, issued under proviso to Article 309 of Constitution. These provisions have been analysed by Co-ordinate Bench in the case of **Dr. Anil Prasad Gara & Ors. vs. State of Bihar & Ors.** reported in 1991 (2) PLJR 384 (Para 7 to 10). The same principle has been followed in yet another decision in the case of **Dr. Kaushal Khushum** in CWJC No. 10227 of 2007 decided on 02.07.2010 and it was affirmed by the Division Bench in LPA No. 365 of 2011 on 07.09.2017.*



5. It is necessary to re-produce agenda and resolution dated 13.08.2024, which reads as under:-

Text of the resolution of the meeting of Hon’ble Standing Committee held on 13th August, 2024

<u>Item No.</u>	<u>Agenda</u>	<u>Resolution</u>
2.	<p>To consider the prayer of Ms. Shikha Kumari, J.M. 1st Class, Vaishali at Hajipur, for grant of permission to apply for the Master of Laws (LL.M.) in Transnational Crime and Justice, at UNICRI (United Nations Interregional Crime and Justice Research Institute), UN Campus, Turin, Italy and in event of her selection, permission to take admission and pursue the said course availing study Leave from 18.11.2024 till 15.07.2025 alongwith permission for foreign visit to Turin (Italy) from 15.01.2025 to 15.07.2025. (XXIX-191-2023)</p> <p>(A.D. Appointment Section)</p>	<p>Having considered the matter, Standing Committee was of the opinion that there has been instances where the Judicial Officers have sought permission to undergo Online LL.M. Programmes, which have been rejected by the Standing Committee, especially looking at the prohibition for Online Course as has been brought by the UGC (Open and Distance Learning Programme and Online Programme) Regulations, 2020.</p> <p>In the present case also, the Course curriculum indicates it to be both Online and Regular; the first six months on Online</p>



		<p><i>mode and the second six months, when the candidate is obliged to attend on physical mode.</i></p> <p><i>It is pertinent that the State Government permits Study Leave on half-pay and also provides three increments, to a LLM qualified, which makes it imperative that the High Court grant permission only for courses which are recognized in India or those of similar nature.</i></p> <p><i>Finding that the course in which the Officer has sought permission is partly an Online course, the Standing is of the unanimous opinion the request be rejected. Rejected."</i></p>
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6. Learned counsel for the petitioner distinguish UGC Regulations, 2020 in respect of online and regular on par with the courses - programme in Transitional Crime and Justice to be prosecuted by the petitioner. It is submitted that three months is in Hybrid and six months is by physical mode. It is also submitted that in the event of completion of course by the



petitioner and acquired Masters of Law (LLM) in Transnational Crime and Justice and it is not equivalent to LLM of the Indian University, in that event she will not claim any service benefits like acquisition of LLM by a Judicial Officer is entitled to certain increments and monetary benefits. In other words, she is prepared to give up the aforementioned service benefits, if Masters of Law (LLM) in Transnational Crime and Justice is not equivalent to that of LLM degree of Indian University.

7. Learned counsel for the petitioner further pointed out Rule 205 of Bihar Service Code, it relates to grant of extraordinary leave for higher studies. Petitioner fulfills the stipulated condition under Rule 205. Therefore, whatever the reasons assigned in the resolution dated 13.08.2024 is not directly bearing on the acquisition of LLM by the petitioner and reasons are extraneous and not commensurate with cited (supra) statutory provisions of Bihar Service Code and Rules dated 28.11.1956 issued under Article 309 of Constitution, which were analysed by this Court on judicial side.

8. On the other hand, learned counsel for the respondents resisted the aforementioned arguments and submitted that in the light of resolution dated 13.08.2024, the petitioner has not made out a prima facie case for granting of interim order. It is further submitted that Rule 212 of Bihar Service Code is required to be complied. There is non-compliance to Rule 212 of Bihar Service Code insofar as recognition of the course to be prosecuted by the petitioner viz., Masters of Law (LLM) Transnational Crime and Justice. Therefore, it is not a case of granting interim order.

9. Heard learned counsels for the respective parties.

10. Undisputed facts are that the petitioner is a Judicial Officer who was appointed in the year 2018 and served in various districts. Respondent No. 1 – The Hon'ble High Court of Judicature at Patna had issued a guidelines for grant of permission to Judicial Officer/Judges of the Sub-Ordinate



Judiciary for private foreign visit dated 20.10.2020. It is relating to only private foreign visit, the guidelines are not applicable to the case in hand, since the present litigation is in respect of prosecuting higher studies while Judicial Officer is in service. Therefore, the relevant provision is under Bihar Service Code, Rule 205 it reads as under:-

“205. Extra leave on half average pay for the purpose of study leave may be taken either, in or outside India. Study-leave will not ordinarily be granted to Government servant of less than five year’s service or to Government servants within three years of the date at which they have the option of retiring or if they have the option of retiring after 20 years’ service, within three years of the date at which they will complete 25 year’s service.”

[Underlined Supplied]

11. In the event of acquisition of Masters of Law (LLM) in Transnational Crime and Justice by the petitioner it has direct sphere on the functions of the Judicial Officer post. In other words, there would be enhanced/efficiency in discharging the duties of the post held by the petitioner and it would be beneficial to the people at large and Judiciary - Institution. Masters in Law (LLM) in Transnational Crime and Justice subject having a direct and close connection with the sphere of her judicial function and so also it may benefit Bihar Judicial Academy in future. Even though she is attending course by hybrid and physical mode, which are capable of widening her mind in a manner likely to improve her ability as a Judicial Officer and to equip her better to collaborate with those employees in the judiciary service. In fact, proposed course of study shall be of definite advantage



from the point of view of Judicial Service and by the authority competent to grant study leave.

12. On two occasion, this Court considered in respect of acquisition of higher qualification by in service candidate in the Department of Health and Family Welfare and Veterinary Department. Those decisions are cited (supra), this Court allowed in favour of acquisition of higher qualification in which this Court has analysed Rule 204, 205, 212, 243 of Bihar Service Code read with rule which has been issued on 28.11.1956 by which State Government is empowered to grant relaxation of any of the rules (Para 7 to 10). So also, the Hon'ble Supreme Court decision on Article 14 and 226 (Para 11 to 13) vide Dr. Anil Prasad Gara & Ors. Decision has been taken into consideration in the aforementioned decisions. In the impugned communication dated 14.08.2024 read with resolution dated 13.08.2024, respondents have not taken note of statutory provisions like Rule 204, 205, 212 & 243 of Bihar Service Code and Rules dated 28.11.1956 issued under Article 309 of Constitution. Co-ordinate Bench in the cited decisions considered the aforementioned provisions.

13. Learned counsel for the respondent relied on Rule 212 of Bihar Service Code and it reads as under:-

“212. No course of study will be recognised as qualifying, for the grant of study allowance, or for study-leave for any other purpose, unless it has been approved in at least broad outline by the sanctioning authority in India, in accordance with Rules 210 and 211 above, and unless in cases where it has not been found possible to submit full particulars to the authorities in India, it has been approved in detail by the High Commissioner before it is begun.”



Rule 212 has not been given effect to the extent of identification of courses which have been recognized by the State Government. In the absence of such recognition and identification, Rule 212 of Bihar Service Code would not aid the decision of the respondents dated 14.08.2024 read with resolution dated 13.08.2024 whereas respondents have considered extraneous material like UGC Regulation 2020, when there is no recognition of course or University or UGC Regulation under Rule 212 of Bihar Service Code reasoning is incorrect. Be that as it may, Co-ordinate Bench decisions cited (supra) are aptly applicable for grant of interim relief.

14. In the light of these facts and circumstances, the petitioner has made out a prima facie case for grant of interim order. Accordingly, communication dated 14.08.2024 issued by the Respondent No. 1 stands stayed till disposal of CWJC No. 13639 of 2024. Further, Respondent No. 1 is requested to grant provisional No Objection Certificate/permission to the petitioner to enable her to apply for VISA, pending the hearing and disposal of the present writ petition. The petitioner be granted leave from discharging her from official judicial duties and permission be granted to her to attend online/virtual classes of the LLM programme in question which will commence from 18.11.2024 and completed on 15.07.2025, forthwith. The aforementioned interim relief is subject to result of the final decision in the petition.

15. Relist this matter on 26.11.2024.”

31. It is to be noticed that by virtue of interim order dated 01.10.2024, petitioner has already completed first phase of Distance Learning and she is undergoing second phase of Residential of the LL.M. course and it is not appropriate to distract



her higher studies at this distance of time. In the light of these facts and circumstances, petitioner has made out a case so as to interfere with the impugned communication dated 14.08.2024 read with Standing Committee’s Resolution dated 13.08.2024 and both are set aside. Consequently, the petitioner is entitled to have the benefit of study leave in accordance with the Bihar Service Code like study leave and other related ancillary issues. In this regard, petitioner is at liberty to submit detailed representation. If such representation is submitted, respondent Nos. 1 and 2 are requested to consider and proceed to pass appropriate order within a reasonable period of time.

32. Accordingly, CWJC No. 13639 of 2024 stands allowed.

(P. B. Bajanthri, J)

(Sunil Dutta Mishra, J)

GAURAV S./-

AFR/NAFR	AFR
CAV DATE	05.02.2025
Uploading Date	17.02.2025
Transmission Date	

