

Pankaj Kumar and anr. Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Aug-30-2007

Judge : Mridula Mishra, J.

Acts : Bihar Service Code - Rule 192A; Bihar and Orissa Traverse Rules - Rule 87; Settlement Department Rules - Rules 537, 538 and 539

Appeal No. : C.W.J.C. No. 943 of 2006

Appellant : Pankaj Kumar and anr.

Respondent : The State of Bihar and ors.

Prior history : Mridula Mishra, J. 1. The petitioners have preferred present petition praying to quash memo No. 274 dated 28.3.2005 and letter vide Memo No. 1043 dated 11.11.2005 by which they have been granted duty period leave from 1.4.2005 to 30.9.2005 and have been sanctioned duty period leave salary respectively. 2. Petitioners No. 1 and 2 both were appointed on the post of 'Traversor' on compassionate ground and posted at Bihar Survey Office Guljarbagh, Patna. Petitioner-No. 1 was appointed by letter d

Judgement :

Mridula Mishra, J.

1. The petitioners have preferred present petition praying to quash memo No. 274 dated 28.3.2005 and letter vide Memo No. 1043 dated 11.11.2005 by which they have been granted duty period leave from 1.4.2005 to 30.9.2005 and have been sanctioned duty period leave salary respectively.

2. Petitioners No. 1 and 2 both were appointed on the post of 'Traversor' on compassionate ground and posted at Bihar Survey Office Guljarbagh, Patna. Petitioner-No. 1 was appointed by letter dated 29.11.1988 and the petitioner No. 2 by letter dated 25.2.1997. Petitioners' case is that after joining the service they were working in the Bihar Survey Office Guljarbagh. Suddenly a letter dated 28.3.2005 contained in Memo No. 274 was issued by the Deputy Director, Bihar Survey Office Guljarbagh, Patna whereby petitioners alongwith others were sent on leave form 1.4.2005 to 30.9.2005. This letter has been challenged by the petitioners on the ground that it is arbitrary and unreasonable because prior to issuance of this letter no notice to this effect was given to them as for the first time after their joining they were sent on leave. Another grievance of the petitioners is that earlier when other employees were sent on leave they were paid 50% of their basis salary alongwith other allowances but in the case of the petitioners they have been allowed only 20% of their basic salary without any allowance. It has also been submitted that only such 'Traversors' who are in the Field Establishment can be sent on leave under Rule 87 of Tranversors Rule and Bihar Service Code 192. Petitioners being appointed in the Bihar Survey Office Guljarbagh and not being the Field Staff could not have been sent on leave. It has also been submitted that since the petitioners were appointed on compassionate ground Rule 87 of Traversor Rule read with Bihar Service Code 192 is not applicable in their case. For all these reasons the petitioners have challenged the impugned orders.

3. Counter affidavit has been filed on behalf of The Deputy Director. Bihar Survey Office Guljarbagh, respondent No. 5. Respondent No. 5 has stated that granting duty period leave to the petitioners and sanctioning of duty period leave salary to them is well within the jurisdiction of the Deputy Director, Rule 192A(iii) of Bihar Service Code specially mentions that Traversors who are appointed for field work can be sent on sanctioned leave in the off season or when there is no work. The duty period leave is not a punishment or stricture as the petitioners are trying to project. Rule 192 of the Bihar Service Code provides the conditions in which the duty period leave can be granted and the other conditions attached to this ground of duty period leave. Rule 87 of Traverse Rule Bihar and Orissa Survey 1986 lays down the rational for grant of duty period leave salary the maximum of which has been limited to a maximum of half of pay of the duty period. The impugned order is neither illegal nor arbitrary as such interference of this Court is not needed. The orders have been passed in accordance with the provisions of law and statutory rules. As such the allegation of violation of Articles 14 and 16 of the Constitution of India and Principle of Natural Justice is unfounded.

4. Considering the pleadings and submissions of the parties as well as relevant rules, i.e. Rule 87 of Bihar Traversors Rule and Rule 192 of Bihar Service Code it transpires that the impugned orders have been passed by the respondent No. 5 in exercise of jurisdiction for which he is authorised under the Rules.

5. Petitioners were appointed on the post of traversors and service condition of the Traversors is governed by Traversor Rule. Rule 87 provides that when there is no traverse work to be carried out the traversors can be granted duty period leave. Rule 192(a)(iii) provides that during leave period salary of Traverser will be decided by the Deputy Director but it cannot exceed 50% of the basic salary. The leave salary will be paid after the employee will join on conclusion of the leave. Petitioners are traversors and this is their service condition. As such the impugned order whereby they were asked to go on leave cannot be treated as a punitive order.

6. The other grievance of the petitioners is that instead of 50% of their salary the order has been passed for 20% of their basic salary only without any allowance, which is contrary to the rules. Other employees who were sent on leave were given 50% of their salary alongwith other allowance. The reason which has been assigned for making only 20% of the basic salary is that the petitioners on their return from leave and giving joining made prayer for granting salary for the duty period leave as per Rule 87 of the Traversors Rule. The petitioners were asked to submit detail of duty in Form L performed by them during field season 2004 - 2005. The statement showing quantity and quality of petitioners' performance in Form L annexed as Annexure-D, shown but during field season 2004-2005, but performance was Nil. Petitioners have not performed any duty as such they were not found entitled for any salary for the leave period under the Provisions of Rule 87 of Traverse Rule. In spite of that petitioners' case was considered compassionately and it was decided that 20% of the salary should be given to them. It was also decided that the period spent on departmental leave will not be treated as duty period. As such they were not allowed duty attached allowances like conveyance allowance or House rent allowance. On consideration of submissions and pleadings I find that petitioners have specifically stated in the writ application that during 17 years service period they were never sent for field work, and always worked in office. This statement has not been denied. In this circumstance the statement shown in Form L, that petitioners' field work performance during Season 2004-2005, is Nil can not be taken into consideration for denying 50% salary and allowances to the petitioner. Part of the order, which by petitioners have been allowed only 20% of salary without any allowances are quashed. Respondents are directed to consider and allow petitioners 50% salary with all allowances pay which petitioner is entitled, for his duty leave period.

7. Petitioners plea that since they were appointed on compassionate ground as such they should not have been sent on duty leave, and there should not have been curtailment of their salary, is also misconceived. If a government servant dies in harness, his dependent/legal heir is appointed on compassionate ground for providing immediate relief to the family. Thus, the only relaxation is given to the dependent is at the time of appointment and they have not to face the process of appointment, which is observed in case of other appointments. Once appointed on compassionate ground there is no clause in compassionate appointment circular for granting relaxation to the compassionate appointee from adherence to the service conditions as

laid down condition of service as mentioned in Bihar Service Code. The pleading taken by the petitioners that the service condition rule applicable in the case of other traversers is not applicable in the case of the petitioners is not sustainable and as such stands rejected.

8. Counsel for the petitioners has also tried to emphasise that reason for sending the petitioners on leave, i.e. non-availability of work is baseless. There are 19 sanctioned posts of traverse in the department and only 8 persons are working. There is abundance of the work which is evident from the letter dated 21.11.2006 issued by the Deputy Director, Bihar Survey, Guljarbagh. Even though the petitioners are available for work the Deputy Director in this letter has said that due to non-availability of the traversers the work of Survey cannot be done. In spite of availability of work the petitioners have been sent on leave on the ground that there is no work. In reply to this the counsel for the State has submitted that now a days only revisional survey is conducted and for any revisional survey as well as the settlement operation generally Traverse survey is not needed. Thus, the revisional survey is conducted on Blue Print of the previous cadastral or revision survey map as mentioned in Rules 537, 538 and 539 of Technical Rule of the Settlement Department. As such even if the number of traversers working against sanctioned post are less, they do not have sufficient work to do. The petitioners and others were sent on leave because of non - availability of work.

9. On consideration of the submissions as discussed in the aforesaid paragraph I find that there is no merit in this application. So far petitioners' claim Rule 192 of Bihar Service Code read with Rule 87 of Traverse Rules is not applicable to them and they could not had been sent on duty leave, is rejected. Part of the claim of the petitioners relating to 50% leave salary with allowances is allowed.

10. This application is allowed in part.

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