

Deodatt Singh Vs. Human Resource Development

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Court : Jharkhand

Decided On : May-06-2015

Appellant : Deodatt Singh

Respondent : Human Resource Development

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No.158 of 2013
Deodatt Singh Petitioner Versus 1. The State of Jharkhand 2. The Secretary,
H.R.D. Department, Govt. of Jharkhand, Ranchi 3. The District Superintendent of
Education, Hazaribag 4. The Block Education Extension Officer cum D.D.O, Ichak,
Dist. Hazaribag Respondents CORAM: HONBLE MR. JUSTICE APARESH
KUMAR SINGH For the Petitioner : Mr. Ayush Aditya For the Respondents : Mr.
Dhananjay Kumar Dubey, Sr.S.C.I 06/06.05.2015 Heard counsel for the
parties. In the instant writ petition, prayer has been made for quashing the letter
dated 13.9.2012(Annexure-5) issued by the respondent no.3, District
Superintendent of Education, Hazaribag where under petitioner's application dated
19.6.2009 for sanction of leave on medical ground for the period from 3.11.2002 to
17.11.2003 has been rejected. Petitioner has made a plea that his application
ought to have been dealt with under Rule 234 of the Jharkhand Service Code but
the same has been rejected invoking Rule 227 of the Jharkhand Service Code. He
has also made a prayer for payment of salary from March 2009 and fixation of his
salary counting the period from 3.11.2012 to 17.11.2003 as a period of leave.
Petitioner claimed to be working as In-charge Head Master under the respondent-

Human Resources Development Department. As per his case, while he was waiting for instruction for joining at Middle School, Jagdishpur in July 2002, he came to know through another office order bearing no. 2366 dated 11.10.2002 issued by the District Superintendent of Education, Hazaribag that he has been posted at Keredari. He made several representation for recall of the said order and also moved this Court in W.P.S. No. 5936 of 2002, which was disposed of vide Annexure-2 dated 1.11.2002 directing the Deputy Commissioner, Hazaribag to dispose of his representation within stipulated period. According to him the order of posting dated 11.10.2002 was withdrawn and a fresh order of transfer was issued. He however filed another writ petition before this Court being W.P.S. No. 6625 of 2004 claiming salary -2- for the period from 1.11.2002 to 17.11.2003 by taking plea that he had challenged the transfer order dated 11.10.2002 in the previous writ petition. Petitioner has tried to make out a case that the said period be treated as leave on medical ground as he was suffering from pancreatic illness and was unable to work during the said period. Therefore, by invoking Rule 234 of the Jharkhand Service Code, he claims sanction of the leave on medical ground. Petitioner claims that his representation was rejected vide letter dated 13.9.2012 issued by the respondent no.3, which is impugned herein. Learned counsel for the respondent- State by referring to the contents of the counter affidavit submitted that petitioner did not submit his joining pursuant to the order dated 11.10.2002 which was impugned in W.P.S. No. 5936 of 2002 and there was no stay order passed against the said transfer order. Thereafter, on consideration of petitioner's representation a fresh transfer order was issued on 21.10.2003. The petitioner's claim for salary for the aforesaid period from 1.11.2002 to 17.11.2003 was disposed of by the learned Single Bench of this Court in W.P.S. No. 6625 of 2004 vide judgment dated 22.12.2004 directing him to pursue his representation. Learned counsel for the respondent has referred to Rule 265 of the Jharkhand Service Code , which is quoted herein below:- A Government servant who does not join his post within his joining time is entitled to no pay or leave salary after the end of the joining time. Wilful absence from duty after the expiry of joining time may be treated as misconduct for the purpose of Rule 56. By relying upon the said Rule 265, learned counsel for the respondent- State submitted that the claim of the petitioner for grant of salary for the said period cannot be entertained as he had

not submitted his joining pursuant to the said transfer order. Since the petitioner had not worked during the said period in compliance of the order of transfer, his claim for salary has been rightly rejected. As a -3- matter of fact, he cannot now claim that the same should be converted into Earned leave or Commuted leave to avail of the salary for the said period. On these grounds the impugned order has been defended by the learned counsel for the respondent. Learned counsel for the respondent- State has also submitted that petitioner has taken alternative plea while challenging the said order of transfer before this Court and also had made a claim for leave on medical ground. Such plea therefore cannot be entertained in the eye of law when specific condition of Rule 265 of the Service Code has been violated. I have heard learned counsel for the parties at length and gone through the relevant materials on record. The first proposition which needs to be reiterated is that an employee cannot as a matter of right seek one or the other leave, more so Earned Leave or Medical Leave which depend upon sanction of the competent authority upon consideration of all the relevant and attendant facts of the case. It is also true that petitioner did not submit his joining, though he may have challenged the said order of transfer. It is also apparent that there was no stay of the order of transfer dated 11.10.2002 and for the entire period he kept waiting without submitting his joining while his representation was being reconsidered after an observation was made in the W.P.S. No. 5936 of 2002 upon the Deputy Commissioner, Hazaribag, without however expressing any opinion upon the merit of the case of the petitioner. In this factual backdrop, it appears that petitioner had not joined at the transferred place though there was no order of stay and therefore he had violated the relevant provision of Jharkhand Service Code i.e. Rule 265. In such circumstance, the respondent authority has duly considered the relevant aspects of the matter and the impugned order does not seem to suffer from any legal infirmity. Learned counsel for the respondent submits that petitioner's admissible post retirement dues have been calculated and he has been -4- asked to receive the Bankers Cheque for an amount totaling Rs.14,75,000/- and odd, which he had failed to collect by the time of filing of counter affidavit. He is also required to complete certain formalities for processing his claim for pensionary dues. In such circumstance, learned counsel for the respondent submits that petitioner should cooperate with the respondent- authorities so that his other

admissible post retirement dues can be paid, since he has already retired in 2013. Needless to say, if the petitioner approaches the competent authority in that regard, the same shall be looked into in accordance with law after due verification of the relevant service records of the petitioner within a reasonable time. However, no ground for interference is made out in the impugned order in the writ petition. Accordingly, the writ petition is disposed of in the aforesaid manner. (Aparesh Kumar Singh, J.) A. Mohanty

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