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Court : Jharkhand

Decided On : Dec-23-2004

Reported in : [2005(104)FLR931]; [2005(1)JCR359(Jhr)]

Judge : S.J. Mukhopadhaya, A.C.J.

Acts : Service Law

Appeal No. : W.P. (S) No. 3340 of 2003

Appellant : Bimalandu Kumar Chatterjee

Respondent : Bharat Coking Coal Limited and ors.

Advocate for Def. : Anoop Kumar Mehta, Adv.

Advocate for Pet/Ap. : Party-in-person

Judgement :

S.J. Mukhopadhaya, A.C.J.

1. This writ petition has been preferred by petitioner against the letter Ref. No. CMS/CHD/2003/352, dated 14th March, 2003, whereby and whereunder, the Chief of Medical Services. Central Hospital of M/s. Bharat Coking Coal Limited (hereafter referred to as M/s. BCCL), Dhanbad communicated the decision of management that it has taken a liberal view and pleased to sanction sick leave for the period 16th March, 2002 to 27th March, 2002 and 1st April, 2002 to 10th April,

2002 against 13 days sick leave and 14 days earned leave due to credit of the petitioner as on the date as a special consideration.

2. According to petitioner, he was initially appointed as Accounts Assistant on 3rd September, 1971 when it was a private company. It was taken over by M/s. BCCL and he became an employee of M/s. BCCL. He was transferred from Central Hospital, Jagjiwan Nagar, Dhanbad to Bhuli Town Administration Dhanbad on 1st March, 2002 and was released on 16th March, 2002 and after availing sick leave as was due to him, he reported duly in writing to Bhuli Town Administration with protest, but his joining was not accepted and he was not allowed to mark any attendance though he was reporting his duty place everyday.

Further case of the petitioner is that he had to move before this Court in WP (S) No. 2068 of 2002, wherein an interim order was passed by this Court on 2nd April, 2002 with specific direction not to compel him to join the transferred place, if not already joined. Subsequently, the writ petition was allowed and the order of transfer was set aside by this Court vide order dated 18th April, 2002. He thereafter, reported back to duty to Central Hospital but he was not allowed to join. For the said reason, he requested CMP (NEE) vide his letter dated 24th April, 2002 to comply with the Court's direction which was followed by reminder dated 26th April, 2002 submitted by him to the Director (P). M/s. BCCL and the letter dated 4th May, 2002 submitted before the Chief of Medical Services. Only thereafter he was allowed to join duty on 4th May, 2002.

The petitioner, who appeared in person, submitted that for the entire period from 28th March, 2002 to 30th March, 2002 and 11th April, 2002 to 3rd May, 2002, he was forced by the respondents to remain idle without any valid and genuine ground though he had reported the place of work everyday. It was submitted that the petitioner cannot be penalized for the same. He is entitled for full salary and other consequential benefits of the aforesaid period.

3. From the impugned letter, it will be evident that the respondents have decided as to how the period from 16th March, 2002 to 27th March, 2002 and 1st April, 2002 to 10th April, 2002 shall be counted and what salary to which the petitioner shall be entitled. Petitioner has been informed that the aforesaid period has been

sanctioned as sick leave and earned leave as was due to his credit. It appears that no decision has been taken nor the respondents have denied the salary for the period from 28th March, 2002 to 30th March, 2002 and 11th April, 2002 to 3rd May, 2002. In the circumstances, there being no denial of the claim for the period the petitioner sought for relief from the authorities. This Court is not inclined to interfere with the letter Ref. No. CMS/CHD/2003/352 dated 14th March, 2003.

So far as salary for the period from 28th March, 2002 to 30th March, 2002 and 11th April, 2002 to 3rd May, 2002 is concerned, if the order of transfer was stayed and the writ petition against the order of transfer was subsequently allowed and the petitioner reported back for duty to the Central Hospital, he will be entitled for salary for the period he was asked to join the transferred place. He will also be entitled to the benefits of the period during which his rejoining in the Central Hospital was not accepted in spite of the order passed by this Court. If the petitioner was forced to sit idle, no order accepting the rejoining having been issued, the respondents cannot deny the salary but will be liable to pay full salary and consequential benefit of such period to the petitioner. However the matter requires to be determined by the competent authority as to whether the petitioner was forced to sit idle or (sic) duty. For such, determination, the case is remitted with direction to the competent authority to decide the question of payment of salary of the period from 28th March, 2002 to 30th March, 2002 and 11th April, 2002 to 3rd May, 2002 taking into consideration the stand taken by the petitioner and the observation of this Court as made above and communicate the decision within a period of three months from the date of receipt/production of a copy of this order.

4. This writ petition stand, disposed of with the aforesaid observations/directions.