

Rajan Vs. State of Kerala

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Court : Kerala

Decided On : Dec-09-2004

Reported in : [2005(104)FLR1166]; 2005(1)KLT250

Judge : Kurian Joseph, J.

Acts : Kerala Service Rules - Rules 117 and 118

Appeal No. : O.P. No. 864 of 1999

Appellant : Rajan

Respondent : State of Kerala

Advocate for Def. : Lal George, Government Pleader

Advocate for Pet/Ap. : P.V. Mohanan, Adv.

Judgement :

Kurian Joseph, J.

1. The procedure for leave on medical certificate is the issue to be decided in this Writ Petition. The petitioner filed an application for leave without allowances on medical certificate with effect from 6.5.1998 supported by a medical certificate from an Assistant Surgeon. However, as per Ext.P2, the same was rejected by the Government with the following endorsement:--

'I am to invite your attention to the reference cited. As the medical certificate furnished in support of the leave seems to be bogus, you are directed to obtain and forward a second medical opinion from a Medical Board'.

This communication is dated 23.9.1998. It is seen endorsed by the Director on 15.10.1998 and by the Sub Treasury Officer on 26.10.1998. According to the petitioner, he got information about Ext.P2 communication only on 16.11.1998 when as a matter of fact, he had already applied for extension of leave for a further period of 30 days with effect from 2.11.1998. Learned Counsel for the petitioner submits that the reasons stated in Ext.P2 are totally untenable. Reference to Medical Board arises only if the second medical opinion is found not acceptable. Learned Government Pleader, referring to the counter affidavit submits that the petitioner as a matter of fact, had not appended a medical certificate along with his application for leave with effect from 6.5.1998. The same was produced only on requisition. On obtaining the medical certificate, the application for sanction was forwarded to the Government and the Government issued Ext.P2 communication since the genuineness of the medical certificate produced by the petitioner was doubtful.

2. If the genuineness of the medical certificate produced under Rule 117 of Part I K.S.R. is doubted, it is only open to the authority to require the applicant to produce a second medical opinion under Rule 118(a) of the rules. If the second medical opinion from a Civil Surgeon also is doubted, then alone the matter can be referred to the Medical Board. Rule 118(a), (b) and (c)'read as follows:-

'118. (a) In the case of certificate issued by an Assistant Surgeon, Ayurvedic Physician or Homoeopathic Doctor attached to a Government Hospital or Dispensary or a Private Practitioner of Modern, Indigenous or Homoeopathic Medicine, the authority competent to sanction leave may at its discretion, secure a second medical opinion by requesting a Civil Surgeon, District Indigenous Medical Officer or the Chief Medical Officer (Department of Homoeopathy) as the case may be, to have the applicant medically examined. Should it decide to do so it must arrange for the second examination to be made on the earliest possible date after the date on which the first medical opinion was given.

(b) It shall be the duty of the Civil Surgeon, the District Indigenous Medical Officer or the Chief Medical Officer (Department of Homoeopathy) as the case may be, to express an opinion, both as regards the facts of the illness and as regards the necessity for the amount of leave recommended. For this purpose, he may require the applicant to appear either before himself or before a Medical Officer nominated by him.

(c) if the authority competent to sanction leave has doubts about the second medical opinion also he may refer the case to the Medical Board, constituted by the Director of Health Services on requisition'.

In Ext.P2, instead of requesting the petitioner to obtain a second medical opinion, the Government straight away requested the petitioner to get the opinion from the Medical Board. It has to be seen that there is no question of opinion by the Medical Board. The Board is to prepare a report. If the medical certificate of Assistant Surgeon is not acceptable, then the competent authority has to arrange for the second examination by the Civil Surgeon, in the case of Ayurvedic Physician by the District Indigenous Medical Officer and in the case of Homoeopathic Doctor by the Chief Medical Officer of the Department of Homoeopathy. It is open to the Civil Surgeon, District Indigenous Medical Officer or the Chief Medical Officer as the case may be, to require the applicant to appear before them. It is also open to them to nominate a Medical Officer for the purpose and the applicant can be required to appear before the said officer for the examination. Only if the authority competent to sanction the leave doubts the second medical opinion, the case can be referred to the Medical Board. The Medical Board has to be constituted by the Director of Health Services on requisition.

3. In the instance case, the application for leave is with effect from 6.5.1998. The extension was from 2.11.1998 to 30.11.1998. Instead of requesting for a second medical opinion by the Civil Surgeon, the petitioner was directed to get the opinion of Medical Board. That is not warranted under the rules. It is not in dispute that as per Ext.P5, the petitioner has since joined duty. Therefore, the disputed period is only from 6.5.1998 to 1.12.1998. There is no point in relegating the petitioner for a

second opinion at this distance of time. Therefore, I dispose of the Writ Petition directing the first respondent to treat the period of leave as applied for by the petitioner from 6.5.1998 till 1.12.1998 as leave on medical certificate. The required orders shall be passed within two months from the date of production of a copy of the judgment. It is also made clear that the period the petitioner was made to wait for joining duty pursuant to Ext.P5 order will also be regularised within the said period.

The Writ Petition is disposed of as above.

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