

Sushil Kumar Vs. Health

Sushil Kumar Vs. Health

SooperKanoon Citation : sooperkanoon.com/76270

Court : Jharkhand

Decided On : Jul-13-2016

Appellant : Sushil Kumar

Respondent : Health

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 4557 of 2015
Sushil Kumar Petitioner Versus 1. The State of Jharkhand through the
Principal Secretary, Health and Family Welfare Department, Government of
Jharkhand, Ranchi.

2. The Principal Secretary, Health and Family Welfare Department, Government of
Jharkhand, Ranchi.

3. The Director-in-Chief, Health and Family Welfare Department, Government of
Jharkhand, Ranchi.

4. The Chief Medical Officer-cum-Civil Surgeon, Godda.

5. The Chief Medical Officer-cum-Civil Surgeon, Latehar.

6. The Department of Home, Government of Bihar, Patna.

7. The Principal, Patna Medical College & Hospital, Patna. .. Respondents. -----

CORAM : HONBLE MR. JUSTICE H. C. MISHRA ----- For the Petitioner : Mr.

Rahul Kumar, Advocate For the Respondent Nos. 1 to 5 : Miss Shruti Shrestha, J.C. to A.G. For the Respondent Nos. 6 & 7 : Mr. Ranjit Kumar, J.C. to G.A. (Bihar) ----- 03/ 13.07.2016 Heard learned counsel for the petitioner, learned counsel for the respondent State of Jharkhand as also learned counsel for the respondent State of Bihar.

2. The petitioner was working as Lab Technician in Primary Health Centre, Mahuatand, Latehar. After bifurcation of the State of Bihar, by the order as contained in memo No. 6046 dated 13.5.2010, the petitioner was allocated Bihar Cadre. The case of the petitioner is that in spite of being allocated Bihar Cadre, he was not relieved and he was transferred by the letter bearing No. 323(1) dated 25.5.2010, issued by the Director General of Health Services, Jharkhand, to Godda. Accordingly, the consequential order was also issued by the Civil Surgeon-cum-Chief Medical Officer, Latehar, on 2.6.2010 relieving the petitioner for joining his post on transfer at Godda.

3. The petitioner had moved before this Court in W.P.(S) No. 5676 of 2010 as he was not being relieved for joining in the State of Bihar. The said writ application was disposed of by order dated 11.1.2011, as contained in Annexure-4 to the writ application, giving liberty to the petitioner to file a representation before the Director, Health and Family Welfare Department, Government of Jharkhand, which was to be considered and disposed of by passing appropriate order within six weeks from the date of receipt of the representation. The petitioner again moved before this Court in W.P.(S) No. 7802 of 2011 and during the pendency of that writ application, the petitioner was relieved from -2- Jharkhand to give his joining in the State of Bihar, as in the meantime the petitioner had given his joining on 6.8.2011, at Sadar Hospital, Godda, where he was transferred. The writ application was disposed of by order dated 22.7.2013, as contained in Annexure-9 to the writ application, and in view of the fact that it was found that L.P.C. (Last Pay Certificate), issued to the petitioner did not reflect the proper pay scale, the Secretary, Health, Medical Education and Family Welfare Department, Government of Jharkhand, was directed to consider the petitioners representation for the same and to pass the appropriate order in accordance with law.

4. Pursuant to the aforesaid direction, a detailed order dated 16.6.2015 has been passed by the respondent No. 2, the Principal Secretary, Health and Family Welfare Department, Government of Jharkhand, as contained in Annexure-11 to the writ application, whereby certain grievances of the petitioner have been redressed. The petitioner is aggrieved by only that portion of the order, whereby, it has been directed that as the petitioner was unauthorizedly absent from duty from 15.6.2010 to 5.8.2011, for which period, on the basis of No Work No Pay, no salary was payable to the petitioner.

5. It may be pointed out that pursuant to the order issued by the Civil Surgeon-cum-Chief Medical Officer, Latehar, on 2.6.2010, relieving the petitioner for joining his post on transfer at Godda, as contained in Annexure-2 to the writ application, the petitioner had had not joined at Godda for a considerably long time, and ultimately, he joined only on 6.8.2011, whereupon he could be relieved for giving his joining in the State of Bihar.

6. Learned counsel for the petitioner has submitted that the petitioner has been wrongly deprived of his salary for the period 15.6.2010 to 5.8.2011, even though the petitioner was seeking his remedies before this Court in the meantime. Learned counsel has placed reliance upon a decision of the Honble Apex Court in *Somesh Tiwari Versus Union of India & Others*, reported in 2009 (2) SCC592 wherein where, the employee was transferred from Bhopal to Ahmedabad, upon an allegation, which was found to be untrue, and the transfer order was also quashed by the High Court. In the facts of that case, it was directed by the Apex Court in the interest of justice, that the period of absence of the employee be treated on leave. Placing reliance upon the aforesaid decision, learned counsel has, submitted that the petitioner is also entitled to the same relief and it is a fit case in which the period of absence of the petitioner be also treated on leave and the salary of the aforesaid period be made applicable to the petitioner. -3- 7. Learned counsel for the State on the other hand has opposed the prayer, submitting that in spite of the transfer order and consequently being relieved to join his post on transfer at Godda, as contained in Annexure-2 to the writ application, the petitioner deliberately did not join for a considerably long time without giving any information, and ultimately he joined only on 6.8.2011, whereupon he could be

relieved for giving his joining in the State of Bihar. It is accordingly, submitted that the petitioner has rightly been deprived of his salary on the principle of No work No Pay.

8. Having heard learned counsels for both the sides and upon going through the record, I find that the case of the petitioner is not similar to the case of Somesh Tiwari (supra). In the said case, it was found that the employee was transferred upon an allegation, which was found to be untrue, and the transfer order was also quashed by the High Court. Accordingly, the order was passed in favour of the said employee in the interest of justice by the Apex Court. In the present case, the facts are absolutely different and the petitioner though was relieved to join on the place of his transfer by order dated 2.6.2010, as contained in Annexure-2 to the writ application, but he deliberately did not join for a considerably long time, due to which he could not be relieved for giving his joining in the State of Bihar. Ultimately he joined only on 6.8.2011, where after he could be relieved for giving his joining in the State of Bihar.

9. In that view of the matter, there was an unauthorized absence from duty by the petitioner from 15.6.2011 to 5.8.2011, pursuant to the order dated 2.6.2010, as contained in Annexure-2 to the writ application, for which, no application whatsoever was given by the petitioner. I am of the considered view that the principle of No Work No Pay has rightly been applied to the case of the petitioner. There is no illegality in the impugned order dated 16.6.2015 passed by the respondent No. 2, the Principal Secretary, Health and Family Welfare Department, Government of Jharkhand, as contained in Annexure-11 to the writ application.

10. There is no merit in this writ application and the same is accordingly, dismissed. (H. C. Mishra, J.) Amitesh/-

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com