

Court No. - 21

Case :- SPECIAL APPEAL No. - 731 of 2023

Appellant :- Ntpc Ltd. And 3 Others

Respondent :- Vibhushit Singh

Counsel for Appellant :- Hanuman Prasad Dube

Counsel for Respondent :- Siddharth Khare

Hon'ble Manoj Kumar Gupta, Acting Chief Justice

Hon'ble Donadi Ramesh, J.

1. The instant intra-court appeal is directed against the order of the learned Single Judge, dated 19.10.2023 in Writ-A No.9538 of 2023. The writ Court has allowed the writ petition filed by the respondent (hereinafter referred to as writ petitioner), challenging the orders dated 31.03.2020 and 03.03.2023 passed by the Senior Manager, (HR-EB), Rihand Super Thermal Power Project, Bijpur, Sonbhadra and a mandamus has been issued to the appellants herein to reinstate the writ petitioner "with his seniority and continuity of service though no emoluments will be payable for the period by the terms of leave." It was left open to the appellants to take action against the writ petitioner in abandoning the course of study for which leave was taken as permissible under the Rules.

2. Facts in brief are that the writ petitioner while working with the appellants took study leave. By order dated 17.06.2017, the study leave was sanctioned from 19.06.2017 to 18.06.2019 subject to the condition that the original writ petitioner would not be entitled to pay or allowances during the said period. The conditions subject to which study leave was granted were as follows:

"• He shall execute a service agreement bond to serve the

Company for a minimum period of three years after completion of the study leave or to pay to the company Rs. 50,000/- in case of default.

- He will not be entitled to any pay or allowances during the period of study leave and he will not accept any part/full time employment, scholarship, honorarium or any other payment during this period without prior approval of the Competent Authority.*
- He will be entitled to the benefits of the continuity of service for CPF and Gratuity and if he chooses to contribute to his provident fund account during study leave period. the Company will make a matching contribution as per rules framed from time to time.*
- During the study leave period, he shall not be considered for promotion. However, the period will count for eligibility for promotion only if he successfully completes his study. He will be considered for promotion as per the Company policy after rejoining duties on expiry of study leave. The duration of Study Leave availed without completing the study will not be reckoned for purpos of eligibility for promotion or for earning increments. He will also not be eligible for grant of study leave again.*
- The Study Leave period will not be considered for the purpose of earning any kind of leave.*
- He shall vacate the company accommodation provided to him within stipulated time period, failing which market rent will be charged.*
- He shall also be covered by any other rules in respect of study leave as framed by NTPC from time to time."*

3. The admitted fact is that the writ petitioner, could not complete the course for which leave was taken. The appellants conducted an inquiry and treated the period of leave as unauthorized absence and passed an order terminating his services. The period of unauthorized leave from 19.06.2017 to 17.06.2019 was treated as *dies non*. The appeal filed by the writ petitioner was dismissed by order dated 03.03.2023. The learned Single Judge found fault with the impugned orders and accordingly, quashed the same and

directed for reinstatement of the writ petitioner with consequential benefits noted above.

4. Sri H.R. Mishra, learned Senior Counsel appearing for the appellants contended that the direction contained in paragraph no.29 of the impugned order for reinstating the writ petitioner forthwith with continuity of service without clarifying that the said period would not count for eligibility for promotion, is likely to result in confusion. He submits that under Clause 2.3 (iii) of N.T.P.C. Scheme of Facilities for Higher Studies, it is provided specifically that in case study leave is availed without completing the study, such period will not be reckoned for the purpose of eligibility for promotion or earning increments. It is urged that a clarification be made in order to avoid any confusion.

5. Sri Ashok Khare, learned Senior Counsel appearing for the writ petitioner has no objection in case the said clarification is made in the light of Clause 2.3 (iii) of the Scheme.

6. Accordingly, we **dispose of** the instant appeal with the clarification that although the writ petitioner would be entitled to continuity of service in terms of the impugned order but the period of leave would not be counted for the purpose of eligibility for promotion or for earning increments. Rest of the impugned order of learned Single Judge remains unaltered.

(Donadi Ramesh, J.) (Manoj Kumar Gupta, A.C.J.)

Order Date :- 1.12.2023

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