

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****WP No. 1783 of 2003**

Ramkala Agrawal S/o.
 Ramchandra Agrawal, Aged
 about 57 years, R/o. Patel Colony
 Ward No.4, Rope Factory,
 Kantabhaji, District Balangir
 (Orissa)

---- Petitioner**Versus**

1. State of Chhattisgarh through the
 Secretary Water Resources
 Department DKS Bhawan,
 Raipur(C.G.)
2. State of Madhya Pradesh through
 the Secretary Water Resources
 Department, Vallabh Bhawan,
 Bhopal (M.P.)
3. The Chief Engineer Hasdeo
 Bango Project Water Resources
 Department Bilaspur, District
 Bilaspur (C.G.)
4. Superintending Engineer,
 Narmada Valley Development
 Circle No. 12, Narmada Nagar,
 District Khandwa (M.P.)
5. Joint Director, Treasury, Accounts
 and Pension, Bilaspur Division,
 Bilaspur

---- Respondents

For Petitioner	:-	Shri Anand Dadariya Advocate with Shri Ashish Surana Advocate
For Respondent No.1	:-	Shri B. Gopa Kumar, Dy. Advocate General.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****16/04/2015**

1. The instant writ petition has been preferred by the petitioner
 challenging the impugned order dated 12.11.2000 Annexure P/2 whereby
 the respondents after more than 3 years from the date of retirement of the

petitioner has issued an order holding that while the petitioner was in service in between from 01.01.1993 to 27.11.1996 in the intervening period, the petitioner has remained absent for a period of 273 days and for the purpose of settlement of his retirement 273 days has been declared as non-working and have also been declared as "dies non".

2. The grievances of the petitioner is that the effect of the impugned order would be that of imposition of punishment that of 'dies non' as by way of the impugned order even the pensionary benefits payable to the petitioner would be adversely effected and as such the action could not have been initiated by the respondents without affording any opportunity of hearing or by conducting the enquiry by the respondent.

3. Counsel for the petitioner submits that the petitioner admittedly was at the time of his retirement was working as Executive Engineer and the petitioner retired from the service w.e.f. 01.10.1997. The contention of the petitioner further is that all the 273 days on which the petitioner was shown to be absent from his duty, the petitioner in fact was present from almost 157 days which has not been properly verified by respondent in as much as he has filed Annexure P/6 with his rejoinder and produced certain documents by which he tried to show that he was on duty for all these period and which ought to have been verified by respondents before the period of 273 days was declared period as "dies non".

4. Counsel for the petitioner further submits that so far as the other period of absent is concerned all these days he had moved the application for grant of leave with the concerned competent authority and which has been to be verified whether it were allowed or not. However, whether the application was accepted or has been rejected and without there being an order of rejection it has to be presumed that the leave had been granted to the petitioner. He further submits that even otherwise the

respondent before issuance of impugned order Annexure P/2 ought to have verified from the leave account of the petitioner whether the said period could have been adjusted from the leave in his credit by respondent before declaring the period as 'dies non' so that the dues payable to the petitioner would not get adversely affected.

5. Counsel for the State-respondent however opposes the submission made by the petitioner and submits that from the plain perusal of the return filed by the respondent itself it is evidently clear that the petitioner had been regularly absenting himself as is evident from the details of the period of absent which is reflected from the paragraph-3 of the return filed by the State. He further submits that the petitioner had availed unsanctioned, unauthorizedly leave for about 273 days and therefore, the respondents had no other option but to pass and declare the period as non-working days or in other words as "Dies Non".

6. However, on a query being put to him he fairly admits the fact that before issuance of impugned order Annexure P/2 declaring the 273 days period as dies non and the state has not conducted any enquiry. He further admits the fact that from the record as well as return of the State it does not appear that the petitioner at any point of time while he was in service subjected to disciplinary proceedings for the period he allegedly remained unauthorized absent.

7. Taking into consideration the submission made by the rival parties, the disputed facts which come up in the submissions on either side, is that according to the respondent, the petitioner has remained unauthorized absent for the period of 273 days, whereas according to the petitioner out of these 273 days for the period of 173 days he has

remained present in the office continuously but was not allotted any work by the department and therefore, he said that the period can not be treated as non-working days. Similarly, the petitioner also submits that for the remaining period also he has moved an appropriate application for grant of appropriate leave to the respondents.

8. Another admitted position is that the respondent before declaring period of 273 as dies non has not conducted any sort of enquiry and the impugned order Annexure P/2 has been passed at the back of the petitioner and which admittedly is violation of the principle of natural justice, without granting any opportunity of hearing in defence to the petitioner. Lastly, the effect of the impugned order treating 273 days as dies non would adversely affect the pensionary benefit payable to the petitioner and as such it would amount of having a civil consequence and for which an enquiry ought to have been conducted at least by giving an opportunity of hearing to the petitioner.

9. For the aforesaid reasons, this Court is of the opinion that the impugned order to the extent of declaring the period as dies non is bad in law and is set aside. However, respondent is at liberty to verify the submission of the petitioner that he had remained present for working for the period 173 days but was not allowed or allotted any work and thereafter the respondent may pass an appropriate order in accordance with law as to how the said period has to be treated.

10. Needless to mention while conducting the verification the respondent may also call upon the petitioner to justify his stand for the period of absence which would be considered by respondents objectively and in case any claim is to be settled in favour of the petitioner, the same shall be done as expeditiously as possible.

11. With the aforesaid observation the instant writ petition is dismissed.

(P. Sam Koshy)
JUDGE