

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****W.P.(S) No. 3144 of 2011**

Lata Goswami W/o R.N. Raje, Aged about 55 years, Head Master,
Govt. Middle School (Milchal School) Rajnandgaon, R/o Sahdev Nagr
Near Lov Provision Stores, Rajnandgaon, (CG)

---- Petitioner**Versus**

1. State of Chhattisgarh through the Secretary, Tribal and Welfare Department, D.K.S. Bhawan, Raipur (CG)
2. Collector, Tribal and Welfare Department, Rajnandgaon (CG)
3. Assistant Commissioner, Tribal and Welfare Department, Rajnandgaon (CG)
4. Principal, Govt. Higher Secondary School, Kaudikasa, Distt. Rajnandgaon (CG)

---- Respondents

For Petitioner	:	Shri Ajay Shrivastava, Advocate
For Respondent/State	:	Shri B. Gopa Kumar, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****03/09/2015**

The present is a second round of writ petition in respect of the same cause of action. The first round of writ petition was registered as Writ Petition (S) No. 3764/2005 which was disposed of by this Court on 06.07.2010 with the observation as under:

“9. However, while considering the case of the petitioner in the light of the order of this Court, in respect of period from 16.10.1987 to 13.04.1988, this aspect shall also be taken into consideration and decision in accordance with law would be taken.

11. In so far as decision with regard to period from 16.10.1987 to 13.04.1988 as leave without pay is concerned, the same is declared illegal and is hereby set aside. The Competent Authority shall reconsider the entire aspects of the matter in the light of the observations made by this Court and in accordance with the provisions contained in the M.P./C.G. Civil Services (Leave) Rules, 1977.”

2. The issue involved in the instant case is that the petitioner had availed maternity leave from 03.07.1987 to 30.09.1987 for a period of three months which for personal reasons further had to be extended and the petitioner extended the same till 24.07.1989. Subsequently, after her fitness when the petitioner reported for duty, she was refused joining and at the intervention of the State Administrative Tribunal she was permitted to join her duty on 13.10.1995.

3. Grievance of the petitioner is that the intervening period beyond the sanctioned maternity leave period has not been regularized by the respondents nor has she been granted salary benefits during the said period. According to the petitioner, for the period from 25.07.1989 i.e. the date on which she reported for duty after extended period of maternity leave till 12.10.1995 she was willing to work but she was refused joining arbitrarily and illegally to join her duty and therefore she is entitled for the the said period for salary benefits.

4. The respondents after disposal of the earlier writ petition i.e. W.P.(S) No. 3764 of 2005 dated 06.07.2010, on receipt of the representation so made by the petitioner have passed the impugned order whereby the period from 16.10.1987 to 13.04.1988 i.e. 180 days has been treated as leave without pay and the two subsequent periods from 14.04.1988 to 15.10.1989 and 10.08.1991 to 10.10.1994 have been treated as on duty. However, the remaining intervening period from 16.10.1989 to 09.08.1991 and 11.10.1994 to 12.10.1995 has not been treated as on duty and the same has been treated as on extraordinary leave.

5. Counsel for the petitioner submits that for these three periods the respondents have not given any reason or justification for treating those as leave without pay and extraordinary leave particularly when the intervening period i.e. 14.04.1988 to 15.10.1989 and 10.08.1991 to 10.10.1994 has been treated as on duty. According to the counsel for the petitioner, the same reason prevailed for the entire period and since from April 1988 to October 1989 and August 1991 to October, 1994 has been treated as on duty, the other period also deserves the same treatment and the impugned order therefore is bad in law. Further, the order is a non-speaking order.

6. This Court on 20.06.2011 while directing the State Government to file response had observed that the State Government should explain as to why the case of the petitioner has not been considered in the light of the directives given by this Court on 06.07.2010 in W.P.(S) No.3764 of 2005. In spite of the order of this Court dated 20.06.2011, the respondents in their reply have only tried to translate the impugned order in English and have submitted their reply without giving any reason, justification or explanation in respect of the impugned order passed by the Authorities. The impugned order as well as the report of the State Government does not give any explanation for the three periods which have been treated as leave without pay and extraordinary leave. The impugned order thus being a non speaking order and the respondents having failed to give any justification or plausible explanation for the said order, the same cannot be held to be proper, legal and justified and deserves to be set aside.

7. Once the matter was sent back to the authorities concerned especially by the High Court, the Authorities should have taken extra care while deciding the claim of the petitioner and ought to have given reasons and the provisions of the Rules under which the order was being passed. The impugned order does not disclose application of mind to the grievance and contentions of the petitioner. The authority was duty bound to give independent conclusions on his decisions. Specific reasons should have been given on his findings.

8. In the case of **East Coast Railway and Another Vs. Mahadev Appa Rao and Others with K. Surekha Vs. Mahadeo Appa Rao and Others** (reported in **2010 (7) SCC 678**), the Supreme Court in a very categorical terms has held that Arbitrariness in making of an order by an authority can manifest itself in different forms. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. Application of mind is best demonstrated by disclosure of mind by the authority making the order and disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary hence legally unsustainable. In the absence of

reasons in support of the order it is difficult to assume that the authority had properly applied its mind before passing of the order.

9. Likewise, again in case of **Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota Vs. Shukla and Brothers** (reported in **2010 (4) SCC 785**), the Supreme Court has held that “recording of reasons is an essential feature of dispensation of justice. Reasons are the soul of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. A judgment without reasons causes prejudice to the person against whom it is pronounced, as that litigant is unable to know the ground which weighted with the authority in rejecting him claim and also causes impediments in his taking adequate and appropriate grounds before the higher court in the event of challenge to that order.”

10. For the foregoing reasons, the impugned order deserves to be and is accordingly set aside. The matter is remanded to the Authority concerned for passing an order afresh so far as the disputed periods are concerned.

11. Accordingly, the authority concerned is directed to decide the periods i.e. 16.10.1987 to 13.04.1988, 16.10.1989 to 09.08.1991 and 11.10.1994 to 12.10.1995 afresh taking into consideration the entire facts and circumstances of the case and also giving an opportunity of hearing to the petitioner.

12. It is expected that this time the Authorities concerned shall be more careful while deciding the case of the petitioner and shall decide the same objectively giving the reasons to their findings so arrived within a period of three months from the date of receipt of copy of this order.

13. With the aforesaid observation, the instant writ petition stands allowed.

Sd/-
(P. Sam Koshy)
JUDGE