

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 1879 of 2014

Shailendra Kumar Nagwanshi S/o Late Shri Sarju Ram Nagwanshi Aged About 34 years R/o Village & Post Binjli, Tahsi & P.S. Narayanpur, Distt. Narayanpur, Civil & Revenue Distt. Narayanpur C.G.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, School Education Department Mahanadi Bhawan, Mantralaya, P.S. Rakhi, New Raipur C.G.
2. Chief Executive Officer, Jila Panchayat, Basar, Jagdalpur C.G.
3. Additional Chief Executive Officer, Janpad Panchayat, Farasgaon, Distt. Kondagaon C.G.

---- Respondents

For Petitioner	Shri Abhishek Pandey, Advocate
For Respondent/State	Shri S. Mazid Ali, PL
For Respondent No.3	Shri Rahul Tamaskar, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board By

06/07/2015

1. With the consent of the learned counsel for the parties, the matter is heard finally.
2. The petitioner has preferred this writ petition seeking a direction to the respondents to allow him to join the services as Shiksha Karmi Grade-II, Janpad Panchayat Farasgaon.

3. The petitioner was appointed as Shiksha Karmi Grade-II in the year 2005 and was continuously working on the post. However, he remained absent from duties regularly from October, 2009 to November, 2014 for a total period of 1128 days. He wanted to assume duties, however, he was not allowed to do, therefore, the present writ petition has been preferred.
4. Shri Pandey, learned counsel for the petitioner would submit that the petitioner had returned from leave and submitted his joining along with fitness certificate on 02.01.2014, however, he was not allowed to join. He would submit that in absence of any disciplinary proceeding having been initiated against him, the petitioner should not have been refused to join duties.
5. Per contra, learned State counsel and learned counsel for the respondent No.3 would draw attention of the Court to the Chhattisgarh Civil Services (Leave) Rules, 2010 (for short 'the Leave Rules') to contend that when a person remains unauthorizedly absent for a long period, the joining cannot be allowed as a matter of course. The petitioner was served show cause notices to which, he had not replied, therefore, the matter has been remained pending.
6. At this stage, Shri Pandey, learned counsel for the petitioner would submit that the petitioner has already replied to the show cause notices yet, orders in terms of the Leave Rules have not been passed, therefore, petitioner has claimed relief in para 10.3 of the petition for issuance of a direction to the respondents to comply the Leave Rules.
7. Rule 23 of the Leave Rules provides thus:-

“23. Return from leave.- (1) A Government servant on leave shall not return to duty before the expiry of the period of leave granted to him, unless he is permitted to do so by the authority which granted him leave.

(2) Notwithstanding anything contained in sub-rule (1), a Government servant on leave preparatory to retirement shall be precluded from returning to duty, save with the consent of the authority competent to appoint him to the post from which he proceeded on leave preparatory to retirement.

(3) A Government servant who has taken leave on medical certificate may not return to duty until he has produced a medical certificate of fitness in Form 4.

(4) (a) A Government servant returning from leave is not entitled, in the absence of specific orders to that effect, to resume as a matter of course the post which he held before going on leave.

(b) Such Government servant shall report his return to duty to the authority, which granted him leave or to the authority, if any, specified in the order granting him leave and await orders.

Note- A Government servant, who has been suffering from tuberculosis, may be allowed to resume duty on the basis of Fitness Certificate, which recommends light work for him.”

8. A reading of the above provision would make it explicit that on return from leave, an employee cannot be allowed to resume duties as a matter of course, however, it is equally true that the competent authority is enjoined to pass orders concerning the leave period or initiating any disciplinary action against the employee and the matter cannot be kept pending for indefinite period.

9. For the foregoing, the writ petition is disposed of with an observation that if the petitioner has already submitted reply to the notices issued to him seeking explanation for his absence, the same may be considered. If the petitioner has not filed any reply till date, he is allowed 15 days time to submit reply and thereafter the competent authority shall pass necessary orders concerning the leave period or any other connected matters including the decision whether to initiate any disciplinary proceeding against the petitioner and depending upon the said order, the petitioner shall be allowed to join the duties, in accordance with law. The entire exercise may be completed within 6 weeks from today.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA