

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No. 1910 of 2005**

- Shyamratan Manghoghre, S/o Late Shri Pheruram, Aged about 50 years, Presently working as Assistant Development & Extension Officer at Janpad Panchayat Saja, Panchayat & Rural Development Department, District Durg, C.G. R/o Village Dhaurabhata, P.O. Bargada, Block Saja, District Durg, C.G.

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through the Secretary, Department of Panchayat & Rural Development, Mantralaya, D.K.S. Bhawan, Raipur (C.G.)
2. The Development Commissioner, Department of Panchayat & Rural Development, Government of Chhattisgarh, Raipur, C.G.
3. The Collector, District Durg, Durg, C.G.
4. The Chief Executive Officer, Jila Panchayat Durg, District Durg, C.G.
5. The Chief Executive Officer, Janpad Panchayat Saja, District Durg, C.G.

---- Respondents

For Petitioner : Shri Alok Dewangan, Advocate.
 For Respondent/State : Shri S. Majid Ali, Panel Lawyer.
 For Respondent No.5 : Shri Sandeep Dubey and Shri Pawan Shrivastava, Adv.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****03/08/2015**

1. The petitioner has called in question the order dated 11.3.2005 passed by the Joint Commissioner in the office of Development Commissioner,

Chhattisgarh granting 377 days of leave without pay to the petitioner for the period 20.12.2002 to 31.12.2003.

2. Brief facts of the case, as projected in the writ petition, are that the petitioner was working as Assistant Development Extension Officer and was posted at Janpad Panchayat, Saja, District Durg. Upon creation of the State of Chhattisgarh with effect from 1.11.2000, the petitioner's services were allocated to the State of M.P., therefore, he preferred WP No.2252/2002 wherein an interim order was passed on 31.10.2002 directing the parties to maintain status quo with regard to the petitioner's posting in the State of Chhattisgarh. Before this interim order, the petitioner was already relieved by the State Government on 9.10.2002 and by the CEO, Janpad Panchayat, Saja on 23.10.2002. He was paid one month salary in advance so as to enable him to join at Sidhi (MP). On petitioner's repeated representation, he was permitted conditional joining in the State of Chhattisgarh on 18.12.2002. Having submitted joining, the petitioner thereafter remained absent till 31.12.2003. On his application, the Joint Commissioner informed the CEO, Janpad Panchayat, Saja for obtaining leave application from the petitioner and sending proposal to the higher officers. It is this issue which has now been decided by the impugned order by treating the subject period as leave without pay.
3. Shri Dewangan, learned counsel for the petitioner would submit that as on the date of consideration of his case, enough leave was available in his leave account, therefore, the authorities are not justified in treating the period as leave without pay, which would amount to break in service and may affect his career. He would submit that when the petitioner rejoined in the State of Chhattisgarh on or about 18.12.2002, the CEO did not allow him to work. Therefore, the petitioner was not at fault for not joining duties and as such, the order refusing the leave is illegal.
4. Per contra, learned State counsel, Shri Dubey and Shri Shrivastava,

learned counsel for respondent No.5 would submit that the petitioner was not attending the office after 18.12.2002, therefore, taking lenient view in the matter, instead of treating the petitioner as unauthorizedly absent and imposing any major penalty on him, the order has been passed only for treating the period of absence as leave without pay.

5. It is settled that leave cannot be claimed as a matter of right. Merely because leave was available in the petitioner's leave account or for that matter in the account of an employee, it cannot be gainsaid that an employee may remain unauthorizedly absent and later on move application for grant of leave claiming the same as his fundamental right. Allowing this would amount to encouraging indiscipline in the cadre.
6. None of the representations preferred by the petitioner would make any statement that the petitioner was regularly attending the duties but was malafidely denied access in the office. On the contrary, a show cause notice dated 10.3.2004 issued from the office of CEO, Janpad Panchayat, Saja (Annexure-P/13) would clearly indicate that because of petitioner's unauthorized absence, he was directed to resume duties, failing which appropriate decision shall be taken. It is clearly mentioned in this communication that for the period 19.12.2002 to 31.12.2003 the petitioner should have attended the duties so as to permit the authorities to process his claim for salary but the petitioner was engaged in his personal work rather than attending duties.
7. In the considered opinion of this Court, the respondent authorities, instead of proceeding against the petitioner departmentally by constituting an enquiry, had taken a lenient view to treat the period of absence as leave without pay. Much leniency has already been shown to the petitioner. Allowing any further leniency may be construed as according misplaced sympathy to an employee, who does not deserve the same as he was remaining unauthorizedly absent.

8. For the foregoing, the writ petition is bereft of any substance, the same deserves to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve