

Civil Writ Jurisdiction Case No. 9701 of 2013

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.... Respondent/s/Opposite Party.

Mr. Santosh Kumar Jha, Adv.

For the State

Mr. Partha Sarthy, G.A.-11.

(In C. REV. No. 225 of 2014)

For the Petitioner/s : Mr. Ashok Kumar Sinha, Sr. Adv.
For the Respondent/s : Mr. Mrigank Mauli, Adv.

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

C.A.V. JUDGMENT.

Date: 02-02-2016

1. The above stated Civil Review Petition No. 225 of 2014 as well as M.J.C. No. 3965 of 2014 have been filed in connection with order dated 11.03.2014 passed in CWJC No. 9701 of 2013 by which the applicant in Civil Review Petition No. 225 of 2014 was directed to sanction earned leave up to 300 days to the opposite party no. 1 of Civil Review Petition No. 225 of 2014 who was petitioner in CWJC No. 9701 of 2013 within a period of three months.

2. The petitioner in Civil Review Petition No. 225 of 2014 has sought the review of order dated 11.03.2014 passed in CWJC No. 9701 of 2013 on the ground that the State Government's letter dated 29.05.2008 and office order dated 19.08.2009 issued by the Vice Chancellor could not be produced before the court at the time of hearing as a result whereof, this court directed the petitioner to sanction 300 days earned leave to opposite party no. 1 whereas in view of the aforesaid letters opposite party no. 1 was only entitled to get 245 days of earned leave.

3. Similarly, M.J.C. No. 3965 of 2014 has been filed by

the petitioner of CWJC No. 9701 of 2013 for initiation of a contempt proceeding against the opposite parties of aforesaid M.J.C. No. 3965 of 2014 as they failed to comply the order dated 11.03.2014 passed by this court in CWJC No. 9701 of 2013.

4. I have already heard all the parties at length.

5. Learned counsel Sri Mrigank Mauli appearing for the petitioner in Civil Review Petition No. 225 of 2014 submitted that in pursuant to revision of pay scale and other benefits, the scheme for grant of earned leave was introduced in the Universities and the scheme, specifically, made provision for the rate of admissible earned leave i.e. at the rate of 12 days per annum with maximum admissible limit of 300 days for purposes of encashment upon superannuation and vide letter no. 14/D2-017/89(HE)-1205 dated 29.05.2008, it was communicated by the State Government that entitlement of enhanced earned leave shall be applicable to a teaching or non teaching employee with effect from 15.09.2006 and, thereafter, it was notified by the University vide memo no. B/1757 dated 19.08.2009 that entitlement of earned leave of 300 days shall be admissible only from 15.09.2006 and, therefore, the aforesaid letters show that maximum admissible earned leave to a teaching or non teaching employee of the University was only 180 days up to 14.09.2006 and to get 300 days of earned leave a teaching or non teaching employee had to earn 120



days from 15.09.2006. It was further contended by him that opposite party no. 1 in Civil Review Petition No. 225 of 2014 had earned 186 days of earned leave up to 14.09.2006 and from 15.09.2006 to 31.12.2006, he had earned ten days of earned leave and he also earned 33 days of earned leave between 01.01.2007 to 31.12.2007 and another 22 days of earned leave between 01.01.2008 to 31.08.2008 and, therefore, it is apparent that opposite party no. 1 in Civil Review Petition No. 225 of 2014 had earned only 65 days of earned leave from 15.09.2006 and, therefore, he was only entitled to get earned leave of 245 days but the Government's Letter dated 29.05.2008 as well as Letter no. BSU-28/2008-2198/GS(I) dated 30.06.2008 could not be brought on record at the time of passing order dated 11.03.2014 in CWJC No. 9701 of 2013 and that was the reason this court directed the University to sanction earned leave of 300 days to the opposite party no.1 in Civil Review Petition No. 225 of 2014. It was further contended by him that had the above stated letters brought to the notice of this court at the time of passing order dated 11.03.2014 in CWJC No. 9701 of 2013, this court would not have passed the aforesaid order directing the University to sanction 300 days of earned leave in favour of opposite party no. 1 in Civil Review Petition No. 225 of 2014. It was further contended by him that in view of the aforesaid letters, there is apparent error on the face of record and the

impugned order dated 11.03.2014 should be reviewed by this court.

6. On the other hand, learned counsel appearing for the opposite party no. 1 in Civil Review Petition No. 225 of 2014 refuted the above stated submissions arguing that above stated letters had not been brought on record at the time of passing the impugned order dated 11.03.2014 in CWJC No. 9701 of 2013 and, therefore, on the basis of aforesaid letters, the petitioner has got no right to seek review of the impugned order because it is well settled principle of law that in guise of review roving enquiry or de novo hearing cannot be done. It was further contended by him that the petitioner in Civil Review Petition No. 225 of 2014 cannot take advantage of his own laxity and furthermore, the petitioner has got no right to say that there is error apparent on the face of record because due to failure of the petitioner, the aforesaid letters could not be brought on record. It was further contended by him that admittedly, up till now, the University has not made payment of earned leave of 300 days to petitioner in CWJC No. 9701 of 2013 and, therefore, the concerned University and its officials have voluntarily violated the order of this court and they are liable to be punished in contempt proceeding.

7. The opposite party no. 1, who was petitioner in CWJC No. 9701 of 2013, filed the above stated CWJC No. 9701 of 2013 for issuance of a direction to University to pay leave encashment of 300



days in terms of the Statutes as contained in letter no. 2/E-2-01/04 H.E. 2306 Patna dated 30.07.2005 as well as for declaration of letter no. BSU 28/2008-2198 dated 30.06.2008 as ultra vires. The aforesaid CWJC No. 9701 of 2013 was disposed of by this court directing the petitioner in Civil Review Petition No. 225 of 2014 to sanction earned leave up to 300 days to the opposite party no. 1 within a period of three months.

8. It is an admitted position that opposite party no. 1 in Civil Review Petition No. 225 of 2014 retired on 31.08.2008 as Head of the Department of Philosophy. It is also an admitted position that opposite party no. 1 in Civil Review Petition No. 225 of 2014 had earned 186 days of earned leave till 14.09.2006 and between 15.09.2006 to 31.12.2006 he had earned ten days of earned leave and similarly, between 01.01.2007 to 31.12.2007 he earned 33 days of earned leave and 22 days of earned leave between 01.01.2008 to 31.08.2008. It is also an admitted position that according to State Government's letter dated 29.05.2008, the opposite party no. 1-writ petitioner was entitled only up to 180 days of earned leave till 14.09.2006 and from 15.09.2006 to 31.08.2008 he was entitled only up to 65 days of earned leave and, therefore, it is apparent from the aforesaid facts that opposite party no. 1-writ petitioner was entitled to get only 245 days of earned leave after his superannuation. No doubt,

the University failed to bring the above stated letters on record at the time of hearing in CWJC No. 9701 of 2013 but had the aforesaid letters been brought on record by the University at the time of hearing of above stated CWJC No. 9701 of 2013, this court would not have passed the order dated 11.03.2014 directing the University to sanction 300 days of earned leave to opposite party no. 1-writ petitioner and, therefore, in my view, learned counsel appearing for the University rightly submitted that impugned order dated 11.03.2014 passed in CWJC No. 9701 of 2013 should be reviewed.

9. In view of the aforesaid discussions, Civil Review Petition No. 225 of 2014 stands allowed and it is ordered that order dated 11.03.2014 passed in CWJC No. 9701 of 2013 stands modified to this extent that in last paragraph of the aforesaid order, in place of earned leave up to 300 days, it be read earned leave up to 245 days.

10. Since the opposite party no. 1-writ petitioner has already encashed earned leave of 245 days, there is no necessity to keep the M.J.C. No. 3965 of 2014 pending and accordingly, M.J.C. No. 3965 of 2014 stands dismissed.

(Hemant Kumar Srivastava, J)

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