

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 3819 OF 2016

Suresh Wamanrao Mhatre

-VS-

The State of Maharashtra, thr.its Principal Secretary, Water Resources Deptt. and another

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. N.B.Kalwaghe, counsel for the petitioner.
Mr. A.A.Madiwale, AGP for the respondent No.1.

CORAM : SMT. VASANTI A. NAIK &
MRS. SWAPNA JOSHI, JJ.

DATE : 15.07.2016.

By this writ petition, the petitioner challenges the order of the Maharashtra Administrative Tribunal, Nagpur Bench, Nagpur, dated 21/11/2015 dismissing the original application filed by the petitioner for treating the absence of the petitioner from 13/06/2011 to 12/07/2012 as leave without pay by terming it as extraordinary leave.

The petitioner was working as an Executive Engineer, when he was transferred by the order, dated 31/05/2011 from Pipri to Arni. The petitioner, however, did not join at the place of transfer by raising a frivolous objection that in the order of transfer, his name was wrongly written as 'S.A.Mhatre' instead of 'S.W.Mhatre' and instead of 'Arni', the transfer order recited 'Arvi'. The petitioner declined to join at the place of transfer and stated that he was indisposed. The petitioner claimed to have been suffering from jaundice from 13/06/2011 to 12/09/2011 and thereafter he claimed that he was suffering from hypertension and amoebic colitis from 13/09/2011 to 09/07/2012. He did not join the place of transfer for a long time and after he joined, he applied for medical leave. Despite his prolonged absence for more than a year, merely because he was transferred, the respondents treated the

absence of the petitioner as extraordinary leave without pay. The petitioner challenged the action on the part of the respondents in treating the absence as extraordinary leave without pay. The Maharashtra Administrative Tribunal dismissed the original application filed by the petitioner.

On hearing the learned counsel for the parties and on a perusal of the impugned order, we do not find that there is any scope for interference with the impugned order, in exercise of the writ jurisdiction. The Tribunal has observed and rightly so, that the petitioner, who was holding a responsible post of an Executive Engineer, refused to join the place where he was transferred by raising an objection under the garb of a mistake that had allegedly occurred in writing the name of the petitioner in the transfer order and the place to which he was transferred. The petitioner could have sought an explanation and immediately joined at the place where he was actually transferred, however, as soon as the transfer order was served on the petitioner, in June, 2011, the petitioner sought leave from 13/06/2011 to 12/09/2011 on the ground that he suffered from jaundice and from 13/09/2011 to 09/07/2012 on the ground that he was suffering from hypertension and amoebic colitis. The petitioner should have joined the place of transfer immediately or within a reasonable time. However, it was not done and the petitioner continuously went on leave for a period of nearly fourteen months on the ground that he suffered from jaundice firstly and thereafter from hypertension and amoebic colitis. The petitioner did not think it necessary even to apply for leave before he continuously availed the leave for about fourteen months. The Tribunal rightly held that such conduct on the part of the petitioner, who was holding a responsible post of an Executive Engineer, cannot be approved. It was found by the Tribunal that the petitioner shirked from the sense of duty and even did not send a simple application to the Department seeking medical leave. The silence on the part of the petitioner for more than a year, according to the Tribunal, created a doubt whether the petitioner was really ill. The Tribunal held and rightly so, that in such circumstances, the petitioner

was not entitled to salary for the period for which he was on leave from 13/06/2011 to 12/07/2012. Merely because the term extraordinary leave is used in the order that was challenged before the Tribunal, it cannot be said that the action on the part of the respondents was unjust and improper. The Tribunal held that the Authority competent to grant leave is entitled to commute retrospectively, periods of absence without leave, into extraordinary leave and presumably the concerned respondents had done so, in view of the provisions of Rule 63(6) of the Maharashtra Civil Services (Leave) Rules, 1981. In the circumstances of the case, specially on a consideration of the conduct of the petitioner, we are not inclined to interfere with the order of the Tribunal, in exercise of the writ jurisdiction.

In the result, the writ petition fails and is dismissed with no order as to costs.

JUDGE

JUDGE

C E R T I F I C A T E

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P.A.to Hon'ble Judge

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