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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.6711 of 2012

Date of decision: March 14, 2016

R.P.S. Tyagi

.....Petitioner

Versus

The New India Assurance Co. Ltd. and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Sanjiv Sharma, Senior Advocate for
Mr. Vikram Vir Sharda, Advocate
for the petitioner.

Mr. Ashwani Talwar, Advocate
for the respondents.

SABINA, J

Petitioner has filed this petition under Article 226 of the Constitution of India seeking a writ in the nature of Certiorari for quashing the order dated 16.11.2011 (Annexure P-25).

Learned Senior counsel for the petitioner has submitted that the impugned order Annexure P-25 was passed in pursuance to the order dated 16.09.2011 (Annexure R-6). However, Annexure R-6 was never communicated to the petitioner. Learned Senior counsel has further submitted that the petitioner was transferred vide order dated 28.04.2011 (Annexure R-1). Petitioner was due to retire w.e.f. 31.08.2011. As per Annexure P-27, the

period of unauthorised absence could have been treated as period spent on casual leave, earned leave or sick leave. Wife of the petitioner was suffering from Cancer and remained under treatment from 18.05.2011 in Indraprastha Apollo Hospital and was discharged from the Hospital in October, 2011. Petitioner also suffered from back problem and got treatment from Dr. Ram Manohar Lohia Hospital, New Delhi from 23.05.2011 to 23.08.2011. Petitioner had mentioned all the above said facts in his reply (Annexure P-24) to the show cause notice (Annexure R-5). However, the submissions made by the petitioner were not considered at the time of passing of the order dated 16.09.2011 (Annexure R-6). In fact, the absence period of the petitioner was duly explained and could have been treated as sick leave/earned leave/casual leave and there was no occasion for the respondents to have treated the said period as loss of pay. Learned Senior counsel has further submitted that so far as the handing over of the charge to the new incumbent is concerned, petitioner was not having in possession financial or other documents. Mr. P.C. Saini who was working in the Divisional Office was already looking after the said office. Petitioner was only in possession of two keys concerning his own table.

Learned counsel for the respondents, on the other hand, has submitted that the name of the petitioner

appears in the “agreed list” prepared by the Chief Vigilance Officer in consultation with Superintendent of Police, Central Bureau of Investigation. Due to this reason, petitioner was transferred from Divisional Manager's post to Deputy Manager's post at the regional office, at Chandigarh itself. Petitioner had, however, failed to join at the place of his new posting on account of transfer and had failed to hand-over the charge.

Order dated 16.09.2011 (Annexure R-6) reads as under:-

“On the captioned subject, we would like to inform you that the Competent Authority on due examination of reply dated 3.9.2011 submitted by Mr. Tyagi to show cause notice dated 24.8.2011 issued to him, has directed as under:-

“the period of absence of Mr. Tyagi shall be treated as Loss of Pay and the salary if any paid for the said period shall be recovered thereof.”

We request you to take necessary action at your end as per the directions of the Competent Authority under intimation to us.”

The said order was passed in pursuance to the show-cause notice dated 24.08.2011 (Annexure P-23/R5). Petitioner had submitted his reply to the show-cause notice and the said reply has been placed on record as Annexure P-24. The reply (Annexure P-24) submitted by the petitioner to the show-cause notice reads as under:-

"I acknowledge having received your letter no.Corp/HRM/IDD/2011 dated 24.08.2011 received by me on 30.08.2011 through Sr. D.M. D.O. IV Chandigarh regarding above and noted the contents thereof. My reply is given below:

I never refused to accept my transfer order but only requested that my representation is pending with H.O. And on receipt of the reply from H.O. I will join at R.O.

On 02.05.2011, suddenly my wife fell ill, I got her treated at Dr. R.N. Bansal Clinic at Saharanpur (my home town), who suggested some tests and gave medicines but finally referred for higher centre on 10.05.2011. I took my wife to New Delhi at Indraprastha Apollo Hospital before Dr. Ramesh Sarin FRCS (Sr. consultant Surgical Oncology) who diagnosed her patient of right breast carcinoma and after different pathological tests suggested 3 cycles of anterior chemotherapy which were given on an interval of 21 days followed by radical mastectomy on 26.7.2011 and again suggested 3 cycles of adjuvant chemotherapy. Two has already been given on 11.8.2011 and IInd on 1.9.2011 and the IIIrd is due for 22.9.2011.

Sir, I humbly request you that how I would have left my wife in such a serious situation when 24 hours attendant is required for her. Most of the time she is in subconscious like condition.

Due to running of myself from pillar to post without rest some serious back pain problem precipitated to me with intolerably pain. I take treatment at Dr. R.M.L. Hospital, New Delhi. Dr. suggested to rest at different intervals whenever

they examined me, medical prescription/certificate were sent to worthy CRM Chandigarh from time to time (copies attached). Finally medical certificate alongwith certificate of fitness were sent to CRM, Chandigarh on 24.8.2011 (all attached).

I have already informed worthy C.R.M./R.O. personnel Deptt. Chandigarh telephonically/in writing for station leave/C.L. On 6.5.2011 and 13.5.2011 and for S.L. On 23.5.2011. Prior sanction in writing could not be taken due to unforeseen circumstances as enumerated above.

In lieu of the foregoing circumstances, I could not join at R.O. and may not handover charge to Mr. Saini, Sr. D.M. D.O. IV the position was already communicated to worthy C.R.M. Chandigarh vide letter dated 28.6.2011 under copy to your goodself.

Inspite of all constraints, I felt my ailing wife alone on 30.8.2011 and joined as R.O. Chandigarh (copy enclosed) and handed over charge personally to Mr. P.C. Saini, Sr. D.M. D.O. IV.

Sir, hope you will realize the situation sympathetically and would sanction the desired leave.

Sorry for the inconvenience if any caused due to my above unforeseen situation and circumstances."

A perusal of the order Annexure R-6 reproduced above reveals that the pleas taken by the petitioner in his reply to the show-cause notice qua his unauthorised absence are not even discussed. Petitioner has taken a

specific plea that his wife was suffering from Cancer and was undergoing treatment and he himself had also got treatment from Dr. Ram Manohar Lohia Hospital, New Delhi qua his back problem. In this situation, in case, any medical leave was available to the petitioner, his absence period could have been treated as sick leave/earned leave/casual leave in pursuance to Rule Annexure P-27.

In the facts and circumstances of the present case, it would be just and expedient to quash the orders Annexure R-6 and P-25 (passed in pursuance to Annexure R-6) and direct the respondents to pass a fresh order in accordance with law.

Accordingly, order dated 16.09.2011 (Annexure R-6) and order dated 16.11.2011 (Annexure P-25) are set aside. Respondents are directed to pass a fresh order in accordance with law after duly considering the reply (Annexure P-24) submitted by the petitioner within eight weeks from the receipt of certified copy of this order.

Petition stands disposed of, accordingly.

**(SABINA)
JUDGE**

March 14, 2016
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