IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3199 of 2016

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Devendra Prasad Singh son of Yugeshwar Prasad Singh, retired Head Master, High School, Gopalwad Pranawa, P.S. - Sarmera, District - Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Accountant General (A & E), Bihar, Patna.
3. The Under Secretary, Education Department, Bihar, Patna.
4. The District Programme Officer (Establishment), Nalanda.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amaresh Kumar Singh, Advocate
: Mr. Sushil Kumar Roy, Advocate

For the State : Mr. R.S.P.Yadav, AAG-11
: Mr. A.K. Dubey, SC to AAG-11

For the Accountant General : Mr. L.P.K. Rajgrihar, Standing Counsel

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 13-02-2017

Despite adjournment having been granted earlier on 25th January, 2017 to file counter affidavit, the State has failed to file counter affidavit in the matter.

2. The only grievance of the petitioner, in the instant writ application, is for payment of 44 days salary in lieu of utilized earned leave in addition to 256 days paid earlier.

3. Learned counsel for the petitioner submitted that the petitioner retired from service as Headmaster from High School, Gopalawad Pranawa, Police Station- Sarmera, District-Nalanda on 31st October, 2014 on attaining the age of retirment. He was granted earned leave of 366 days from 14.04.1987 to 06.10.2014. Under the rule an employee is entitled for payment of earned leave upto maximum period of 300 days only. However, the respondents paid salary in lieu of unutilized earned leave of 256 days only against 300 days to the petitioner. It is submitted that under the Right to Information Act the petitioner was informed that summer vacation/Panchayat Election/General Election/census duty is not to be counted as earned leave/duty period in view of letter no.174 dated 20/21.01.2011 issued by the Education Department, Government of Bihar, Patna.

4. Learned counsel for the petitioner submitted that in similar and identical matter in **Saket Bihar Sharma vs. State of Bihar and Ors. [2013(2) PLJR 596]**, this Court held that entitlement of a Government servant under Rule 184 of the Bihar Service Code cannot be taken away by a letter of authority as that would tantamount to amending the Service Code which has statutory force. He submitted that denial of 44 days of sanctioned earned leave by the respondents is contrary to the ratio laid down by this Court in **Saket Bihar Sharma case (supra).**

5. On the other hand, learned counsel for the State submitted that since denial of 44 days earned leave to the petitioner has been made pursuant to the policy decision of the State, the petitioner cannot raise any grievance in that regard. He submitted that in view of letter no.174 dated 20/21.01.2011 issued by the Education Department, Government of Bihar, the duty discharged by the teachers and non-teaching members for Panchayat Election, General Election, Census duty and summer vacation will not qualify for earning leave as per Rule 184 of the Bihar Service Code. He submitted that in the light of the aforesaid letter of the Education Department dated 20/21.01.2011, the petitioner has not been found entitled to earned leave for the period of 44 days. Hence, no illegality can be found with the action of the State whereby the petitioner has been denied earned leave for 44 days.

6. The respondent no.2, Accountant General, Bihar, Patna has also filed counter affidavit wherein it has been stated that the District Programme Officer, Establishment, Nalanda forwarded leave account of the petitioner vide letter no.885 dated 09.07.2015, which indicated that leave for 366 days had been due to the petitioner. However, on scrutiny of the service book and leave account, it was found that he performed work for Panchayat Election, Census and Corporation Election during the period of summer vacation and in the light of the Education Department letter dated 20/21.01.2011 the period of 44 days from the total leave of the petitioner credited at the account of the petitioner at the time of retirement was deducted. The admissible unutilized leave for 256 days was reported and authorized to the petitioner in the light of sanction accorded by the Department.

7. Learned counsel for the Accountant General, Bihar, Patna submitted that in view of the aforesaid letter dated 20/21.01.2011 there is no error in counting admissible period of unutilized leave in case of the petitioner and the petitioner has duly been paid leave encashment of 256 days.

8. I have heard learned counsel for the parties and perused the records.

9. I find force in the submissions made by the learned counsel for the petitioner.

10. In case of **Saket Bihari Sharma** (supra), the respondent State had deducted 84 days of earned leave on the ground that during the said period he was engaged for election, census and survey related work and received allowance and, therefore, he cannot be given double benefit, that is, vacation and an earned leave both in the light of the order passed by the Deputy Secretary, Directorate of Secondary Education, Government of Bihar, Patna being order no.174 dated 20/21.01.2011. After hearing the parties at length, this Court set aside the aforesaid order no.174 dated 20/21.01.2011. The Court held that entitlement of the petitioner under Rule 184 of the Bihar Service Code cannot be taken away by a letter of authority for that would be amending of Service Code which has statutory force. The Court ruled as under:

> ***"5. Having considered the matter, in my view, the writ application must succeed. The fact that petitioner had worked during vacation in a vacation department is not in dispute. The quantum of leave earned by virtue of this work is also not in dispute. The dispute is with regard to entitlement. It is not in dispute that if Rule 184 of the Rules were applied as it is, petitioner would become entitled to 84 days of additional earned leave. The same is being denied on the ground that for those extra works, petitioner had received certain allowances. It is not averred that the allowances were in lieu of full pay for the said period. They were allowances for doing work beyond the scope of employment. Thus seen, in my view, the logic given by the learned Deputy Secretary cannot be accepted.***
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> ***6. I may further note that if by Rule 184 of the Bihar Service Code, the entitlement is there then merely by a letter of the Deputy Secretary, the entitlement cannot be taken away for that would be amending the Code which has statutory force. Bihar Service Code, 1952 is a Code relatable to Article 309 of the Constitution. It could only be amended by the State Government. It can at best be clarified by Government instructions but, by no means, in can be amended by instructions.***
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> ***7. Thus, in my view, Annexure-A cannot be sustained nor can it be held that it rightly deprived the***

petitioner of his 84 days of earned leave.

8. In that view of the matter, the writ petition is allowed. Annexure-A, to the extent it deprives the petitioner of 84 days of earned leave, is set aside.

9. Authorities are now directed to compute the value of 84 days of earned leave of petitioner in accordance with law and pay the same".

12. The aforesaid decision of this Court in **Saket Bihari Sharma (supra)** squarely covers the case of the petitioner.

13. In that view of the matter, the writ application is allowed. The District Programme Officer (Establishment), Nalanda is directed to pay 44 days of salary in lieu of unutilized earned leave in addition to 256 days earned leave paid earlier to the petitioner. The entire exercise in this regard should be completed within two months from the date of receipt/production of a copy of this order.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	18.2.2017
Transmission Date	