

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10499 of 2013

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1. Phulchand Choudhary Son Of Karu Choudhary Resident Of Village - Masaurhi,
C/O J.K. Singh, Teregaria Dih, P.O. + P.S. - Masaurhi, District - Patna

.... Petitioner/s

Versus

1. The Managing Director Bihar State Housing Board 6th Manglus Road, Patna
2. The Secretary, Bihar State Housing Board, 6th Manglus Road, Patna
3. Awadh Kishore Prasad Section Officer (Estb.) Bihar State Housing Board, 6th
Manglus Road, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Sharma, Adv.

For the Respondent/s : Mr. Anshuman Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 31-01-2017

The present writ application has been filed by the petitioner for quashing letter no. 4971 dated 30th July, 2010 issued by the Managing Director, Bihar State Housing Board, Patna (for short 'Board') and for a further direction to the respondent Board to make payment of leave encashment of 137 days.

2. Prior to the filing of the present writ application, the petitioner had filed a writ application vide C.W.J.C. No. 5046 of 2008 seeking payment of leave encashment for 300 days and other post retiral dues, such as, C.P.F., Gratuity, Pension and Group Insurance. The said writ application was disposed of by this Court vide order dated 12th January, 2010 directing the petitioner to represent before the Managing Director of the Board and the Managing Director was



directed to decide his representation within six weeks from the date of filing and make necessary payment for which the petitioner may be found entitled to in accordance with law.

3. As the petitioner's representation was not decided within the time stipulated in the order dated 12th January, 2010, a contempt application was filed by the petitioner before this Court.

4. During pendency of the aforesaid contempt application, the Managing Director disposed of the representation of the petitioner and admissible payments under different heads were made to him whereafter the contempt application was disposed of. The Board took a decision to make payment of the leave encashment for 177 days.

5. The grievance of the petitioner in the present case is that the respondents have illegally withheld payment of leave encashment of 137 days. The contention of the petitioner is that the petitioner is entitled for leave encashment for 300 days but for no reason the respondents have not paid him the amount of leave encashment of 137 days for the period between 23rd December, 2004 and 8th May, 2005.

6. In reply, learned counsel for the Board submitted that the petitioner is not entitled to get leave encashment of 137 days for the period 23rd December, 2004 to 8th May, 2005 for which leave was granted to him on the basis of his different application seeking leave.



7. He submitted that during the aforesaid period the petitioner sought leave on the pretext that he was running ill. However, the Board came to know that the petitioner was not attending the office during the aforesaid period as he was made accused in Jakkanpur P.S. Case No. 249 of 2004 dated 23rd December, 2004 registered under Sections 302, 120-B and 34 of the Indian Penal Code as also Section 27 of the Arms Act. When the Board came to know about this fact, vide office order no. 2885 dated 1st August, 2005, the petitioner was put under suspension with effect from 23rd December, 2004 itself. Later on, his suspension was vacated vide office order no. 3034 dated 28th June, 2006 with immediate effect and his service from 1st August, 2005 to 27th June, 2006 was directed to be counted for full service and full salary was directed to be paid to him.

8. It is contended by the learned counsel for the Board that the period between 23rd December, 2004 and 8th May, 2005 is the period for which leave of the petitioner has been ordered not to be encashed as the petitioner had gone on leave on a false pretext that he was suffering from illness. He submitted that the petitioner had concealed the factum of being accused in Jakkanpur P.S. Case No. 249 of 2004 and, hence, he is not entitled for leave encashment for the period from 23rd December, 2004 to 8th May, 2005.



9. In reply, learned counsel for the petitioner submitted that from a bare reading of the office order no. 4580 dated 1st October, 2007, as contained in Annexure-1 to the writ application, it would be apparent that the period of suspension of the petitioner from 1st August, 2005 to 28th June, 2006 has been ordered to be treated as period spent on duty and hence the reason assigned by the respondents for not making payment of leave encashment for 137 days of the period 23rd December, 2004 to 8th May, 2005 is wholly unjustified. He submitted that during the said period the petitioner was granted leave on applications made by him and once leave was sanctioned, it cannot be said that the leave was wrongly sanctioned to the petitioner on any false pretext.

10. I have heard learned counsel for the parties and perused the record.

11. The facts of the case are not in dispute. The petitioner was suspended on 1st August, 2005 with effect from 23rd December, 2004 and vide office order dated 1st October, 2007 passed by the Managing Director of the Board the period intervening between 1st August, 2005 to 27th June, 2006 was ordered to be counted as the period spent on duty. In the opinion of this Court, the order of suspension dated 1st August, 2005 could not have been passed with retrospective effect with effect from 23rd December, 2004. However,



the said issue is not under challenge before this Court. Hence, this Court would say no more regarding legality of order of suspension with retrospective effect.

12. Presently, the question before this Court is whether or not the petitioner is entitled for payment of leave encashment amount for the period intervening between 23rd December, 2004 and 8th May, 2005. In this regard, it is to be noted that earned leave, as the very name suggests, is to be earned by an employee by putting actual service. Unless the employee works during the period of admissible leave, he does not earn leave. Further, during the period of suspension an employee is eligible only for subsistence allowance. However, after the suspension is revoked, the employer has to determine as to how the period of suspension would be counted. Here in the present case, the office order dated 1st October, 2007 passed by the Managing Director of the Board would suggest that the period from 1st August, 2005 to 27th June, 2006 while the petitioner was under suspension was directed to be counted in full service and for that period the petitioner was made entitled to receive full salary. However, the said office order is completely silent about the period 23rd December, 2004 to 8th May, 2005 the period for which the petitioner is claiming his leave salary. It is not in dispute that during the said period the petitioner was on leave on medical ground. If the petitioner was on



leave between the periods 23rd December, 2004 to 8th May, 2005, in the opinion of this Court, he cannot claim leave encashment for the said period as he had not earned leave by putting actual service during the aforesaid period. In that view of the matter, if the respondents have rejected the claim of the petitioner for payment of earned leave of 137 days, no fault can be found with such order.

13. Accordingly, the writ application, being devoid of any merit, is hereby dismissed.

14. There shall be no order as to cost.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	06-02-2017
Transmission Date	

