

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7004 OF 2004

Swaroopchand Ramlal Bedwal .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri. D. N. Suryawanshi, Advocate for Petitioner.

Shri. D.R. Kale, A.G.P. for Respondents No. 1 to 4.

**CORAM : S.V. GANGAPURWALA AND
MANGESH S. PATIL, JJ.
DATED : 08th AUGUST, 2017**

PER COURT:

. The present petitioner has filed Original Application before the Maharashtra Administrative Tribunal, Aurangabad challenging the orders passed by the respondents with regard to the sanction of extra ordinary leave and recovery of leave salary from payment. The tribunal dismissed the original application. Aggrieved thereby the present

petition.

2. The learned counsel for the petitioner strenuously contends that the petitioner had challenged his transfer order, however as the respondent filed affidavit stating that the petitioner is already relieved the tribunal, dismissed the original application. The learned counsel submits that, under order dated 28.06.2000, the Chief Engineer sanctioned leave for 218 days on medical grounds and further 10 days leave as his joining period. After the said order was passed the Respondent No. 1 *sou motu* without notice to the petitioner reviewed the said order and held the period from 01.07.1999 till 13.02.2000 as an extra ordinary leave. No notice was issued to the petitioner by the Respondent No. 1 before passing the said order. The learned counsel submits that the petitioner had submitted an application seeking leave from 01.07.1999 to 30.07.1999 on 08.07.1999. The said application is also not considered. The petitioner had submitted the certificate of the doctor regarding the ailment of the petitioner. All these aspects were considered by the Chief Engineer while sanctioning the leave of the petitioner. However, the Respondent No.1 while reviewing the said order did not consider all these aspects. The tribunal also failed to consider all these aspects in its correct perspective. The tribunal even did not refer to the leave application of the petitioner dated

08.07.1999. There was no element of the mala fide on the part of the petitioner. The leave period ought to have been regularized.

3. The learned Assistant Government Pleader supports the order and submits that the Chief Engineer did not have the authority to sanction the leave. If an employee is absent from duty for more than 60 days on medical grounds, then such an employee is required to be referred to the Medical Board as per the Rule 40 and 47 of the Maharashtra Civil Services (Leave) Rules. The Chief Engineer, Nagpur, has exceeded his powers and authority.

4. We have considered the submissions, so also have gone through the order passed by the tribunal. The record shows that before the tribunal passed an order of status quo in the original application filed by the petitioner challenging his transfer, the petitioner was already relieved. As such, the order of *status quo* did not have any efficacy. The petitioner has sanctioned leave up to 30.06.1999. Thereafter was required to join at the transferred place at Nagpur. However, the petitioner did not join at his transferred place on 01.07.1999, nor his leave application was pending. No leave application was also filed on the said date.

5. The tribunal has observed that, the petitioner did not file a leave application and one leave application is without date. The applicant displayed adamant attitude. He did not submit leave application to the Chief Engineer, Nagpur. There was element of mala fide on his part. Even the application given by the petitioner to regularize his period of absence by granting the leave did not bear the date and in the said representation he had asked his posting at Nasik or Pune. The tribunal on the basis of the same drew an inference that petitioner did not want to join at Nagpur. The Chief Engineer without authority had passed the order. Even provisions of rules 40 and 47 of the MCS (Leave) Rules were not followed. The Respondent No. 1 called for explanation from the Chief Engineer, the explanation was given. Even explanation was called from the petitioner under letter dated 10.10.2001. The petitioner had submitted explanation to the same under letter dated 03.04.2002. Upon consideration of the explanation, the Respondent No.1 took the decision referable to rule 63 (6) of the leave Rules. The government took the decision to consider the said period as an extra ordinary leave, i.e. from 01.07.1999 to 13.02.2000.

6. The tribunal has considered all these aspects. Upon appreciation of the documents and the facts on record the tribunal has taken a proper

view. The tribunal has not committed any error.

7. In light of the above the writ petition is dismissed. No costs.

[MANGESH S. PATIL, J.]

[S. V. GANGAPURWALA, J.]