

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

**CWP No.1892 of 2017 (O&M)
Date of Decision : 10.05.2017**

Ved Rattan Arya

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. A.K.Sharma and Mr. Lalit Rishi, Advocates
 for the petitioner.

Mr. Harish Rathee, Senior DAG, Haryana.

AJAY TEWARI, J. (Oral)

By this petition the petitioner has challenged the order whereby his earned leave has been deducted for the period from 17.02.2014 to 06.03.2014.

The brief facts of the case are that the petitioner was working as TGT at GSSS, Bhusthala, Kurukshetra. By an order dated 12.12.2013 (Annexure P-1) he was transferred to GSSS, Babain, Kurukshetra. As per the transfer order he was bound to join the new place of posting within 7 days. However, for some domestic reasons he could not join and only submitted his joining report on 16.02.2014. When he went to submit his joining report it transpired that though the vacancy against which he had been transferred was there but there was no workload and order dated 17.02.2014 (Annexure P-3) was passed. The Principal, GSSS, Babain informed the respondent No.2 that even though there are 5 sanctioned posts

in the school but the workload is of only 4 teachers and that was the reason why the petitioner could not be permitted to join. Ultimately on 05.03.2014 the respondent No.2 passed an order directing the petitioner to assume the charge at his previous place of posting. The respondents thereafter deducted his earned leave from the date of transfer i.e. 18.12.2013 till the date he ultimately rejoined back in GSSS Bhusthala on 06.03.2014. By this petition the petitioner has challenged that part of the action whereby the period from 17.02.2014 to 06.03.2014 has been directed to be period during which the petitioner was on earned leave.

The contention of the learned counsel for the petitioner is that as far as the period from 18.12.2013 to 16.02.2014 is concerned there is no dispute that the petitioner had to be treated on earned leave because he did not join. However, once he went to join but was not allowed to join and was issued fresh posting order only on 06.03.2014 then the period from 17.02.2014 to 06.03.2014 could not have been treated as period during which he was on leave.

On the other hand the contention of the Senior DAG is that in the transfer order itself it had been stipulated that if there was no vacancy at the new place of posting for any reason then the employee was bound to report back to the previous place of posting. Consequently, as per the Senior DAG once the petitioner was not permitted to join at GSSS Babain on 16.02.2014 he should have re-joined back at his previous place of posting i.e. GSSS, Bhusthala and therefore the period from 17.02.2014 to 06.03.2014 has rightly been treated as earned leave.

Learned counsel for the petitioner has argued that that stipulation was made only for a situation where there was no vacancy while in the case of the petitioner the vacancy was there but he was not permitted to join because there was no workload.

I find more weight in the argument of the learned counsel for the petitioner. In the various cases which have come before this Court, it has been noticed that the stipulation of the type adverted to by the Senior DAG was primarily inserted to quote position where a person was transferred from Station A to Station B but the corresponding person at Station B was not transferred and consequently no vacancy was there at Station B. In the present case as pointed out by the learned counsel for the petitioner there was a vacancy at the transferee school but it was a case where there was no workload.

In the circumstances, the claim of the petitioner has to be allowed. The respondents are directed to consider the period from 17.02.2014 to 06.03.2014 as duty period and release the dues of the petitioner.

Petition stands allowed.

Since the main case has been decided, the pending Civil Misc. Application, if any, also stands disposed of.

10.05.2017

Pooja sharma-I

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No