

**HIGH COURT OF CHHATTISGARH AT BILASPUR****WRIT PETITION (S) NO. 6984 OF 2011**

Vimla Ekka, W/o Chintamani Yadav, aged about 59 years, R/o presently working at Sub Health Centre, Jhikki, Community Health Centre, Bagicha, District Jashpur (C.G.)

... **Petitioner**

**versus**

1. State of Chhattisgarh, through its Secretary, Health and Family Welfare Department, D.K.S. Bhawan, Raipur, Tahsil & District Raipur (C.G.)
2. Directorate of Health Services, through its Director, Old Nurses Hostel, Raipur (C.G.)
3. Chief Medical and Health Officer, Raigarh, District Raigarh (C.G.)
4. Chief Medical and Health Officer, Jashpur, District Jashpur (C.G.)
5. Block Medical Officer, Bagicha, District Jashpur (C.G.) ... **Respondents**

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For Petitioner : Mr. Anumeh Shrivastava, Advocate.

For Respondent-State : Mr. Syed Majid Ali, Dy. Govt. Advocate.

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**Hon'ble Shri Justice P. Sam Koshy**

**Order on Board**

**11/07/2018**

1. The main grievance of the Petitioner in the instant writ petition is to the order dated 31.1.2009, Annexure P-2, whereby the period reflected in the said order has been ordered to be treated as dies non. Against which, the Petitioner had also preferred an appeal/representation to the higher authorities and the higher authorities also vide order dated 23.2.2011, Annexure P-1, have rejected the same.
2. Contention of the learned Counsel for the Petitioner is that the order, Annexure P-2 and its confirmation vide Annexure P-1 by the higher authorities is bad in law to the extent that the effect of the order of dies non is that of a major punishment and it has an adverse impact on the terminal/retiral dues that are payable to the Petitioner as well and therefore before issuance of the order of dies non the Petitioner ought to have been taken into confidence or at least an explanation should had been called upon and if not an enquiry ought to have been conducted before issuance of the order of treating the said period as dies non, in the absence of which the impugned order is not sustainable and deserves to be set aside. He further submitted that the Petitioner had at no point of time been called upon to explain the period of absence and the order of the authorities also do not reflect as to whether there were efforts made by the authorities to adjust the leave in his credit from the total period of absence of the Petitioner, and on this ground also the impugned order is not sustainable.

3. Learned Counsel for the State however opposing the petition submits that it is a case where the records show that the Petitioner has been in the habit of remaining absent unauthorizedly for continuous and long period without there being any justifiable explanation and reasons for remaining absent nor has the absence period being substantiated with sufficient documentary proof therefore the Respondents have rightly held the period of absence to be treated as dies non. The State Counsel thus prays for the rejection of the petition.

4. So far as the order of dies non is concerned, it is by now well settled that before issuance of order of dies non the least that is expected from the authorities is to conduct an inquiry by calling upon the concerned person to explain his conduct as to why the period be not declared as dies non. In the instant case, perusal of record shows that the Petitioner at no point of time had been called upon or an explanation was sought from the Petitioner before issuance of the impugned order, Annexure P-2. It would be relevant at this juncture to refer to a decision rendered in the case of **Smt. Mrudula Rishi v. State of Chhattisgarh & Others**, decided on **30.10.2013** in **Writ Petition No. 101 of 2006** wherein it has been observed as under:-

“9. In the opinion of this Court, an order adverse to the Government servant, who has remained wilfully absent after expiry of leave, cannot be passed without initiating any disciplinary proceeding, as provided under Rule 24(2) of the Rules, 1977. While holding so this Court would take assistance of the law laid down by the High Court of Madhya Pradesh in *Ali Hussian (Dr.) v. State of M.P.*, 1984 JLJ 67, and *Mahesh Kumar Shrivastava v. State of M.P. & Others*, 2007 (3) MPLJ 525.

10. In *Battilal v. Union of India & Others*, 2005 (3) MPHT 32 (DB), the High Court of Madhya Pradesh has held as under :

“3 ...When the Authority directs that the period will be treated 'dies-non', it means that continuity of service is maintained, but the period treated as 'dies-non' will not count for leave, salary, increment and pension. In fact, F.R. 54(1) casts such a duty on the authority. It provides that when a Government servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review, the authority competent, to order reinstatement shall consider and make a specific order-

- (a) regarding the pay and allowances to be paid to the government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and
- (b) whether or not the said period shall be treated as a period spent on duty.”

Thus, the law is well settled that while the disciplinary authority is competent to direct the period of willful absence as dies non, as a measure of penalty, such order cannot be passed unless the concerned employee has been proceeded departmentally under the provisions of Rule 24(2) of the Rules, 1977 read with the Rules, 1996.”

5. The reply filed by the State Government also does not show the authorities to have considered the fact as to whether there was sufficient leave in the credit of the Petitioner or not and whether the period of absence could had been adjusted from the leave that was in the credit of the Petitioner.
6. Given the fact, this court is of the opinion that the impugned order, Annexure P-2, and the rejection of the appeal vide Annexure P-1 both deserve to be and are accordingly set aside and the matter is remitted back to the Respondents to process the case of the Petitioner afresh and after suitable opportunity of hearing be granted to the Petitioner, let appropriate orders be passed by the authorities concerned as regards how the period of absence would be treated.
7. With the aforesaid observation/direction, the writ petition stands allowed and disposed of accordingly.

Sd/-  
**(P. Sam Koshy)**  
Judge