

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 2414 of 2008**

Smt. Shradha Deshpandey W/o Dr. M. R. Deshpandey, aged about 47 years, occupation Upper Division Teacher, posted at Government Higher Secondary School, Vishrampuri, District Bastar (CG)

---- Petitioner**Versus**

1. The State of Chhattisgarh, through the Secretary, Adim Jati Tatha Anusuchit Jati Department, Mantralay, D.K.S. Bhawan Raipur (CG)
2. The Commissioner, Adim Jati Tatha Anusuchit Jait Vikas, Chhattisgarh, Raipur (CG)
3. The Assistant Commissioner, Adim Jati Tatha Anusuchit Jati Vikas, Bastar District Bastar (CG)
4. The Principal, Government Higher Secondary School, Vishrampur, District Bastar (CG)
5. The Principal, District Institute of Education Training, Shanker Nagar, Raipur (CG)

---- Respondents

For Petitioner : Smt. Renu Kocher, Advocate
 For Respondent/State : Shri Ahsutosh Pandey, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****15.05.2018**

The order under challenge is Annexure P-1 dated 8th June, 2006 whereby the respondents have issued an order treating 504 days of absence from duty of the petitioner as dies-non.

2. Counsel for the petitioner submits that the said order is bad in law to the extent that the same has been passed in total violation of the principle of natural justice. She submits that the authority concerned has not

granted any opportunity of hearing to the petitioner before passing of the impugned order. It is contended that the authority concerned ought to have conducted an enquiry and verified the fact whether the petitioner was unauthorisedly absent from duty or whether there was sufficient cause for her absence. The petitioner was chronically ill during the said period and that she had applied for leave which has not been considered by the authority concerned before passing of the impugned order. Thus, prayed for quashment of Annexure P-1.

3. State counsel, on the other hand, justifying the action submits that it is a case where undoubtedly there is an admission of the petitioner herself that she was absent from duty for a period of 504 days. That there was no proper leave application or any leave granted by the respondents before proceeding on leave neither her application was supported with relevant documents showing justification. Thus, need for departmental enquiry would have been an empty formality in the given admitted factual matrix of the case.

4. So far as the law is concerned, it is by now well settled that the term “dies-non” means the said intervening period would be treated as break in service and it would have an adverse effect on the retiral dues as well as the pensionary benefits payable to the petitioner on superannuation. The effect of the order of dies-non as such is that of a major punishment and therefore, the requirement of conducting a departmental enquiry becomes all the more necessary.

5. In the instant case also the petitioner was working as Upper Division Teacher during the period she remained absent. According to the petitioner, she had sufficient medical leave to her credit and she had also

applied for grant of leave. This aspect should have been verified by the authority concerned after issuance of a show cause notice or calling for an explanation from the petitioner. Having not done so and having unilaterally taken a decision for declaring the said intervening period as dies-non, this Court is of the opinion that the same amounts to an order having been passed in contravention to the basic principles of natural justice. The impugned order thus deserves to be and is accordingly set aside/quashed.

6. The view of this Court stands fortified by the decision of the MP High Court in the case of Battilal v. Union of India and others reported in 2005 (3) MPHT 32 (DB) wherein the MP High Court 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.”

7. The writ petition accordingly stands allowed with consequences to follow.

Sd/-
P. Sam Koshy
Judge