

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 5266 of 2009**

Smt. Falguni Biswas, W/s Shri S.R. Biswas, Aged about 56 yrs, Lecturer,
M.L.B. Girls Higher Secondary School, Jagdalpur, Distt. Bastar (C.G.)

---- **Petitioner****Versus**

1. State Of Chhattisgarh Through : The Secretary, Tribal Welfare Department, Mantralaya, Raipur (C.G.)
2. The Commissioner, Tribal Welfare Department, Old Nurses Hostel, Raipur (C.G.)
3. The Assistant Commissioner, Tribal Welfare Department, Jagdalpur, Distt. Bastar (C.G.)

---- **Respondents**

For Petitioner	: Shri Harshal Chouhan, Advocate
For State	: Shri Ashish Surana, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****11/01/2018**

(1) Learned counsel for the petitioner would submit that respondent No. 3 has penalised the petitioner and declared the period from 17.12.1986 to 14.01.1988 and 01.07.1988 to 04.07.1993 i.e. total 2224 days as dies non, which runs contrary to the decision rendered by this Court in the matter of Smt. Mrudula Rishi Vs. State of Chhattisgarh decided on 30.10.2013 in Writ Petition No. 101 of 2006 as according to Rule 24 of the Chhattisgarh Civil Services (Leave) Rules, 1977, it cannot be done.

(2) Per contra, counsel for the State would support the impugned order.

(3) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.

(4) It is correct to say that absence period has been declared dies non by respondent No. 3 – State Authority but no departmental enquiry has been conducted by the State Government before declaring the absence period of the petitioner as dies non.

(5) High Court of Madhya Pradesh in the matter of **Battilal Vs. Union of India (UOI)** and others¹ 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 of spent on duty.

Thus, it 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, 1966.”

(5) In view of the aforesaid legal position, the impugned order dated 7.9.2006 is set aside. However, liberty is reserved in favour of respondent authorities to initiate departmental enquiry and proceed to take proper action against the petitioner, in accordance with law and on its own merits.

¹ (2005) ILR (MP) 580: (2005) 3 MPHT 32

(6) Accordingly, the writ petition is allowed to the extent indicated above, leaving the parties to bear their own costs.

Sd/-

(Sanjay K. Agrawal)

Judge

D/-