

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 6060 of 2018**

Satyaprakash Banjare, S/o Bharat Lal Banjare Aged About 35 Years
Lecturer Panchayat, Govt. Higher Secondary School, Hasua, Block
Kasdoile, District- Balodabazar- Bhatapara, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through Secretary, Panchayat And Rural Development Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, District- Raipur, Chhattisgarh.
2. Chief Executive Officer Zila Panchayat Balodabazar, District- Balodabazar-Bhatapara, Chhattisgarh.
3. Block Education Officer Block Kasdoile, District- Balodabazar- Bhatapara, Chhattisgarh.

----Respondents

For Petitioner	:	Mr. C. Jayant K. Rao, Advocate
For State	:	Mr. S.P. Kale, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****14/09/2018**

1. The challenge in the present writ petition is to the order Annexure P/1 dated 22.06.2017, whereby the period between 26.03.2015 to 21.02.2017 has been ordered to be treated as "dies-non".
2. The counsel for the petitioner submits that the effect of the order is that of a major punishment, which would have a far reaching repercussion to the service as also to his retiral dues including pensionary benefits that he would be entitled for. Therefore before passing the order of "dies-non", the authorities ought to have conducted atleast a preliminary enquiry or an enquiry, taking into confidence the petitioner by giving a suitable opportunity of hearing and defence.
3. The petitioner further submits that because of the intervening period being treated as "dies-non" by the respondents, the petitioner also is being put to suffer as his claim for absorption is getting prolonged.

4. The facts of the case is that the petitioner on account of his illness i.e. the petitioner had suffered with some mental ailment, because of which he could not attend his duties for a period of about 2 years i.e. between 26.03.2015 to 21.02.2017. Thereafter the petitioner is said to have got the fitness certificate after his treatment and reported for duty and the respondents have also permitted the petitioner to resume his duties and he is thereafter continuing his service without any interruption. Meanwhile the respondent authorities have passed the impugned order, treating the intervening period i.e. the period of absence on account of his illness as “dies-non”.
5. The law so far as dies-non is concerned is by now well settled that it is a short of major punishment as the effect of dies-non is treated as a break in service, which could not be counted for the purpose of granting the retiral dues as also the pensionary benefits.
6. It appears that the respondent authorities intended to pass an order that the intervening period would be treated as “No work no pay” on account of the fact that the petitioner has not discharged his duties, but the authorities for that have used the term “Dies-non” instead of “No work no pay”. For passing an order of “dies-non” atleast, a show cause notice ought to have been given to the petitioner concerned seeking explanation as to why the period should not be treated as “dies-non”. Such show cause notice has not been issued in the instant case.
7. The show cause notice which has been referred to in the impugned order dated 16.03.2016 is a show cause notice, so far as the absent from duties of the petitioner was concerned, therefore the same cannot be construed to be a show cause notice issued, before issuance of the order of “dies-non”.

8. Given the said facts, this Court is of the opinion that in the peculiar facts and circumstances of the case, the order dated 22.06.2017 may not be sustainable so far as treating the said period as “dies-non”, particularly when it has been issued without conducting a departmental enquiry or giving an opportunity of hearing to the petitioner against the issuance of order of “dies-non”, the impugned order therefore stands set-aside.
9. The matter stands remitted back to the authorities concerned i.e. the Chief Executive Officer, Zila Panchayat, Baloda Bazar for taking a fresh decision and pass a fresh order.
10. The writ petition accordingly stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Ved