

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.22407 OF 2002

ORDER:

1. This writ petition is filed by the petitioner seeking to issue a writ of Mandamus directing the 2nd respondent to pay to the petitioner for 65 days of leave earned and unavailed by him on his foreign assignment to Egypt, and other claims as sought in his letter dated 10.11.2001 or in the alternative to direct the 2nd respondent himself to attend the petitioner's grievance and decide his representation dated 10.11.2001 within the period fixed by this Court.

2. Heard Sri P.V. Ravindra Kumar, learned Counsel for the petitioner; Sri K. Lakshman, Assistant Solicitor General and Sri C.V. Rajeeva Reddy, learned Counsel for the respondents.

3. It is the case of the petitioner that while he was working in railways, during 1995, he applied for the post of Yoga Teacher in response to a notification dated 19.8.1995 issued by the 2nd respondent. The 2nd respondent worked under the control of the 1st respondent. The post of Yoga teacher was sponsored through the 2nd respondent so as to establish, revive and strengthen cultural relations and mutual understanding between India and other Countries, to promote cultural exchanges with other Countries and to adopt all other measures as may be required to achieve the objectives. The petitioner was selected

and appointed as Yoga Teacher and he was also given appointment order dated 9.7.1998.

4. Further, it is the case of the petitioner that on perusal of the said appointment order, it is obvious that he was deputed initially for a period of two years commencing from the date of his joining in ICCR i.e., from 9.7.1998 and the said period is further extendable by mutual consent. Insofar as the leave is concerned, it was stated in the appointment order itself that during the period of deputation, the petitioner will be entitled to leave as admissible to India-based officers of the Council and the salary for the period of leave earned and availed during deputation will be paid by the Council. Further, it is stated in the appointment order that the appointment is subject to the provisions of the agreement executed by the petitioner with the 2nd respondent on 9.7.1998. The petitioner submits that his service was further extended by order dated 21.9.2000 up to 30.6.2001 on the existing terms of employment, and the petitioner was deputed to work at Indian Embassy at Cairo, Arab Republic of Egypt under the supervision of the Ambassador. While so, prior to expiry of his tenure, the petitioner addressed a letter dated 29.3.2001 requesting the 2nd respondent to pay an amount for the earned leave and other benefits in terms of the appointment order. Finally, the tenure of the petitioner with the 2nd respondent came to an end on

15.10.2001. The 2nd respondent replied vide letter dated 18.7.2002 rejecting the case of the petitioner and demanding him to pay Rs.2,785/- to the 2nd respondent. Aggrieved by the same, the petitioner filed this writ petition.

5. The issue raised for consideration in this writ petition is whether the petitioner is entitled for earned leave for the period he worked on deputation in the 2nd respondent as Yoga teacher.

6. At this juncture, it is relevant to note the observations made by the 2nd respondent in letter dated 18.7.2002, rejecting the case of the petitioner, which read as follows:

“As regards encashment of 65 days earned leave, as per the clause “C” of the Appointment order dated 9th July,1998 issued to Shri M. Ramjayaram, salary for the period of leave earned and availed during deputation will be paid by the Council. The Ramjayaram had availed 33 days earned leave from 15.10.2000 to 16.11.2000 leaving 65 days earned leave to his credit. The tenure of Shri Ramjayaram had already expired on 15.10.2001 and he had already relieved by the Mission from the services of the Centre. As he failed to avail the unavailed leave during or before the expiry of his tenure, therefore, we cannot consider his case for the reimbursement of amount equivalent to 65 days balance earned leave standing to his credit.”

Vide above letter dated 18.7.2002, the petitioner was also directed to pay an amount of Rs.2,785/- as if excess amount was paid to him earlier.

7. The learned Counsel for the 2nd respondent contended that the petitioner had not availed the leave during his deputation period under the presumption that he would encash the outstanding earned leave, but the petitioner is not entitled for encashment of unavailed earned leave standing to his credit as per the terms of the appointment letter and therefore, the 2nd respondent has rightly rejected the case of the petitioner for encashment of earned leave for the period during which he worked on deputation with the 2nd respondent.

8. This Court has considered the rival submissions made by the parties and perused the material available on record. The denial of encashment of earned leave on the ground that the petitioner had not availed during the period he worked on deputation with the 2nd respondent is not sustainable. As per Rules, every year some quantum of earned leave, which is not availed by the employee, will be accruing to the credit of the employee and at the end of service of the employee, he will be entitled to get the salary for the earned leave which he has not availed. The maximum limit of earned leave that can be encashed will vary from department to department. It is not the case of the respondents that the petitioner requested for

encashment of earned leave more than the permissible limit that can be encashed as per the rules. Further, there is no dispute as to the number of days for which the claim is made by the petitioner. Apart from that, the appointment order itself says that the petitioner is entitled for salary for the period of leave earned and availed of during the period of his deputation, as per the agreement entered between the petitioner and the 2nd respondent. So, the contention of the respondents that since the petitioner had not availed earned leave, the question of paying salary for the earned leave is totally misconceived.

9. Yet another contention raised by the learned Counsel for the 2nd respondent is that the agreement entered between the petitioner and the 2nd respondent contains arbitration clause and in view of the said arbitration clause, this writ petition is not maintainable. Perusal of the said clause in the agreement entered between the petitioner and the 2nd respondent discloses that there is reference of Arbitration Act, 1940. The said Act was repealed and new Arbitration Act 1996 has come into force. The parties entered into agreement and signed the agreement on 9.7.1998 by which time Arbitration Act 1940 was not in existence. In view of the same, the contention of the learned Counsel for the 2nd respondent cannot be accepted.

10. This Court has taken into account the fact that the petitioner was selected and posted to work with the 2nd

respondent as Yoga teacher. When a person is deputed from his parent unit that is railways to the 2nd respondent, there cannot be any service conditions detrimental to the petitioner, while working on deputation. Even though the petitioner was on deputation, he is entitled to all the benefits, to which he is entitled in his parent organization. In the above circumstances, this Court is of the view that the action of the respondents in rejecting the case of the petitioner vide order dated 18.7.2002 is arbitrary, illegal, and therefore, the said order is liable to be set aside.

11. Accordingly, the writ petition is allowed directing the respondents to pay the salary for 65 days of the earned leave to the petitioner during the period of his deputation in the 2nd respondent, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

(ABHINAND KUMAR SHAVILI, J)

Dated:20th September, 2018
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THE HON'BLE SRI ABHINAND KUMAR SHAVILI



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