

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 2126 of 2018**

1. Smt. Neelam Soni W/o Shri Kamlesh Kumar Soni Aged About 49 Years Working As Assistant Librarian, National Institute Of Technology, Raipur, R/o L.I.G. 1, Sector 4, Deendayal Upadhyay Nagar, Raipur, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Manpower, Planning And Technical Education, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur, Chhattisgarh
2. The Director, Technical Education, 3rd/4th Floor, Indravati Bhawan, Raipur, District Raipur, Chhattisgarh
3. The Director, National Institute Of Technology, G.E. Road, Raipur, Chhattisgarh

---- Respondent

For Petitioner	Shri Goutam Khetrapal, Advocate
For Respondent/State	Shri Sudeep Verma, Dy. Govt. Adv.
For Respondent/NIT	Shri Prateek Sharma, Advocate

Order On Board**By****Prashant Kumar Mishra, J.****14/01/2019**

1. Petitioner would assail the legality and validity of the order Annexure – P/1 dated 3-3-2017 by which the period of absence from the duty for 351 days between 27-1-1994 to 12-1-1995 and for 2454 days between 24-3-1995 to

10-12-2001 total 2805 days i.e. 7 years 8 months 5 days has been declared as '*dies non*'.

2. Petitioner had earlier preferred WPS No.5242 of 2007 for grant of monetary benefits of regularisation w.e.f. 1-3-1990 as also for fixation of pay, bonus, etc. under the 5th Pay Commission, time bound promotion, annual increment, salary, arrears as also for quashing the order dated 5-12-2006 whereby 30 days period has been declared as break-in-service and the subject period has been treated as Leave Without Pay (LWP). The writ petition was disposed of on 14-12-2010 directing the respondents to consider the claim of the petitioner pursuant to the order dated 13-12-2010 whereunder some previous order against the petitioner was withdrawn.
3. In **Smt. Mrudula Rishi v State of Chhattisgarh & Others**¹ this Court while dealing with similar issue has held thus in paragraphs 9, 10 & 11 :

9) In the opinion of this Court, an order adverse to the Government servant, who has remained willfully 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.*² and *Mahesh Kumar Shrivastava v. State of M.P. and others*³.

10) In *Battilal v. Union of India and Others*⁴, 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

1 WP No.101 of 2006 (decided on 30-10-2013)

2 1984 JLJ 67

3 2007 (3) MPLJ 525

4 2005 (3) MPHT 32 (DB)

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, 1966.

11) For the foregoing, the impugned order dated 29-6-2004 (Annexure – P/11) is set aside. However, liberty is reserved in favour of the respondent authorities to initiate departmental enquiry and proceed to take proper action against the petitioner, in accordance with law and on its own merits.

4. In the present case also the subject period of absence from the duty has been treated as *dies non* without holding any enquiry, therefore, the matter in issue is squarely covered by

the decision rendered by this Court in **Smt. Mrudula Rishi** (supra). Therefore, the writ petition deserves to be and is hereby allowed. The impugned order is quashed reserving liberty in favour of the respondents to initiate departmental enquiry and proceed to take appropriate action against the petitioner, in accordance with law and on its own merits.

5. In the result, the writ petition is allowed to the extent indicated above, leaving the parties to bear their own cost(s).

Sd/-

Judge

Prashant Kumar Mishra

Gowri