Reserved Judgment

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 179 of 2018 (S/S)

(under Article 226 of the Constitution of India)

Harish Rautela ..... Petitioner

Versus

State of Uttarakhand & others ..... Respondents

Mrs. Janki Suyra, Advocate for the petitioner.
Mr. Mr. Tej Singh Bisht, Dy. A.G. with Mrs. Mr. Virendra Singh Rawat, Mr. Narain Dutt and Ms. Indu Sharma, Brief Holders for the State.

JUDGMENT

Hon'ble Lok Pal Singh, J.

By means of present writ petition, petitioner has sought following relief:

> "(i) To declare the action of the respondents, particularly respondent no.3 in the matter, as arbitrary and illegal.
> (ii) To issue a writ, order or direction in the nature of mandamus directing the respondent no.3 to forthwith release the salary of the petitioner for the month of July, 2017 to December, 2017 and onwards, along with the interest on the delayed payment at a rate to be fixed by the Hon'ble Court.
> (iii) To issue a writ order or direction in the nature of mandamus restraining the respondents, particularly respondent no.3 from interfering in the peaceful functioning of the petitioner on the post of Administrative Officer."

2. Brief facts of the case are that the petitioner was appointed as Clerk in the respondent department on 27.08.1983. He was given promotion from time to time and on 23.05.2011, he was promoted to the post of Administrative Officer. It is contended that due to ill health, he proceeded on medical leave w.e.f. 22.06.2017. Thereafter, the petitioner submitted his application for earned leave from 15.07.2017 to 08.10.2017. The petitioner resumed his duties on 09.10.2017 in the office respondent department-respondent. Thereafter, the petitioner appeared before the Medical Board on 16.10.2017 and submitted all the medical

documents to the concerned Medical Board. Grievance of the petitioner is that the respondent department has not release the salary of the petitioner for the month of July to December, 2017.

3. Heard learned counsel for the parties and perused the material available on record.

4. Learned counsel for the petitioner would submit that the petitioner has submitted several representations requesting that the medical leave availed by him during the period 22.06.2017 to 08.10.2017 be converted into earned leave but the authority concerned has not decided the same no heed was paid by the respondent authority thereon. She would further submit that the petitioner has also submitted representation regarding release of his salary for the month of July to December, 2017 but authority concerned has not taken any decision as yet.

5. A counter affidavit has been filed by the respondent no.3 stating therein that the petitioner remained absent from duties for which he availed medical leave but the medical board with regard to the application of medical leave of the petitioner, he was directed to remain present before the Medical Board, initially he did not appear before the Medical Board but subsequently, when he appeared before the Board on 16.10.2017, it was found that the disease which is mentioned in the medical certificate, no medical tests relating to the same has been done. Thereafter, registered notice was sent to the petitioner but he was not received the said notice. It is further stated that the for the indiscipline and irresponsible behaviour of the petitioner, the District Magistrate has been recommended for departmental proceedings as well suspension of the petitioner. It is further stated that the application for leave was not supported by any medical certificate and same were not produced as per rules.

6. The petitioner denied the averments made in the counter affidavit by filing the rejoinder affidavit. It is stated that the respondent no.3 has recommend for initiation of disciplinary proceedings against the petitioner but no order has been passed by the respondent no.2 till date. It is further stated that there is no provision in law which authorizes the respondent no.3 to withhold the salary of the petitioner. It is further stated that the respondent no.3 has raised hyper-technicalities in the counter affidavit instead of substantive reason/provision of law.

7. A perusal of the record would reveal that due to illness petitioner applied for medical leave w.e.f. 22.06.2017 to 14.07.2017 but as he could not recover from such illness and could not join his duties on 15.07.2017, he applied for earned leave for 15.07.2017 to 08.10.2017. He resumed his duties on 09.10.2017 and thereafter he submitted a representation before the District Magistrate, Udham Singh Nagar, whereby he requested that the medical leave taken by him be also treated as earned leave and prayed to grant him earned leave of 109 days. However, such request was not accepted and the salary of the petitioner for the said period was withheld. It may be time that the petitioner has acted as per his own whims and fancies and as has been alleged by the respondent authority but the fact remains that salary is a property under Article 300-A of the Constitution of India which cannot be taken away except by authority of law.

8. In view of the above, the respondent authority is directed to treat the leave taken by the petitioner July, 2017 to December, 2017 as earned leave and to pay the salary for the aforesaid period to the petitioner within a period of two months from the date of production of certified copy of this order.

9. Writ petition is disposed of accordingly.

10. No order as to costs.

(Lok Pal Singh, J.)

Mamta
Dated : 22.12.2020