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HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.3034 of 2013

Dr.Bhagwat Prasad Baghel (dead) through LR's

- (a) Sarita Baghel, Aged about 54 years, W/o Late Shri B.P.Baghel,
- (b) Parul Bhagwat Aged about 29 years, D/o Late Shri B.P.Baghel,
- (c) Yeesha Grace Aged about 27 years, D/o Late Shri B.P.Baghel,
- (d) Prince Joy Aged about 25 years, S/o Late Shri B.P.Baghel,

All R/o-Ward No.05, Bhogha Para, Shivrinarayan, P.S.-
Shivrinarayan, Dist-Janjgir-Champa (CG)

---- LR's of the
Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Health & Family Welfare Department, Mahanadi Bhawan, Naya Raipur, District Raipur (CG)
2. Under Secretary, State of Chhattisgarh, Secretary Health & Family Welfare Department, Mahanadi Bhawan, Naya Raipur, District-Raipur (CG)
3. Director, Health Services Raipur, District-Raipur (CG)
4. Chief Medical & Health Officer Raipur, District-Raipur (CG)
5. Block Medical Officer, Community Health Centre, Kashdol, District-Raipur (CG)

---- Respondents

For LR's of Petitioner:	Mr. Ravindra Sharma, Advocate
For Respondents/State:	Mr.Animesh Tiwari, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board

17/09/2021

1. Mr.Ravindra Sharma, learned counsel for the petitioners,
would submit that the writ petitioner remained unauthorized
absent from 16.7.2006 to 17.7.2008 for a period of 733

days and that period has been declared as dies non by the respondent-State by order dated 27.3.2010 (Annexure P-1) without affording opportunity of hearing to him and without holding departmental enquiry against him, as such, the impugned order deserves to be set aside.

2. On the other hand, Mr. Animesh Tiwari, learned Deputy Advocate General for the respondents/State, would support the impugned order.
3. I have heard learned counsel for the parties, perused the order impugned and copies of other documents and also gone through the relevant provisions of law with utmost circumspection.
4. Rule 7 of the Chhattisgarh Civil Services (Conduct) Rules, 1965, provides that no Government servant shall proceed on leave before it has been sanctioned provided that in a case of emergency the authority competent to sanction leave may for reasons to be recorded in writing accord *ex post facto* sanction for leave already availed of.
5. Rules 22 and 24 of the Chhattisgarh Civil Services (Leave) Rules, 1977, which speak about recall to duty before expiry of leave and absence after expiry of leave, provide as under: -

“22. Recall to duty before expiry of leave.-

A Government servant while on leave if recalled to duty before expiry of the leave, he shall be entitled:-

(a) If the leave from which he is recalled is in India, to be treated as on duty from the date on which he starts for the station to which he is ordered, and to draw: -

- (i) travelling allowances under rules made in this behalf for the journey; and
- (ii) leave salary, until he joins his post, at the same rate at which he would have drawn it but for recall to duty.

(b) If the leave from which he is recalled is out of India, to count the time spent on the voyage to India as duty for purposes of calculating leave, and to receive-

- (i) leave salary, during the voyage to India and for the period from the date of landing in India to the date of joining his post, at the same rate at which he would have drawn it but for recall to duty;
- (ii) a free passage to India;
- (iii) refund of his passage from India if he has not completed half the period of his leave by the date of leaving for India on recall, or three months, whichever is shorter;
- (iv) travelling allowance, under the rules for the time being in force, for travel from the place of landing in India to the place

of duty.

24. Absence after expiry of leave.-(1)

Unless the authority competent to grant leave extends the leave, Government servant who remains absent after the end of leave is entitled to no leave salary for the period of such absence and that period shall be debited against his leave account as though it were half pay leave to the extent such leave is due, the period in excess of such leave due being treated as extraordinary leave.

(2) Willful absence from duty after the expiry of leave renders a Government servant liable to disciplinary action.”

6. In the matter of Ali Hussain Asgar Ali v. State of M.P. and another¹, the M.P. High Court while dealing with Rule 24 of the Madhya Pradesh Leave Rules, 1977, held as under: -

“It is clear that sub-rule (1) provides that when a Government servant remains absent after expiry of leave he is entitled to no leave salary but it has been further provided that such period shall be debited against his leave account as though it were half pay leave to the extent such leave is due and the period in excess of such leave due being treated as extra-ordinary leave. Sub-rule (2) further provides that willful absence from duty after the expiry of leave renders a Government

¹ 1984 J LJ 67

servant liable to disciplinary action. It is, therefore, clear that on the facts as they stand that the petitioner remained absent without the leave being sanctioned to him, and the only course open to the Government was either to act under sub-rule (1) or under sub-rule (2) of Rule 24. It could not be contended that the orders which were passed could be passed under sub-rule (1) and the learned Government Advocate could not refer to any rule which could justify an order as has been passed in this case, i.e. the order dated 21-7-1979. It is also not in dispute that if the State Government has chosen to act under sub-rule (2) of Rule 24, then it was necessary to follow the procedure of inquiry, which admittedly has not been done in this case. If it was chosen to act under sub-rule (2) then disciplinary action could only be taken after following the proper procedure. Admittedly, before passing of this order dated 21-7-1979 even a notice was not issued to the petitioner to pass such an order. It is, therefore, plain that this order which was passed by the State Government against the petitioner could not be justified under any of the rules framed under Article 309 of the Constitution of India.”

7. Similarly, in a decision rendered in the matter of **Battilal v.**

Union of India and others², which appears to have been

taken into consideration in earlier decisions, the High Court

² 2005 (3) MPHT 32 (DB)

of Madhya Pradesh while considering the meaning of dies non pertinently 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 spent on duty.”

8. Thus, from perusal of the Rules and the law laid down by the Madhya Pradesh High Court in **Battilal's** case (supra), it would appear that to declare the period of absence from duty of a public servant in violation of Rule 7 of the Conduct Rules, 1965 and further to declare the period of

absence as dies non are punitive order and it cannot be passed without proceeding departmentally in view of the procedure laid down under the provisions of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966. In the case in hand, the State Government straightway passed the order declaring the period of absence as dies non without affording opportunity of hearing to him. The consequence would be, the order of the State Government dated 27.3.2010 (Annexure P-1) becomes vulnerable and it is hereby quashed.

9. The writ petition is allowed to the extent indicated herein-above. No order as to costs.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-