

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 2876 of 2010**

Haresh Kumar Tonder (Platoon Commander) S/o Shri Vishram Tonder, Aged about 38 years, Address Platoon Commander 4th Battalion C.A.F. Mana, Raipur, Chhattisgarh.

---Petitioner**Versus**

- 1.State of Chhattisgarh, through Secretary of Home Department, D.K.S. Bhawan, Raipur, Chhattisgarh.
- 2.Director General of Police, Police Head Quarter Raipur, Chhattisgarh.
- 3.Inspector General of Police C.A.F. Head Quarter Raipur, Chhattisgarh.
- 4.The Commandant 4th Battalion C.A.F. Mana, Raipur, Chhattisgarh.

--- Respondents

For Petitioner :- Mr. Vivek Sharma, Advocate

For State :- Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board (Through Video Conferencing)****02/08/2021**

- 1.The short question involved in this writ petition is whether respondent No. 1 is justified in declaring the period of absence of the petitioner

from 20/04/2000 to 10/07/2002 as dies non without affording an opportunity of hearing to him ?

2. The petitioner remained absent from 20/04/2000 to 10/07/2002 on account of his resignation from service but before acceptance of his resignation, he joined his service. The competent authority firstly by order dated 12/07/2002 (Annexure P/3) declared petitioner's period of absence as 'no work no pay', but thereafter, revoked that order by impugned order dated 16/12/2008 (Annexure P/1) and declared the aforesaid period of absence as dies non under Rule 24 of Chhattisgarh Civil Services (Leave) Rules, 1977, which has been called in question by the petitioner in the instant writ petition.

3. Return has been filed on behalf of the respondents/State in support of the impugned order stating that petitioner's absence period has rightly been declared as dies non under Rule 24 of the Rules of 1977.

4. Mr. Vivek Sharma, learned counsel for the petitioner, would submit that the outcome and effect of the order dated 16/12/2008 (Annexure P/1) declaring the period of absence of the petitioner from 20/04/2000 to 10/07/2002 as dies non is that it will have an adverse impact on the

service career of the petitioner and is punitive in nature in addition to the fact that he would not be entitled for salary, increment and pension for the said period, therefore, the impugned order deserves to be set aside

5. Mr. Ravi Bhagat, learned State counsel, would support the impugned order.

6. I have heard learned counsel for the parties at length and perused the record with utmost circumspection.

7. It is not in dispute that petitioner remained absent from 20/04/2000 to 10/07/2002 and the said period was firstly declared as 'no work no pay' by order dated 12/07/2002 (Annexure P/3), but thereafter, the impugned order dated 16/12/2008 (Annexure P/1) has been passed by respondent No. 1 revoking the order dated 12/07/2002 and declaring the period of petitioner's absence as dies non for which petitioner will not be entitled for salary, increment and pension.

8. 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.

9. 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."

10. 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 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."

11. Similarly, in a decision rendered in the matter of **Battilal v. Union of India and others**², which appears to have been taken into consideration in earlier decisions, the High Court 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 maybe; and

(b) whether or not the said period shall be treated as a period spent on duty."

12. Reverting to the facts of the present case in light of the aforesaid Rules and the law laid down by the Madhya Pradesh High Court in **Battilal** (supra), it is quite vivid 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 is 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, respondent No. 1 straightway passed the order declaring petitioner's period of absence as dies non without even affording an opportunity of hearing to him. Accordingly, the impugned order dated 16/12/2008 (Annexure P/1) passed by respondent No. 1 declaring petitioner's absence from 20/04/2000 to 10/07/2002 as dies non deserves to be and is hereby quashed. However, respondent No. 1 is at liberty to proceed in accordance with law.

13. With the aforesaid observation, the writ petition is allowed to the extent indicated herein-above. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge