

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.5658 of 2021
Date of Decision: 01.04.2021

Rakesh Kumar

....Petitioner(s)

Versus

State of Haryana and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. Harish Mehla, Advocate, for
Mr. Sandeep Ahlawat, Advocate, for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana.

Through Video Conferencing

JASGURPREET SINGH PURI, J. (Oral)

The present civil writ petition has been filed under Articles 226/227 of the Constitution of India with a prayer for issuance of a writ in the nature of certiorari quashing the impugned order dated 23.02.2021 (Annexure P-1) whereby the application of the petitioner for grant of special casual leave has been rejected by respondent No.2.

The learned counsel for the petitioner has submitted that the petitioner is presently working as Warder at District Jail, Bhiwani and during his service he had been an exceptional sportsman and at various events and occasions, he had been presented with awards and certificates for his

performance in athletics and other sports activities. His certificates of appreciations and participation in various sports activities have been attached along with the writ petition as Annexures P-5 and P-6. The Government of Haryana in order to encourage the employees to participate in Civil Services Tournaments of National and International importance issued instructions dated 24.10.1990 and provided for grant of 'special casual leave' to its employees for participating in sporting events of National/International importance.

The learned counsel for the petitioner submitted that vide Annexure P-3 the petitioner was invited by M/s Virgin Trails Trekking & Expeditions Pvt. Ltd. to climb two Mountains over 8000 Meters including Mt Lhotse & Mt Everest in coming Spring season and, therefore, the petitioner vide Annexure P-4 sought permission to climb up the Everest Mountain/Hill from 04.04.2021 to 10.06.2021. However, vide Annexure P-1 dated 23.02.2021 his permission has been rejected by respondent No.2. The learned counsel has placed reliance upon Annexure P-2 which are instructions issued by the State of Haryana dated 24.10.1990 which provides for grant of special casual leave for participation by Haryana Government Servants in sporting events and tournaments of National or International importance. Vide Clause (v) 'participating in mountaineering expeditions' is also included in the list and, therefore, according to the learned counsel for the petitioner, the petitioner is entitled for the grant of special casual leave in view of the fact that he was invited by an organization for incurring mountaineering expeditions.

On the other hand, the learned State counsel while referring to the reply filed by the Inspector General of Prisons submitted that the case of the petitioner was considered in the office of respondent No.2 and as per instructions dated 24.10.1990 (Annexure P-2). The special casual leave is

granted to Haryana Government employees for a period of 30 days in a calendar year for participating in Haryana Civil Services Tournaments of National Importance and International Importance **only**. Therefore, as per instructions, the petitioner is not eligible for grant of special casual leave because the petitioner had received invitation from M/s Virgin Trails Trekking & Expeditions Pvt. Ltd. which is a private trekking operator to participate in the expedition of Mount Everest, Nepal and not a Haryana Civil Services Tournament of National and International importance. Furthermore, there is no such provision in the instructions for grant of special leave to a Government employee for participating in mountaineering expeditions to be organized by a private operator. It has been further stated in the reply that the petitioner is an employee of Prisons Department which is very sensitive department and presence of a jail employee is of utmost necessity for the safety of the prisoners and security of the jails and, therefore, the petitioner cannot claim leave as a matter of right.

The petitioner filed replication to the written statement filed by the State. In the replication, the petitioner has submitted that in the past also an employee namely Anita Kundu was granted leave by the Government for her expedition to Mount Everest and her expedition was organized by a private agency and, therefore, the petitioner should also have been allowed special leave at par with the aforesaid employee.

I have heard the learned counsel for the parties.

The instructions issued by the State of Haryana vide Annexure P-2 dated 24.11.1990 make it abundantly clear that the special casual leave is to be granted for participating in Civil Services Tournaments of National and International importance such as participating in mountaineering expeditions

etc. Para 1 of the aforesaid instructions is reproduced as under:-

“No. 27/38/78-2GS II

From

The Chief Secretary to Government, Haryana.

To

1. All the Heads of Departments

Commissioners Divisions/Deputy Commissioners/

Sub Divisional Officers (Civil) in Haryana.

2. The Registrar, Punjab & Haryana High Court and

All District & Sessions Judges in Haryana.

Dated, Chandigarh the 24th October, 1990

Subject:- Participation by Haryana Government Servants in Sporting events and tournaments of national or international importance Grant of incentive/facility.

Sir,

I am directed to invite your attention to the subject noted above and to say that at present special casual leave is granted to Haryana Government employees for a period of 30 days in a calender year for participating in Civil Services Tournaments of National & International importance such as:-

i). Participating in sporting events of National/International importance;

ii). Coaching/Administration of teams participation in sporting events of National/international importance;

iii).Attending coaching or training camps under Raj Kumari Amrit Kaur Coaching Scheme or similar All India Coaching or Training Scheme;

iv).Attending coaching or training camps at the National Institution of Sports Patiala;

v).Participating in mountaineering expeditions;

vi).Attending coaching camps in sports organized by National Sports Federation/Sports Board recognized by all India Council of Sports; and

vii). Participating in trekking expeditions;

A perusal of the aforesaid instructions would show that in the subject itself it has been mentioned that it pertains to participation by Haryana Government Servants in sporting events and tournaments of National or International importance and thereafter in the opening para itself it has been stated that special casual leave can be granted for participating in Civil Services Tournaments of National and International importance. Thereafter list of various events has been provided which includes participating in mountaineering expeditions. Therefore a bare reading of the instructions would show that participating in mountaineering expeditions should be in Civil Services Tournaments of National and International importance. However, in the present case, the event in which petitioner wishes to participate is not an event of the Haryana Government and thus, it does not entail participation in Civil Services Tournaments of National and International importance. However an invitation has been received by the petitioner from a private expedition company. Therefore, such an event would not be covered by the aforesaid instructions vide Annexure P-2. Furthermore, the grant of special casual leave cannot be claimed as a matter of right and it is always at the discretion of the employer either to grant or not to grant leave according to the facts and circumstances.

The stand taken by the respondent that the petitioner is an employee of Prisons Department which is very sensitive department and cannot claim leave as a matter of right can certainly constitute a valid ground for

rejection of the claim of the petitioner.

The argument raised by the learned counsel for the petitioner that in the past, one employee of the State was granted special casual leave, although her expedition was organized by a private agency would not have any force in view of the fact that firstly, such a plea of discrimination was not taken by the petitioner in his writ petition but was taken for the first time in the replication and secondly, be that as it may, the petitioner cannot claim any parity in violation of instructions Annexure P-2. It is settled law that a mistake, if any, committed in the past cannot be permitted to be perpetuated.

Therefore, keeping in view the facts and circumstances of the present case, no interference is called for exercise of jurisdiction under Article 226 of the Constitution of India and consequently, the present petition is hereby dismissed.

01.04.2021

rakesh

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No