

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C)(OAC) No.290 of 2017

Sri Hemanta Kumar Sethi Petitioner

-versus-

State of Odisha & Ors. Opposite Parties

**CORAM:
JUSTICE BIRAJA PRASANNA SATAPATHY**

**ORDER
15.11.2022**

Order No

- 06.** 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard Mr. L. Pradhan, learned counsel for the Petitioner and Mr. D.K. Mohanty, learned ASC appearing for the Opp. Parties.
3. The present writ Petition has been filed challenging the orders passed under Annexure-2, 3 & 5, whereby the claim of the Petitioner for regularization of his service for the period from 30.04.2014 to 12.07.2014 as leave due and admissible was rejected.
4. It is the main contention of the Petitioner that while continuing under O.P. No. 3 the Petitioner remained on medical leave w.e.f.30.04.2014. Subsequently, on being referred the Petitioner remained under treatment for the period from 08.05.2014 to 12.07.2014. The medical certificate issued by the concerned Doctor, Rourkela Govt. Hospital on 12.07.2014 under Annexure-1 series indicates the said fact.
5. However, after being declared fit the Petitioner joined in his duty on 13.07.2014 and made an application to regularize the period as leave due and admissible. But instead of considering the same, O.P.

No. 3 vide his order under Annexure-2 held the said period as “No Pay”. The Petitioner subsequently though preferred an appeal as well as a revision, but vide order under Annexure-3 & 5 the Appellate Authority as well as the Revisional Authority dismissed the matter by confirming the order passed by the O.P. No. 3 under Annexure-2.

6. Learned counsel for the Petitioner submitted that though the Petitioner had leave on his account, taking into account the medical certificate issued on 12.07.2014, O.P. No. 3 should have treated the period of leave due and admissible instead of treating the same as “No Pay”. Accordingly, it is prayed that the orders passed under Annexure-2, 3 & 5 are liable for interference by this Court.

7. Mr. D.K. Mohanty, learned ASC made his submission basing on the stand taken in the counter affidavit. It is submitted that in view of the past conduct of the Petitioner in remaining on medical leave for different periods, O.P. No. 3 did not consider the clam of the Petitioner to treat the aforesaid period as leave due and admissible and has rightly treated the said period as “No Pay”.

8. Mr. Mohanty, learned ASC also submitted that the Petitioner was never admitted in the hospital and he remained as an outdoor patient all through and accordingly there is no illegality on the part of O.P. No. 3 in treating the said period as “No Pay”.

9. Heard learned counsel for the Parties. Perused the materials available on record. This Court after going through the same finds that the Petitioner when remained on medical leave w.e.f.30.04.2014, the said fact was intimated to the Opp. Party No. 3 and the same has also been admitted by the Opp. Party No. 3 in Para 2 of the counter affidavit.

10. Though Opp. Parties have not disputed the fact that the Petitioner remained on leave for the period in question on medical ground, but refused to consider that period as leave due and admissible taking into account his past conduct. This Court is of the view that the same is not a valid ground to deny the prayer of the Petitioner. Past conduct of the Petitioner is not a ground to deny the benefit, if the Petitioner had leave on his account at the relevant point of time.

11. Since there is material available on record with regard to suffering of the Petitioner and remaining on medical leave from 30.04.2014 to 12.07.2014, this Court is inclined to quash the orders available at Annexure-2, 3 & 5. While quashing all those orders, this Court remits the matter to the Opp. Party No. 3 to take a fresh decision on the claim of the Petitioner.

12. It is observed that if at the relevant point of time the Petitioner had leave on his account, O.P. No. 3 shall consider the same and pass appropriate order by treating the period as leave due and admissible. The said exercise shall be completed within a period of two (2) months from the date of receipt of this order. The Petitioner is directed to produce a copy of this order before the O.P. No. 3 within a period of seven (7) days from the date of receipt of this order.

13. The writ Petition is disposed of with the aforesaid observation and direction.

(Biraja Prasanna Satapathy)
Judge

Sneha