

24.8.2023

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WPA 6910 of 2023

Dr. Madhumita Dutta
Vs.
The State of West Bengal & Ors.

Mr. V. Bose
Mr. S. Abedin
Ms. Pooja Singh
Mr. R. Pal
... For the petitioner.

Mr. Nilotpal Chatterjee
Mr. Sourabh Sengupta
... For the University.

Mr. Moni Sakar Chattopadhyay
... For respondent no. 5.

Mr. Arindam Chattopadhyay
Ms. Lipika Chatterjee
... For the State.

By the order impugned dated December 27, 2021, the Principal of Vidyasagar College for Women, Kolkata deducted one day's salary from the monthly salary of December, 2021 of the petitioner. The said deduction was based on the Government Memo No. 78-F(P2) dated January 06, 2020 issued by the Finance (Audit) Department, West Bengal.

It appears that by the said memo dated January 06, 2020, the Additional Chief Secretary, Government of West Bengal, *inter alia*, directed as follows:

“In view of call given by different trade unions and others for a 24 hours' All India Industrial strike/bandh on 8th January, 2020, it has been decided that

all State Government Offices including those provided with Grants-in-Aid by the State Government shall remain open and all the employees shall report for duty on that date. It has been decided that no Casual Leave for absence either in the 1st half of the day or in the second half or for the whole day nor any other leave shall be granted to any employee on the said date. The employees who are on leave on 07-01-2020 shall have to report for duty on 7th January, 2020. It has also been decided that besides the strike/bandh day, no leave for the day preceding the bandh day i.e. 7th January, 2020 and for the day following the strike/bandh day i.e. 09th January, 2020, shall be allowed.”

Now, the Governor has been pleased to Decide that absence of employees on those days will be treated as ‘dies-non’ and no salary will be admissible unless such absence is covered by the following grounds:

- a) Hospitalisation of the employees;
- b) Bereavement in the family;
- c) Severe illness and absence continuing prior to 7th January, 2020;
- d) Employees who had been on Child Care Leave, maternity Leave, Medical Leave and Earned Leave sanctioned prior to the 7th January, 2020.

It is mentioned here that dislocation/disruption of vehicular

traffic will not be a reason for granting leave.

All Heads of Offices/Controlling Authorities concerned will issue Show-Cause notice to the employee(s) concerned who will remain absent on the 8th January, 2020 and/or the date(s)/period as stipulated in Para-1 hereinabove asking him/her to explain why action would not be taken against him/her for such unauthorised absence. On receipt of satisfactory reply, leave due and admissible may be granted on production of documentary evidence on the grounds mentioned above.

Where the absence is not covered by any of the above mentioned reasons and the leave has not been approved, the same will be treated as 'dies-non' and no salary will be admissible for the abovementioned days.

Those who will not respond to the Show-Cause notice will be liable to disciplinary action.

All course of action in terms of this order should be completed by 18th January, 2020 and compliance report on action taken should be sent to this Department."

It is the case of the petitioner that on January 08, 2020 was a Wednesday and as a matter of practice, the petitioner availed Wednesday of the said relevant week as her preparatory day in terms of Statute 103 of the Calcutta University First Statutes, 1979. It is the case of the petitioner that the aforesaid memo could not have been applied to the petitioner. The petitioner contends that since the petitioner was not on leave on that particular date, the said memorandum dated January 06, 2020 does not apply to her and therefore, the decision to deduct one day's salary from her monthly salary of December, 2020, should be set aside.

This Court on August 10, 2023, directed the College to file a report disclosing as to whether in the last three months preceding the notification dated January 06, 2020 the petitioner availed every Wednesday as a preparatory day.

In response to such direction, the college has filed a report in the form of an affidavit before this Court today.

The averments of the report do not disclose the required information. However, it is clear from the annexure to the said report that in the last three months preceding the said notification dated January 06, 2020, the petitioner availed every Wednesday as her preparatory day.

Mr. Moni Sakar Chattopadhyay, learned advocate appearing on behalf of the college has drawn attention of this Court to paragraphs 11, 12 and 13 of the said affidavit, which read as follows:

“11. That as per order of the Hon’ble Court dated 10.08.2023 the College authority scrutinized the attendance and it appears that6 on 26th September, 2018, 9th January (2019 Wednesday) 12th June (2019 Wednesday), 19th June attended college and 17th July (2019 Wednesday) she attended in a meeting with Head Examiner University of Calcutta.

12. Be it mention that there was no written contact between college and teacher for fixing

the preparatory day for which some time the petitioner attended the college on Wednesday.

13. That it is clear that a teacher can avail of preparatory day if she has completed 180 days direct teaching in a academic year but it appears that in academic year 2018-2019 (July 2018 to June 2019) she was present in the college 163 days having only 66 days of direct teaching and in the academic year 2019-2020 also she did not attend the college 180 days.”

It has been submitted by Mr. Chattopadhyay, learned advocate that the petitioner was not entitled to take preparatory leave since she attended the college only 67 days in the academic year 2020.

The college – after allowing the petitioner to avail every Wednesday as her preparatory leave – cannot contend otherwise. The petitioner is never shown as absent on Wednesdays. The attendance register clearly evinces the fact that the college has duly consented to the utilization of Wednesday as her preparatory day.

In that view of the matter, there cannot be any doubt that the petitioner was not on leave on January 08, 2020. The day was her working day in terms of Statute 103 of the Calcutta University First Statutes, 1979.

Therefore, the decision to deduct one day's salary from the month of December 2021 is set aside. The college shall refund the one-day's salary to the

petitioner within a period of seven days from the date of communication of this order.

Accordingly, WPA 6910 of 2023 is disposed of. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)