

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 2578 OF 2013

Omprakash s/o Ranchhoddas Gandhi,
aged about 54 years, Occ. Jr. Geologist,
Ground Water Survey Development Agency,
Gadchiroli, Tah. & Dist. Gadchiroli,
presently working at Nagpur.

PETITIONER

.....VERSUS.....

1. Maharashtra Administrative Tribunal,
Nagpur Bench, Nagpur.
2. The State of Maharashtra,
through its Principal Secretary,
Dept. of Water Supply & Sanitation,
Secretariat, Mumbai – 440032.
3. Director,
Ground Water Surveys & Development Agency
(Maharashtra State), Bhujal Bhawan,
Near Agriculture University,
Wakdewadi Road, Pune.
4. Deputy Director,
Ground Water Surveys & Development Agency (Nagpur Region),
Maharashtra Jeevan Pradhikaran Building,
'A' Wing, 2nd Floor, Telangkhedi, Civil Lines,
Nagpur.
5. Senior Geologist,
Ground Water Surveys & Development Agency,
Gadchiroli, Tah. & Dist. Gadchiroli.

RESPONDENTS

Shri A.M. Sudame, Advocate for the petitioner.
Shri A.A. Madiwale, Assistant Government Pleader for the respondents/ State.

CORAM : A.S. CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.

DATE : JANUARY 5, 2023

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

The petitioner who was serving as Junior Geologist with the Groundwater Surveys and Development Agency had approached the Maharashtra Administrative Tribunal in Original Application No. 673/2010. Therein, the order dated 20/4/2010 holding the period from 25/5/2009 to 22/1/2010 as the period of the petitioner's leave without pay for unauthorized absence came to be challenged. A challenge was also raised to the communication dated 3/12/2010 by which the petitioner was called upon to make an application for grant of leave for 244 days. The petitioner sought regularization of the period from 25/5/2009 to 5/7/2009 as leave period and the period from 6/7/2009 to 22/1/2010 as compulsory waiting period.

2. The petitioner who was serving at Gadchiroli at the relevant time was orally asked by respondent No.4 – Deputy Director to proceed and join at Chandrapur. He came to be relieved from his post at Gadchiroli on 25/5/2009. The petitioner made a representation on 6/7/2009 praying that his deputation at Chandrapur be cancelled and he be permitted to join duties at Gadchiroli. By communication dated 21/1/2010, respondent No.3 – Director instructed respondent No.4 – Deputy Director that the deputation of the petitioner at Chandrapur was being cancelled and the petitioner should be permitted to join duties at Gadchiroli.

3. The Tribunal by its judgment dated 1/2/2013 found that on 25/5/2009, the petitioner while making representation had stated that he was going on leave under protest. Since it was noticed that the petitioner had not complied with the directions to report at Chandrapur on deputation, it was found that such conduct was not proper. It then found that the order dated 20/4/2010 came to be revoked by the State Government by its communication dated 9/11/2010. In the said communication, it was further stated that a written understanding/warning be given to the petitioner in this regard. Referring to the said communication dated 9/11/2010, the Tribunal held that the first prayer made in the Original Application challenging the order dated 20/4/2010 did not survive. It accordingly permitted the petitioner to apply for leave for regularizing the period of absence from 25/5/2009 to 22/1/2010.

Being aggrieved by the aforesaid order, the petitioner filed the present Writ Petition.

4. It may be stated that during pendency of the proceedings and without prejudice to the challenge to the order, the petitioner made an application seeking regularization of the aforesaid period on 25/4/2013. The petitioner was informed on 8/5/2013 that the application made by him was not completely filled in proper format. The petitioner was

directed to re-submit the complete form.

5. It is submitted by the learned Counsel for the petitioner that in view of the order passed by the State Government on 9/11/2010, the initial order posting the petitioner to Chandrapur on deputation had been set aside. Hence, it was necessary to treat the petitioner as in service during the entire period. There was no reason to direct the petitioner to apply for leave in this backdrop. Despite making representation on 6/7/2009, decision thereon was taken only on 21/1/2010 when he was permitted to join his duties at Gadchiroli. It was thus submitted that the Tribunal failed to take into consideration the effect of the communication dated 9/11/2010.

6. The learned Assistant Government Pleader for the respondents supported the impugned order. According to him, the petitioner on 25/5/2009 had clearly stated that he was proceeding on leave. The petitioner himself was responsible for his absence and therefore the Tribunal rightly directed him to make an application for grant of leave. It was further submitted that as per the communication dated 21/1/2010, the direction to fill-in the vacant post was issued only on 16/1/2010 and necessary steps were thereafter taken on 21/1/2010 by which the petitioner could re-join his duties at Gadchiroli. Hence, no

interference with the impugned order was called for.

7. After hearing the learned Counsel for the parties and after perusing the documents on record, we find that the reason for the petitioner's absence from service from 25/5/2009 was on account of his own action of stating that he was proceeding on leave under protest. It is no doubt true that on 6/7/2009 the petitioner had made representation seeking to re-join his duties at Gadchiroli. It however appears that the post on which the petitioner was serving was required to be occupied by another employee as a result of which immediate placement of the petitioner was not possible. It is only on 16/1/2010 that the State Government directed the Deputy Director to fill-in the vacant post at Gadchiroli and consequently the petitioner was permitted to join on 22/1/2010. We find that the communication dated 9/11/2010 though sets aside the order dated 24/4/2010, it further states that the petitioner's absence during the aforesaid period can be regularized subject to leave available to his credit. The petitioner was also directed to be issued warning in writing. This communication dated 9/11/2010 issued by the State Government has not been challenged by the petitioner. Consequently, the petitioner's absence from 25/5/2009 to 22/1/2010 which is for a period of 244 days has been directed to be treated as period of leave subject to leave being to his credit. It is in this backdrop that

the Tribunal has permitted the petitioner to apply for leave for the aforesaid period. We find that there is no illegality committed by the Tribunal especially in the light of the communication dated 9/11/2010 which was not challenged. This aspect has been noted by the Tribunal in the impugned order. Further, there is no basis for regularizing the period when the post in question remained vacant and was thereafter occupied by another employee posted at Gadchiroli on the post held by the petitioner.

8. Hence, for the aforesaid reasons, we do not find any case made out to interfere in writ jurisdiction. The petitioner is free to make an application for grant of leave in compliance with the directions issued on 4/12/2010 by respondent No.4 - Deputy Director. If the petitioner is still unsatisfied with the outcome of such application, he is free to take such steps as are permissible in law for redressal of that grievance.

9. The Writ Petition is thus dismissed. No costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)

SUMIT