

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(203)

CWP-21605-2022

Date of decision: - 07.10.2023

Rajbir Singh

....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Hardeep Singh Kasan, Advocate,
for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana
for the respondents.

VIKAS BAHL, J. (ORAL)

1. Present writ petition has been filed under Article 226 of the Constitution of India for the issuance of a writ of certiorari for setting aside the order dated 27.07.2021 (Annexure P-17) passed by Superintendent of Police, Kaithal, vide which, the period of 120 days for which the petitioner absented himself has been sanctioned as leave without pay. Challenge is also to the order dated 14.12.2021 (Annexure P-21) passed by the Inspector General of Police, Karnal Range, Karnal, vide which the representation filed by the petitioner has also been rejected.

2. Undisputed facts in the present case are that the petitioner was recruited as Constable in the Haryana Police on 31.10.1985 and had

earned promotion as officiating Head Constable on 22.03.2002 and officiating sub inspector on 04.05.2018. The petitioner has voluntarily retired from service w.e.f. 09.08.2021. On 15.03.2021 (Annexure P-1), petitioner had applied for earned leave of 120 days from 17.03.2021 and the reason given in the same was the illness of the petitioner and his wife. The DSP (HQ) Kaithal sanctioned causal leave for 2 days to the petitioner from 21.03.2021 afternoon to 24.03.2021 before noon which fact is apparent from Annexure P-2. The petitioner thereafter filed application dated 20.03.2021 before the Inspector General of Police, Karnal Range, Karnal, with a copy to Superintendent of Police, District Kaithal, in which, it was prayed that the petitioner required 180 days of earned leave and in the said application it was submitted that the said leave was required as the treatment of Paralysis and heart disease of the petitioner's wife was going on in GMCH Sector 32, Chandigarh and that the wife of the petitioner had suffered four paralytic attacks and two heart attacks and had lost her voice three times and eyesight and it was during the treatment, which was being done, her voice had come back. It was also pleaded that even the petitioner was not keeping good health and thus, the said leave for the purpose of treatment of his wife and himself was sought. The fact that the petitioner had been granted two days of casual leave was also mentioned in the said application. Along with the said application, photocopies of the medical treatment of the petitioner and his wife were also annexed. The petitioner had even sent an email with respect to the said application to the Superintendent of Police as well as to the concerned SHO. The Inspector General of Police, vide order dated

30.03.2021, had sanctioned 120 days earned leave w.e.f. 30.03.2021 to 28.07.2021 to the petitioner under Rule 35 (iii) of the Haryana Civil Services (Leave) Rules, 2016 (hereinafter referred as 'Rules of 2016') and a copy of the same was forwarded to the Superintendent of Police, Kaithal, which fact is apparent from a perusal of the order dated 30.03.2021 (Annexure P-8). A perusal of Annexure P-18 (page 70 of the paperbook), which is information which had been sought by the petitioner under the RTI Act would show that the said order of the Inspector General of Police, Karnal Range, Karnal dated 30.03.2021 was received in the office of the Superintendent of Police, vide Diary No.383-Spl. dated 31.3.2021 and thus, the office of the Superintendent of Police, Kaithal was aware of the said order. On 26.04.2021, the petitioner was served with a notice dated 22.04.2021(Annexure P-9) by the Superintendent of Police, Kaithal, in which, it was alleged that since the petitioner had not reported back well in time after the lapse of the causal leave and had absented himself since 24.03.2021 without prior leave or permission and the same constituted a grave misconduct on his part and thus, the petitioner was directed to resume his duty at once, failing which, the disciplinary action would be taken against him. The petitioner filed a detailed reply dated 05.05.2021 (Annexure P-10) to the Superintendent of Police, District Kaithal and in the said reply, the details of the medical problems faced by the petitioner and his wife as well as the treatment being given to the petitioner and his wife were mentioned. A specific reference was made to the fact that the Inspector General of Police, Karnal Range, Karnal had sanctioned 120 days earned leave to the

petitioner vide order dated 30.03.2021. It was also stated that on 09.08.2021 the petitioner had made a separate request to the office of the Superintendent of Police in writing seeking voluntary retirement. Apart from the above, it was also prayed that the petitioner be granted permission to avail his sanctioned earned leave and his absence, if any, be merged into the sanctioned earned leave and salary for the month of March and April, 2021 be released to him. No order was passed on the said reply, but another notice dated 15.05.2021 (Annexure P-21) similar to the earlier notice dated 22.04.2021 was issued to the petitioner. A detailed reply dated 01.06.2021 (Annexure P-13) was given, in which, apart from the other aspects, the details as mentioned in the earlier reply, had been reiterated. The petitioner had been sanctioned earned leave vide order dated 30.03.2021 up to 28.07.2021, but he rejoined on 22.07.2021 as is apparent from the DDR (Annexure P-15). Respondent No.4, vide impugned order dated 22.07.2021, sanctioned the 120 days' absence period as leave without pay on the principle of 'no work no pay'. The petitioner filed a detailed representation (Annexure P-20) before the Inspector General of Police, in which, all the aspects with respect to the medical problems faced by the petitioner and his wife, had been detailed. Specific reference to the order of the Inspector General of Police dated 30.03.2021 vide which the earned leave was allowed to the petitioner from 30.03.2021 to 28.07.2021, was also made in the said representation. In the impugned orders dated 27.07.2021, as well as dated 14.12.2021, the fact that the petitioner was granted earned leave, vide order dated 30.03.2021 by the Inspector General of Police was not taken into

consideration and was not duly dealt with, inspite of the fact that the same had been specifically informed to both the authorities vide reply to the show cause notice sent by the petitioner to the Superintendent of Police and also in the representation filed before the Inspector General of Police.

3. Learned counsel for the petitioner has submitted that the impugned order deserves to be set aside on the following grounds: -

- (i) It is submitted that once the Inspector General of Police, vide order dated 30.03.2021 (Annexure P-8) had granted earned leave of 120 days w.e.f. 30.03.2021 to 28.07.2021 and the said order had attained finality and admittedly no challenge was made to the same, then, it was not open to the Superintendent of Police to have overlooked the said order or to treat the said order as a nullity.
- (ii) The order dated 30.03.2021 was forwarded to the Superintendent of Police, which is apparent from Annexure P-8 at page 43 of the paperbook and was also received by the Superintendent of Police, which fact is apparent from Annexure P-18, vide Diary No.383-Spl. dated 31.03.2021. Without challenging the said order dated 30.03.2021, subsequent notice dated 22.04.2021 was issued by the office of the Superintendent of Police, which is illegal and against law.
- (iii) The factum of passing of the order passed by the Inspector General of Police was specifically brought to the notice of the Superintendent of Police in the reply filed by the petitioner dated 05.05.2021 (Annexure P-10) as well as in the reply dated

01.06.2021 (Annexure P-13), but while passing the impugned order dated 27.07.2021, no reference has been made to the order dated 30.03.2021 passed by the Inspector General of Police. It is submitted that the order dated 27.07.2021 is non-speaking and deserves to be set aside solely on the said ground.

(iv) It is argued that a detailed representation (Annexure P-20) was given by the petitioner to the Inspector General of Police, in which also the factum of the order passed by the Inspector General of Police dated 30.03.2021 was specifically mentioned and in the impugned order dated 14.12.2021 although, there is a reference to the effect that an email was sent to the office of the Superintendent of Police, but neither any reference has been made to the order dated 30.03.2021 nor the said order has been taken into consideration while passing the order dated 14.12.2021.

(v) It is submitted that the order passed by the Inspector General of Police dated 30.03.2021 has been passed under Rule 35(iii) of Rules of 2018, which specifically empowers the Head of Department, which is the Inspector General of Police, to sanction earned leave up to 240 days. Relevant portion of the above-said rule is reproduced herein below: -

“35. Grant of earned leave to government employees other than vacation wing. -

xxx xxx xxx xxx

(iii) Head of Office, Head of Department and Administrative Department are competent to sanction earned leave as under: -

<i>Employees of Group C & D</i>	<i>Head of Office</i>	<i>Upto 120 days within or out of India;</i>
<i>Employees of Group A & B</i>	<i>Head of Office</i>	<i>Upto 30 days within or out of India;</i>
<i>Any Government employee under their control</i>	<i>Head of Department</i>	<i>Upto 240 days within or out of India;</i>
	<i>Administrative Department</i>	<i>Upto 365 days in India and upto 500 days out of India;</i>

(vi) It is submitted that the petitioner had a total 511 days earned leave, out of which, 300 days earned leave have been encashed and 211 days earned leave remained unused even at the time of his retirement i.e., on 09.08.2021. It is further submitted that it is thus apparent that the petitioner had not taken any benefit of 120 days of earned leave which had been sanctioned by the Inspector General of Police vide order dated 30.03.2021 and thus, non-grant of salary for the said period of 120 days when the Inspector General of Police had duly sanctioned earned leave to the petitioner, is illegal and against law and the respondent authorities are duty bound to release the said salary to the petitioner.

(vii) It is stated that the petitioner had given the details of the medical problems suffered by the wife of the petitioner, which included 4 paralytic attacks and 2 heart attacks and also the health problem of the petitioner, which included thyroid, knee and disc problems and the medical proofs regarding the same were also attached in the application to the Inspector General of Police (Annexure P-3). It is further submitted that thus, the prayer for grant of earned leave, which was accepted by the

Inspector General of Police, was bona fide.

(viii) It is stated that as per Rule 12 of the Haryana Civil Services (Leave) Rules, 2016, on the request of a government employee, the authority competent to grant leave to the government employee can convert leave from one kind to another from retrospective effect in case the said leave is due on the date, he intended to convert the same. It is further stated that at any rate, the petitioner is entitled to the said conversion, inasmuch as, the earned leave of the petitioner was due at the time when he moved application and in fact 211 days earned leave remained unused even at the time of his retirement. It is stated that a prayer regarding the said aspect was made in the reply dated 05.05.2021 (at page 47 of the paperbook) to the show cause notice, but the same has also not been considered by the Superintendent of Police while passing the impugned order.

(xi) It is next argued that the petitioner had applied for 120 days earned leave vide application dated 15.03.2021 and as per Rule 11(4) of the Rules of 2016, the competent authority could have either refused or allowed the leave applied for, and it is not open to the sanctioning authority to alter the nature of the leave. It is submitted that sanctioning of only two days casual leave was thus not in consonance with the Rule 11(4) of the Rules of 2016 and the subsequent orders passed by the Inspector General of Police dated 30.03.2021 sanctioning earned leave for 120 days was in accordance with law.

(x) Learned counsel for the petitioner has submitted that none of the above-said aspects have been considered by the authorities, thus, the impugned order deserves to be set aside and the authorities need to reconsider the matter and pass a fresh speaking order after considering all the said submissions.

4. Learned counsel appearing for the respondent-State has opposed the present writ petition and has referred to Rule 28(3) of the Rules of 2016, in which, it is specifically mentioned that casual leave, short leave or quarantine leave which is not recognized as leave under these Rules shall not be combined with any other kind of leave admissible under the Rules. Reference has also been made to Rule 79 of the Rules of 2016 in the said regard. It is further submitted that the petitioner did not apply for leave in accordance with law Rules 22 and 24 of the Rules of 2016. It is argued that the petitioner was granted casual leave of 2 days, vide order dated 21.03.2021 (Annexure P-2) and subsequently the said leave was extended/combined by the Inspector General of Police vide order dated 30.03.2021 (Annexure P-8). It is stated that the two show cause notices were issued to the petitioner to join services but since the petitioner did not do the same upto 22.07.2021, thus, the impugned orders dated 27.07.2021 and 14.12.2021 had been rightly passed. Learned State counsel, however, has not disputed the fact that the order of the Inspector General of Police dated 30.03.2021 had attained finality and that the said order has not been noticed by the authorities in the impugned orders. With respect to the aspect of the petitioner having earned leave of 211 days which remained unused, the State counsel was directed to get

instructions and on instructions, it has been informed by the State counsel that the said fact had been correctly stated by the petitioner in paragraph 12 of the impugned order. It is submitted that in view of the facts and circumstances, the authorities are ready to reconsider the matter.

5. This Court has heard learned counsel for the parties and has perused the paper-book.

6. As has been noticed hereinabove, it is not in dispute that the petitioner, vide application dated 15.03.2021 (Annexure P-1), had applied for 120 days earned leave starting from 17.03.2021 and the reason for the same was the illness of the petitioner and his wife. The petitioner was granted 2 days causal leave by the DSP (HQ), Kaithal, vide order dated 21.03.2021 (Annexure P-2). A detailed representation was made to the Inspector General of Police and the Inspector General of Police, vide order dated 30.03.2021, allowed the 120 days earned leave w.e.f. 30.03.2021 to 28.07.2021. The said order was duly communicated to the Superintendent of Police and was received by the Superintendent of Police, vide Diary No.383-Spl. dated 31.03.2021, which is prior to the issuance of the notice dated 22.04.2021. The relevant portion of the above-said order (Annexure P-18) is reproduced herein below:-

“OFFICE OF THE INSPECTOR GENERAL OF POLICE, KARNAL
RANGE, KARNAL

No. /A-1 dated

120 days Earned Leave w.e.f. 30.03.21 to 28.07.21 is hereby sanctioned to SI Rajbir Singh No.168/KR, presently posted in PS Pundri, district Kaithal, under rule 35 (iii) of Haryana Civil Services (Leave) Rules, 2016

Sd/-

Inspector General of Police,

Karnal Range, Karnal

Endst. No.3656 /A-1 dated 30/3/21

A copy is sent to the following for information & necessary action:-

1. Superintendent of Police, Kaithal

sd/-

*Inspector General of Police,
Karnal Range, Karnal*

Office of the Superintendent of Police

Diary No.383-Spl

Dt 31.3.21

KAITHAL

O.B., OHC, CRC Acctt

for n/action

sd/-

*Superintendent of Police
KAITHAL*

Certified Copy under RTI Act

sd/-

*ASPIO-cum-Inspr. Estt.
Distt. Police Office, Kaithal”*

7. It is not in dispute that the said order has attained finality and a specific reference has been made with respect to the said order in the reply dated 05.05.2021 (Annexure P-10) as well as in the reply dated 01.06.2021 (Annexure P-13) to the two notices issued by the Superintendent of Police. No reference of the said order has been made in the impugned order dated 27.07.2021 (Annexure P-17) passed by the Superintendent of Police. Even in the representation given by the petitioner (Annexure P-20) to the Inspector General of Police, a specific reference has been made to the said order, but in the order dated 14.12.2021 (Annexure P-21), although, the Inspector General of Police

had taken note of the fact that email was received in the office of the Inspector General of Police, but neither any reference has been made to the order dated 30.03.2021 nor the same has been addressed in the impugned order. The order passed by the Inspector General of Police dated 30.03.2021 had been passed under Rule 35(iii) of Rules of 2016, which has been reproduced herein before and a perusal of the said rule would show that the Inspector General of Police, who is the Head of the Department, is entitled to grant earned leave to a government employee up to 240 days and in the present case, the Inspector General of Police had granted earned leave of 120 days, which is lesser than the period which the Inspector General of Police is empowered to grant. The fact that the petitioner had 211 days of earned leave which had remained unused on the date of his retirement i.e. 09.08.2021 was also not disputed. The serious medical condition of the petitioner and his wife, is prima facie, proved from the averments made in the application/reply to the show cause notices as well as the medical documents attached along with the application (Annexure P-3). The said aspects and also the provisions of Rule 12 of the Rules of 2016 have not been taken into consideration by the concerned authorities while passing the impugned order. The impugned order dated 27.07.2021 is non-speaking, inasmuch as, all the above said details have been mentioned in the reply filed prior to the passing of the said order in response to the show cause notice issued to the petitioner and yet, have not been addressed while passing the said impugned order.

8. Keeping in view the above-said facts and circumstances, the

present writ petition is partly allowed and the order dated 27.07.2021 (Annexure P-17) and order dated 14.12.2021 (Annexure P-20) are set aside and respondent No.4 Superintendent of Police, District Kaithal is directed to reconsider the matter in the light of the observations made by this Court and the arguments raised before this Court and pass a fresh order, within a period of three months from today.

October 07, 2023
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes