

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 27478 of 2022

Date of Decision: 25.01.2023

Ashok Kumar

... Petitioner(s)

Versus

State of Punjab and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Prateek Pandit, Advocate
for the petitioner(s).

Mr. D.K.Singal, Additional Advocate General,
Punjab, for the respondents.

Anil Kshetarpal, J.

1. The petitioner prays for the issuance of a writ in the nature of certiorari to quash the order dated 24.06.2022 passed by the Chief Secretary to the Government of Punjab, Water Resources Department, Punjab.

2. It has come on the record that the petitioner after applying for Ex-India leave on 18.01.2010 w.e.f. 01.12.2010 to 16.12.2011 went abroad without waiting for its approval which was never sanctioned. The petitioner claims that he had returned to India upon the aforesaid expiry of period, however, he was informed that the Government of Punjab has scrapped the Satluj Yamuna Link Canal Project and the employees of Patiala Ki Rao, Construction Division, SYL Canal Project, Punjab, Chandigarh, shall be re-allocated to the two other divisions. Thereafter, the petitioner claims that he made several requests to permit him to resume his duties, however, he was never permitted. Ultimately, on attaining the age of superannuation, he retired on 31.01.2020.

3. The competent authority has relied upon the instructions issued by the Government of Punjab, Finance Department, vide letter dated 12.05.2017, which deal with such cases. It is provided that if an employee remains absent for a period of more than one year without getting the leave approved, it will be considered as deemed resignation subject to the fulfilment of the following conditions:-

- “1. If in future any matter is brought to notice regarding any criminal, civil case or disciplinary proceedings against the employee then action shall be taken as per Rule 2.2 Punjab CSR Volume 2 and Appeal Rules, 1970.*
- 2. If any case of departmental/vigilance inquiry or amount of miscellaneous advances are pending against the employee then these order shall have no impact on the same meaning thereby that the inquiry/proceedings shall be continued and action shall be taken against the employee as per rules in accordance with the conclusion of such inquiries.”*

4. The learned counsel representing the petitioner submits that these instructions are beyond the service rules. He further submits that the competent authority has passed the order without granting an opportunity of hearing to the petitioner.

5. This Court has considered the submissions and perused the paper-book.

6. As regards the first argument, it would be noted that under Article 162 of the Constitution of India, the executive powers of the State are at par with its legislative powers. Such powers can be exercised with respect to matters under the domain of the legislature when the State is

the nature of delegated legislation and can be exercised to fill any gap/vacuum in the service rules, by issuing the executive instructions. Such instructions can always supplement the rules but cannot supplant them. Delegated Legislation, when duly exercised, is at par with the law, the Parliament or State Legislature, with respect to its implementation. The learned counsel representing the petitioner has failed to draw the attention of the Court to any service rules to the contrary.

7. As regards the next argument, it would be noted that the petitioner has filed the Civil Writ Petition No. 22531 of 2021 which was disposed of on 08.11.2021 by directing the respondents to decide the petitioner's legal notice dated 28.02.2020. This Court did not direct the petitioner to appear before the respondents. The legal notice sent by the petitioner has already been considered. It is, by now, well settled that the rules of natural justice are the flexible tools in the hands of the Courts to deliver substantial justice. In any case, this Court has also granted an opportunity to the learned counsel representing the petitioner to justify his absence but he has failed to draw the attention of the Court to any such justification.

8. In these circumstances, this Bench does not find it appropriate to be a fit case to exercise its extraordinary writ jurisdiction. Hence, the present writ petition is dismissed.

(Anil Kshetarpal)
Judge

January 25, 2023
"DK"

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No