

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3560 of 2018

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Sirajul Haque Ansari Son of Abdus Sattar, Road NO. 2, Indrapuri Colony,
Post Office- B.V. College, Raja Bazar, Patna- 800014.

... .. Petitioner/s

Versus

1. The Union Of India
2. National Consumer Co-operative Federation India Limited, Government of India NCCF New Delhi, throu
3. The Chairman, National Consumer Co-operative Federation, New Delhi.
4. The Managing Director National Consumer Co-operative Federation, New Delhi.
5. The Manager (P & A), N.C.C.F., Head Office New Delhi.
6. The Dy. Manager (P & A), N.C.C.F., Head Office New Delhi.
7. The Branch Manager, National Consumer Co-operative Federation, Sri Krishnapuri, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Radha Mohan Pandey, Adv.
For the Respondent/s : Mr. S. D Sanjay Addl. Soc. Gen.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 19-02-2024

Heard learned counsel for the petitioner and learned counsel for the N.C.C.F., who appeared and filed counter-affidavit in compliance of the order passed by this Court.

2. The present writ application has been filed for setting aside the order contained in Letter No. NCCF/HO/Pers./4-1270/2017-18/1827 dated 22.12.2017 issued by the Managing Director of the National Consumer's Co-operative Federation of India Limited, New Delhi on behalf of

the Executive Committee through which the petitioner was recorded as unauthorized absent from duty and he has been treated as deemed to have been resigned from the service of the Federation and the competent authority has accordingly accepted resignation of the petitioner with immediate effect with further order to struck off the name of the petitioner from the rolls of the Federation forthwith.

3. Learned counsel for the petitioner submits that the petitioner was appointed as Senior Assistant in the year 1983 at Gauhati N.C.C.F. Centre and thereafter he was promoted to the post of Field Officer in the year 2006, subsequently promoted to the post of Assistant Manager in the year 2014 and since then, he was working as Assistant Manager at Patna Branch of N.C.C.F. since, July 2010. He submits that the petitioner was appointed during his posting at Patna, where he was transferred at the fag end of his service to Bhubaneswar in clear violation of the Transfer Policy, 2017 framed by the National Consumer's Co-operative Federation of India Limited.

4. Learned counsel for the petitioner further submits that the entire service tenure of 34 years of the petitioner is without any complaint and at no point of time, there was any disobedience on his part. He further submits that the

petitioner has to retire in January 2019 but at the fag end of his service, vide Letter No. 1421 dated 22.05.2017, he was directed to transfer from Patna to Bhubaneswar Branch of N.C.C.F. in clear violation of the Transfer Policy, 2017.

5. Learned counsel for the petitioner further submits that the said policy is very much clear that the transfer prior to retirement of two years of his service, may request for last posting at his choice station for consideration, according to Clause 7 of the Transfer Policy, 2017. He further submits that the option was not been granted to the petitioner. He further submits that the petitioner submitted his application for sanction of medical leave till control of his diabetic disease because he was on insulin and on other medicine and therefore, he submitted an application on 27.06.2017 for sanction of medical leave. On the same date, he has also requested to stay his transfer with the reasons mentioned in his application.

6. Learned counsel for the petitioner further submits that in the month of July 2017, he again requested to his Managing Director for sanction of his medical leave and sent his request letter followed by another letter with his medical reports. He has also provided the medical certificate of Gardanibagh Hospital but the authorities have demanded the

medical certificate from Government Hospital. From the letter dated 28.07.2017, counsel submits that in this regard, he has submitted the certificate of P.M.C.H. but that has also not been taken into consideration and subsequently, the petitioner has written another letter on 28.08.2017 through registered post along with the medical prescriptions but that too were not taken into consideration and vide letter dated 22.12.2017, he was treated to be deemed to have been resigned from the service of Federation and competent authority has accordingly accepted resignation of the petitioner with immediate effect.

7. Learned counsel for the petitioner further submits that the policy rule has been framed in the year 2017 at the instance of the highest authority which has completely been ignored. The medical prescriptions and certificate of Government Hospital were also ignored. He further submits that the absence of petitioner was never an unauthorized absent rather time and again, he used to write series of letters assigning the reasons of his absence. He further submits that the petitioner is an employee, who work for 34 years and there are medical leaves already pending in his account but that aspect has also not been taken into consideration at all by the authorities and a vindictive attitude has been taken by the authorities and they

have in a bias manner taken a decision in a welfare state, particularly, a Government Organization may not treat against his employee in this manner.

8. Learned counsel for the respondent nos. 4 & 7, *i.e.* N.C.C.F., who filed counter-affidavit submits that the petitioner has suppressed the material development in this case. According to him, the petitioner was transferred from Patna to Bhubaneswar on 22.05.2017 and he was relieved on 02.06.2017 with instruction to join duty at Bhubaneswar Branch immediately and petitioner was failed to report his duty at Bhubaneswar. In this regard, repeated instructions were issued to the petitioner vide letter 11.07.2017, 28.07.2017, 17.08.2017 and 24.08.2017 but only on the pretext of illness, he did not join.

9. Learned counsel submits that the petitioner remained posted at Patna Branch near about 5 years to the post of same level or different levels for continuous period, so it is necessary as per the service guidelines of the Organization to transfer him at different station/post. He submits that the petitioner joined at Patna Branch on 28.05.2012 and terminated after several reminder/ notices on 22.05.2017 and relieved on 02.06.2017. The N.C.C.F., Head Office issued a letter on

16.08.2017. He also submits that due consideration has taken place by the department on his medical leave and information was communicated to him on 16.08.2017 that competent authority has not sanctioned his medical leave due to the lack of certificate issued by the Government Hospital, duly signed by C.M.O./Civil Surgeon as mentioned in Rule 33 of Staff Regulation, Recruitment and Promotion Rules of N.C.C.F. (hereinafter referred to as 'the Rules of N.C.C.F.')

10. Learned counsel for the petitioner further submits that at last the Organization has no option but to take action under Rule 42 of the Rules of N.C.C.F. which provides that an employee, who remains absent on expiry of his leave or otherwise absents himself shall not, unless the competent authority otherwise direct be entitled to any pay and allowance for the period of such absence and shall deemed to have been resigned from the services of the Federation, if the period of such absence exceeds 15 days without proper reason, intimation and without justification.

11. Learned counsel for the N.C.C.F. submits that after the deemed resignation of the petitioner, he was informed to take the gratuity, leave encashment amount which was released to him and in his gratuity amount, Rs. 7,54,946/- have

been paid on 08.10.2021 and rest of the gratuity amount Rs. 1,63,054/- is paid on 31.03.2022 in his account. Interest upon the gratuity amount of 10 %, *i.e.* Rs. 3,56,361/- has also been paid through NEFT on 10.06.2022 during pendency of the complaint petition.

12. Learned counsel further submits that for his grievances, the petitioner had sent notices through the Assistant Labour Commissioner-cum-Controlling Authority, who is the competent authority in this matter. There also the contest took place and the matter has been decided by them. He further submits that since, the Assistant Labour Commissioner-cum-Controlling Authority is the competent authority, therefore, the decision of the competent authority is final and binding upon the transferring according to Annexure- D of the Transfer Policy, 2017. He also submits that the Rule 33, Rule 37 and Rule 42 of the Rules of N.C.C.F. are sufficient to decide the case of the petitioner. According to Rule 33, the medical leave has not been considered. Under Rule 37, for special leave, the competent authority has taken decision and on transfer policy also, the decision was taken and challenged before the competent authority and acquires finality.

13. Learned counsel further submits that the only

question which has been subject to test before this Hon'ble Court is the applicability of Rule 42 of the Rules of N.C.C.F. He further submits that when the question of medical leave under Rule 33, question of Special Leave under Rule 37 and question of transfer policy under Rule 2017 has been decided by the competent authority and there is no factual dispute on those points, then in that case, the N.C.C.F. has only option to take decision under Rule 42 and it is completely in accordance with law and therefore, no need of any interference.

14. Learned counsel conclusively submits that in the present writ petition also, the petitioner had changed his prayer by virtue of amendment, as his gratuity and other retiral dues have been settled, except salary.

15. In the light of the submissions made, particularly, in the light of the submissions made by the parties, this Court is of the opinion that service of the petitioner has been guided by the Rules of N.C.C.F. framed by the Organization and both parties agrees on the same. The dispute is there on the points of Rules 33, 36 and Transfer Policy, 2017 and it is also admitted from the pleadings of the parties that on the question of Rule 33, 36, 37 and Transfer Policy, 2017, the matter has been adjudicated and finally settled and those matters

acquires finality. The only question which has to be tested under Rule 42 but this Court is of the firm view that grounds for deciding this case under Rule 42 in favour of the petitioner has the genesis in Rule 33, 37 and Transfer Policy, 2017, when those points were already decided against the petitioner, then no ingredients for invoking Rule 42 in favour of the petitioner is available and hence, this Court finds that there is no merit in this writ petition and therefore, the present writ application stands dismissed.

16. Learned counsel for the petitioner submits that the salary of the petitioner from June 2017 to 22nd December, 2017 has not been paid. If it is so, then in that case, the authority is directed to decide the matter on the said issue and communicate to the petitioner within three months from the date of production of this order.

(Dr. Anshuman, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.02.2024
Transmission Date	NA