

S/L 48
08.03.2024
Court. No. 3
Suwayan

WPA 21544 of 2005

Satyanarayan Ghosh
Vs.
The State of West Bengal & Ors.

Mr. Sudeep Sanyal
Mr. Snehasis Jana
Mrs. Tutun Das
Mr. Chandrachur Lahiri
Ms. Anulekha Bera Maity

...for the petitioner.

1. The petitioner is represented by his learned Advocate.
2. Learned Advocate for the writ petitioner files a receipted copy of letter dated 13.02.2024 showing service of notice upon the learned Government Pleader, High Court at Calcutta pursuant to the order as passed by this Court on 04.03.2024.
3. The receipted copy of notice dated 13.02.2024 as filed on behalf of the writ petitioner be taken on record.
4. Since none turn up on behalf of the respondents/State this Court proposes to dispose of the instant writ petition in absence of the respondents.
5. At the time of hearing learned Advocate for the writ petitioner craves leave to file a supplementary affidavit.
6. Leave as prayed for is granted.
7. The supplementary affidavit as filed today be taken on record.
8. Mr. Sanyal, learned Advocate for the writ petitioner at the very outset submits before this Court that the present petitioner though a graduate is compelled to

work as a 'darwan' in an institute named 'DESIRED' under the respondent nos. 2 and 3. It is submitted by Mr. Sanyal further that with an intention to pursue further studies viz., B.Ed. the writ petitioner had made a prayer before the respondent no. 2 and the same has been allowed under cover of its letter no. 502/ME/PH dated 13.07.2005 as written by respondent no. 2.

9. It is further submitted on behalf of the petitioner that for pursuing his higher studies the petitioner was compelled to take some extra leaves that is for a period of 36 days which has been declared as unauthorised leave by the respondent no. 4 for which his salary for 36 days have been deducted and/or not paid. Drawing attention to the Annexure-P9 at page no. 35 of the writ petition, it is contended by Mr. Sanyal that in the said letter dated 13.07.2005 it has been specifically mentioned that in the event the writ petitioner takes any leave for his study, same would be deducted from his credited leave since the writ petitioner would not get any study leave or special leave for pursuing his higher education. Drawing attention to Rule 174 of Chapter XI of WBSR (Part – I) it is submitted by Mr. Sanyal, learned Advocate for the writ petitioner that even if no leave was found to be credited in the account of a Government employee the competent authority may debit such excess leave against half pay leave which a Government employee may earn subsequently.

10. It is, thus, contended by Mr. Sanyal that the respondents/authorities instead of deducting and/or not

paying 36 days pay ought to have exercise their discretion as per the provision of Rule 174 as mentioned (Supra).

11. Drawing further attention of this Court to the supplementary affidavit as filed today, it is contended by Mr. Sanyal that the respondents/authorities had not only deducted the salary of the present writ petitioner for 36 days but also his one increment has been stopped without assigning any reason whatsoever.

12. For effective adjudication of the instant writ petition this Court proposes to have a look to Rule 174 of Chapter XV of WBSR (Part-I) and the same is reproduced hereinbelow in verbatim:

“174. (1) Save in the case of leave preparatory to retirement, “leave not due” may be granted to a Government employee in permanent or temporary employ subject to the following conditions:-

(a) the authority competent to grant leave is satisfied that there is reasonable prospect of the Government employee returning to duty on its expiry,

(b) leave not due shall be limited to the half-pay leave he is likely to earn thereafter,

(c) leave not due during the entire period of service shall be limited to a maximum of 360 days, out of which not more than 90 days at a time and 180 days in all may be otherwise than on medical certificate,

(d) leave not due shall be debited against the half-pay leave the Government employee may earn subsequently.

(2)

(3)

(4)”

13. It is undisputed that while permitting the writ petitioner to pursue his higher studies, the respondent no. 2 has imposed the following three conditions:

“(i) Shri Ghosh will give an undertaking that his normal official duties will not be hampered during the training.

(ii) Shri Ghosh will not get any study leave or special leave for the training period. Leave will be deducted from his credited leave.

(iii) Shri Ghosh will also execute a bond to the effect that he will not claim higher post or scale of pay or any allowances for the course in further.”

14. It is also not in dispute that for some reason or other may be for pursuing his higher education, the writ petitioner had taken 36 excess days of leave which according to the respondents/authorities are unauthorised and for which the writ petitioner was not paid. However, while not paying the said portion of the pay and/or while deducting 36 days of pay from the entitlement of the writ petitioner the respondents/authorities have assigned no reason as to why the provision of Rule 174 of Chapter XV of WBSR (Part-I) shall not be made applicable to the writ petitioner.

15. Though copy of the supplementary affidavit as filed today has been served upon the respondents/authorities but the respondents/authorities have not chosen to

appear before this Court with a cogent explanation as to why one increment of the writ petitioner has not been capable.

16. Such being the position, this Court while disposing the instant writ petition directs the respondent no. 2, i.e., the Director, Mass Education Extension Department, West Bengal, Bikash Bhawan Salt Lake, Kolkata – 700091 to consider a copy of the instant writ petition along with its all annexures and the copy of the supplementary affidavit as filed today as a representation of the writ petitioner with a further direction to the respondent no. 2 to give an opportunity of hearing to the present writ petitioner and to come to a logical finding in writing in the light of the provision of Rule 174 of Chapter XVII of WBSR (part-I).

17. The entire exercise that is consideration of the representation, giving opportunity of hearing to the writ petitioner and/or his learned Advocate and passing a reasoned order shall have to be completed within a month from the day of communication of this order along with a copy of the instant writ petition together its all annexures and the copy of the supplementary affidavit.

18. It is further directed that a soft copy of the said reasoned order shall have to be communicated/forwarded to the petitioner through email for which the writ petitioner is directed to provide his email account details to the respondent no. 2 while communicating the order of this Court.

19. With the aforementioned observation, the instant writ petition being WPA 21544 of 2005 is allowed and disposed of.

20. Parties to act on the server copies of this order.

21. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)