

(2023) 12 J&K CK 0027

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 1155 Of 2009, IA No. 01, 2307 Of 2009

Abdul Rahim Ganai

APPELLANT

Vs

State Of JK And Others (SRTC)

RESPONDENT

Date of Decision : 19-12-2023

Acts Referred:

Citation : (2023) 12 J&K CK 0027

Hon'ble Judges : Sindhu Sharma, J

Bench : Single Bench

Advocate : Molvi Ajaz, Shakir Haqani

Final Decision : Allowed

Judgement

Sindhu Sharma, J

1. Petitioner was working as Orderly in the State Road Transport Corporation, when a charge sheet dated 29.04.2008 was served upon the petitioner for remaining absent unauthorizedly from duty w.e.f 07.07.2007. The petitioner replied to the charge sheet stating that he had fallen ill on 07.07.2007 and rushed for treatment, as such, was on bed rest and he reported to duty after remaining absent.

2. Respondents considered the reply of the petitioner and General Manager, Adm. passed an order dated 18.10.2008, vide which considering the medical certificate produced by the petitioner granted post facto sanction for 46 days half pay leave on medical grounds, to be computed to 23 days full paid leave w.e.f. 07.07.2007 to 31.07.2007 and from 01.08.2007 to 30.05.2008 as on duty. The Board of Directors of the Corporation approved the Golden Handshake Scheme and was duly circulated vide Order dated 21.10.2018. The petitioner was entitled to the benefits of Golden Handshake Scheme, as such, advised him to submit his written consent to the office of the respondent-DFA Vigilance Officer J&K SRTC vide his communication dated 25.10.2008.

3. The petitioner submitted his written consent for the Golden Handshake Scheme. According to the petitioner the respondents again issued a communication dated 29.01.2009 stating that the petitioner has been negligent in discharge of his duty and sought his explanation before taking action as warranted under rule. Thereafter, the respondents vide order dated 12.01.2009, rescinded the earlier order dated 18.10.2008, vide which the sanction was accorded for grant of 46 days leave to the petitioner and the charge sheet had been settled. The petitioner was attached to the Administrative Section for facing enquiry.

4. The Deputy Financial Advisor subsequently issued another communication dated 09.02.2009, stating that the petitioner is not eligible for the purpose of Golden Handshake/Voluntarily Retirement in view of the fact that he is facing an enquiry and his intervening period is yet to be decided. The respondents issued an impugned order on 29.07.2009, vide which while granting post facto sanction to the grant of 50 days half pay leave on medical grounds and commuting of 25 days full pay leave w.e.f from 07.07.2007 to 31.07.2007 and rest of the period involved w.e.f 01.08.2007 to 31.10.2008 was treated as dies non.

5. The petitioner is aggrieved of the order of rescinding of the earlier order dated 12.01.2009, as well as the order vide which the leave of the petitioner has been decided and period from 01.08.2007 to 31.10.2008 has been treated as dies non. The grievance of the petitioner is that the respondents have passed the order of rescinding of the earlier order as well as the order dated 29.07.2009, without issuing any notice and without giving him any opportunity of hearing. The respondents had settled the earlier period of absence of the petitioner in terms of the order dated 18.10.2008, therefore, there was no occasion to re-open the same. The respondents have passed the order on 29.07.2009 without holding any enquiry and without giving any opportunity of hearing to the petitioner. The petitioner had also not been paid the salary for the period. The petitioner thus seeks quashing of Order No. JKSRTC/ EC-III/2395 dated 12.01.2009 vide which order dated 18.10.2008 was rescinded as well as order dated 29.07.2009 since the period of the petitioner's absence has been settled vide order dated 08.10.2008.

6. The respondents in their objections have submitted that the order dated 18.10.2008, vide which sanction was accorded and period of absence of the petitioner was settled on medical grounds was disputed by the petitioner who requested the Corporation for conducting the fresh enquiry and accordingly, a fresh enquiry was ordered to be held by the Corporation. It is submitted that the enquiry Officer in terms of his finding had reported that the attendance register was subjected to tempering and interpolation and manipulation so far as the petitioner was concerned. The period of absence was re-examined and re-considered leading to an order dated 29.07.2009. It is also stated that since the petitioner was facing disciplinary proceedings he was not entitled to be considered under the Golden Handshake Scheme. The period w.e.f 01.08.2007 to

31.10.2008, has been validly treated as Dies non on proper application of mind.

7. Perusal of the record reveals that there is no such request made by the petitioner for re-opening or conducting of enquiry for his absence as the period of absence had already been settled vide order dated 08.10.2001 which was accepted by him. In fact the respondents while considering the case of the petitioner for Golden Handshake Scheme considered the case for calculation of ex-gratia but the respondents, thereafter, decided to cancel the order dated 18.10.2008 and decided to re-examine and review the case. The Deputy Financial Advisor Vigilance observed that the original attendance record was tampered and proposed that period w.e.f. 07.07.2007 to 31.10.2008 be treated as Dies Non. This recommendation was accepted and the order dated 29.07.2001 was issued treating period from 01.08.2007 to 31.10.2008 as Dies Non.

8. There is no enquiry report on the record to show that the respondents have conducted an enquiry and provided any opportunity of hearing to the petitioner before rescinding the order dated 18.10.2008 or issued order dated 29.07.2009. The respondents by way of the impugned order have treated the period from 01.08.2007 to 31.10.2008 as dies non and the petitioner will not be entitled to the benefit of the period for absence for the purpose for financial upgradation and the same will be considered as interruption of the service for the purpose of pension. This order has affected the petitioner harshly and the same has been done in an arbitrarily and unreasonable manner.

9. The respondents in their objections have stated that the petitioner disputed the earlier order dated 18.10.2008 and requested for conducting fresh enquiry whereas as per record, the respondents directed to cancel the order on noticing certain discrepancies while considering the case of the petitioner. The respondents had settled the period of absence vide order dated 18.10.2008 and there was no occasion to rescind the same. Thereafter if the respondents wanted to rescind the order before doing so, it was incumbent upon them to provide an opportunity of hearing to the petitioner and at least before passing order dated 29.07.2009 vide which the period w.e.f 01.08.2007 to 31.10.2008 was treated as Dies Non as the petitioner would not be eligible for allowance or be counted for retiral benefits. As per the order dated 12.01.2009, the petitioner was also attached for facing enquiry but there is nothing on record to show any enquiry proceedings were held.

10. The order adverse to the employee for willfully remaining absent after expiry leave cannot be passed without initiated any disciplinary proceedings. The respondent is competent to direct the period of willful absence be treated as Dies Non but it would be as a measure of penalty and such order cannot be passed without holding enquiry and providing opportunity of hearing to the petitioner.

11. In view of the aforesaid facts and circumstances, the impugned orders dated 12.01.2009 and 29.07.2009 are arbitrary and unreasonable and have been passed without following the principles of natural justice, therefore, require to be

set aside.

12. Accordingly, this petition is allowed. Orders dated 12.01.2009 and 29.07.2009, are set aside and consequently order dated 18.10.2008 stands revived. The petitioner will be entitled to consequential benefits in terms of order dated 18.10.2008.

13. Record be returned to learned counsel for the respondents.