

(2016) 07 PAT CK 0121

In the Patna High Court

Case No : Letters Patent Appeal No.2011 of 2010 in Civil Writ Jurisdiction Case
No. 16337 of 2010

Arun Kumar Singh

APPELLANT

Vs

Central Bank of India

RESPONDENT

Date of Decision : 28-07-2016

Acts Referred:

Citation : (2016) 4 PLJR 672

Hon'ble Judges : Mr. Navaniti Prasad Singh and Smt. Nilu Agrawal, JJ.

Bench : Division Bench

Advocate : Mr. Yogesh Chandra Verma, Ser. Advocate and Mr. Ansul, Advocate,
for the Appellant; Mr. Ajay Kumar Sinha, Advocate, for the Respondents

Final Decision : Allowed

Judgement

Mr. Navaniti Prasad Singh, J.(Oral) - This intra-court appeal is from the order of the learned Single Judge dated 29.09.2010, passed in C.W.J.C. No. 16337/2010 (Arun Kumar Singh v. The Central Bank of India and others) by which the writ petition filed by the appellant-writ petitioner was dismissed virtually in limine holding that he was not entitled to get the benefit of privilege leave (earned leave) though he has been paid full salary for the period in question.

2. We regret not to agree with the order of the learned Single Judge for the reasons recorded hereunder.

3. The writ petitioner-appellant was an employee in the Central Bank of India (for short the Bank). Pursuant to a disciplinary proceeding he was dismissed from service. His departmental appeal was also dismissed but ultimately this Court in a writ proceeding allowed the writ petition with a direction that he would be reinstated in service with all consequential benefits. This was an order passed in C.W.J.C. No. 10820 of 1992 being judgment dated 29.10.1997. It appears that the Bank though reinstated the writ petitioner-appellant and also granted him notional promotion, which was due during the period of his dismissal, but refused

to grant him actual financial benefits for the said period. This forced the writ petitioner-appellant to file another writ petition being C.W.J.C. No. 9487 of 2003 which was heard and allowed by judgment and order dated 10.07.2009 in which it was clearly held that when this Court in the first round of litigation held the dismissal to be wrong and directed reinstatement with all consequential benefits then it would be deemed as if the writ petitioner-appellant had never been dismissed and continued in service. That being so, mere grant of notional promotion serves no purpose. Accordingly, directions were issued to make full payment with regard to the promotional avenue as well. Orders passed in both the writ petitions attained finality.

4. Now when the writ petitioner-appellant sought for his privilege leave account (earned leave account) he found that no privilege leave was credited to his leave account for the period he remained out of service. He made a representation. Bank took the stand that as the privilege leave of one day had to be granted for every 11 days active service, he not having been in active service was not entitled to the grant and accumulation of privilege leave for that period. This was then challenged again by the present writ petition being C.W.J.C. No. 16337 of 2010 and as noted above was virtually dismissed in limine by order dated 29.09.2010. Hence, this appeal.

5. We have heard learned counsel for the writ petitioner-appellant as well as learned counsel for the Bank and perused the records.

6. Apparently, as before the learned Single Judge so in this intra-court appeal learned counsel for the Bank has relied upon the Leave Rules of the Bank employees and in particular Clause 17 which deals with privilege leave, which is quoted hereunder :

"17. The amount of privilege leave earned, which shall be on substantive pay, shall be one day for 11 days" active service, provided that for crediting privilege leave from the calendar year 2001 fraction of a day of earned leave, if any, shall be taken as full day. Such calculation is to be done only for the limited purpose of calculation of entitlement. The workmen will be eligible to avail of such leave only after completion of 11 months" completed service. For calculating the number of days of active service for the purpose of privilege leave, all types of leave availed, except casual leave, will be excluded. Privilege leave accruing to an employee on or after 1.1.1990 can be accumulated upto a maximum of 240 days."

7. With reference to the aforesaid, it is submitted that the expression used therein is one day for 11 days active service, therefore, unless an employee is in active service, he cannot be entitled to privilege leave or accumulation thereof. In our view, that would be putting the cart before the horse. Once it was held by this Court in the first round of litigation that the order of dismissal could not be sustained and he had to be reinstated in service with all consequential benefits, which was again explained in the second round of litigation clearly holding that

the employee being ready to work he was prevented by the management from working. The employee cannot suffer much-less on ground of "no work no pay". That is also the law as per our understanding as laid down in the case of Union of India v. K.V. Jankiraman since reported in AIR 1991 SC 2010. That being the position, again saying that as the writ petitioner-appellant was not in active service he would not be entitled to privilege leave, would be travesty of justice. Bank kept him out of duty. When his reinstatement was ordered by this Court with all consequential benefits, it goes without saying that he would be deemed to be in service all along. Deemed to be in service is not different from active service otherwise it would be like saying that since I have kept you out wrongly, you have to suffer the consequences. That can never be the situation. Thus, when this Court directed reinstatement with full and all consequential benefits, which order attained finality a decade back, we see no reason why and how the writ petitioner-appellant can be deprived of privilege leave or its accumulation.

8. Accordingly, order passed by the learned Single Judge in the writ petition is set aside. Appeal is allowed. Respondent-Bank is directed to forthwith credit full privilege (earned) leave entitlement for the period during which the writ petitioner-appellant remained out of service and allow its consequential encashment in accordance with Rule 42 of the Leave Rules.