
(2015) 03 TP CK 0012
In the Tripura High Court
Case No : Writ Petition(C) No. 193 of 2014

Binoy Bhushan Debnath

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 03 TP CK 0012

Hon'ble Judges : S.C. Das, J.

Bench : Single Bench

Advocate : A. Bhowmik, for the Appellant; A.S. Lodh, Addl. G.A., Advocates for the Respondent

Final Decision : Disposed off

Judgement

S.C. Das, J.—By filing this writ petition under Article 226 of the Constitution of India the petitioner alleged that the respondents have withheld his salary from the month of November, 2012 without having reasonable cause and therefore prayed for direction to the respondents to release his salary with effect from November, 2012 on regular basis.

2. The matter is taken up at the admission stage for hearing and disposal.

3. Heard learned counsel, Mr. A. Bhowmik for the petitioner, learned Addl. G.A., Mrs. A.S. Lodh for respondent No. 1 and learned counsel, Ms. R. Purakayastha for respondent Nos. 2 to 5.

4. The petitioner, inter alia, contended that he entered into service under the respondent No. 1 as a Junior engineer in the month of December, 2003 and thereafter he also got promotion to the post of Assistant Engineer with regular pay scale in the Pay Band of Rs. 13575-37000/- with Grade Pay of Rs. 4500/- as per Notification dated 07.01.2013 (Annexure-P/1 to the writ petition). While he was posted as a Senior Manager of Belonia Electrical SubDivision, on 01.10.2012 at about 12.30 p.m. there was an electrical accident at Bankar under Belonia

Electrical Sub-Division and on hearing about the accident he along with staff went to the spot and at that time an unruly mob attacked him and his staff and as a result he received internal injuries and was not in a position to move temporarily. He could not attend his office from 02.10.2012 to 05.10.2012. On 05.10.2012, he sent a report on the incident of 01.10.2012 to respondent No. 4 but the respondent No. 4 instead of showing sympathy asked him to explain as to why he was absent from duty from 03.10.2012 to 05.10.2012. After receiving the show cause notice, dated 05.10.2012 the petitioner submitted his reply on 05.10.2012(Annexure-P/4 to the writ petition) and the petitioner also made prayer for leave of the period from 02.10.2012 to 05.10.2012 but his leave application was returned by the respondent No. 4 asking him to resubmit the same.

4.1. It is further contended by the petitioner that by writing letter dated 05.12.2012 respondent No. 4 asked him to appear before Chairman of Inquiry Committee on 07.11.2012 and otherwise the matter will be viewed seriously. By Memo. dated 26.07.2013(Annexure-P/7 to the writ petition) he was transferred from Belonia Electrical Sub-Division to the office of Deputy General Manager, Electrical Division-VI, Bagafa and accordingly he handed over the charge to Sri Babul Baidya and joined his new place of posting on 22.08.2013.

4.2. It is also contended that respondent No. 4 by issuing a Memo. dated 05.02.2013 asked him to explain his unauthorized absence from duty with a caution that failing to explain, disciplinary action will be initiated against him. It is the case of the petitioner that respondent No. 4 was not his disciplinary authority and so was not authorized to issue Memo. dated 05.02.2013. Thereafter on 27.08.2013 two letters were issued by respondent No. 4 as to why he was absent from duty without authorization and that there was a shortage of fund of Rs. 1,80,629/-. Both those letters dated 27.08.2013 annexed as Annexure-P/11 and Annexure-P/12 to the writ petition.

4.3. It is the case of the petitioner that from the month of November, 2012 his salary has been withheld and he has not received any salary for eighteen months with effect from November, 2012 and therefore he approached the Court for necessary direction to pay his salary. He has also submitted his salary certificate of the month of August, 2012 and also contended that there was no disciplinary proceedings drawn up against him and so the respondents should not have withheld his salary. He has also submitted a copy of his salary account marked as Exbt.P/14. He prayed for directing the respondents to pay his monthly salary w.e.f. November, 2012 and further prayed for restraining the respondents from withholding his monthly salary.

5. Respondent No. 1 did not submit any counter affidavit. Respondent Nos. 2 to 5 submitted a joint counter affidavit inter alia contending that the promotion order of the petitioner was issued with the stipulation that he will be treated as promoted as soon as he joins to his new assignment but the petitioner did not join his new assignment and therefore he could not be treated as promoted. He

was once suspended in the year 2004 since his performance was not at all satisfactory. It is contended by the respondents that the medical certificate submitted by the petitioner with his leave application was confusing since he alleged to have sustained injury on 01.10.2012 whereas he attended the doctor on 08.10.2012. He did not submit any leave application for the period from 03.10.2012 to 05.10.2012 and since he did not hand over his charge also for the period from 03.10.2012 to 05.10.2012 he was asked to explain the reasons for his absence during the period. It is also contended by the respondents that on 05.10.2012 he applied for grant of leave for the period from 02.10.2012 to 05.10.2012 to be adjusted from his earned leave account but he submitted one earned leave application praying for grant of 30 days earned leave w.e.f. 11.10.2012 to 10.10.2012 with no mention of grant of leave for the period w.e.f. 03.10.2012 to 05.10.2012. So grant of leave for the period from 03.10.2012 to 05.10.2012 was left pending. Moreover, he did not submit any medical certificate towards illness as well as his fitness certificate for the period from 06.10.2012 to 10.10.2012. Taking a sympathetic approach his leave application was returned since the same was erroneous and he was asked to resubmit the same with necessary medical certificates. In respect of the electrical accident occurred at Bankar an inquiry committee was constituted and he was asked to remain present before the inquiry committee with all necessary papers and documents to facilitate the enquiry but he did not appear before the inquiry authority. It is contended by the respondents that the salary of the petitioner could not be paid to him due to some obvious reasons. The petitioner was absent from duty without prior intimation to the authority and he was absent from duty from 03.10.2012 to 18.08.2013 which is a long period and he could neither show any medical certificate in regard to his hospitalization even for a single day nor submitted any proper leave application in prescribed form. He was not observing any official formality or procedure rather he was all through whimsical, desperate and negligent. The respondents by all means tried to communicate him and even tried to contact him through their office peon so that he could clarify his stand but he every time refused to receive any letter from the respondents' side. Finding no other alternative one letter was sent by registered post by the respondent No. 4 to the petitioner to know the reasons of his long absence from office but that letter also was not received by the petitioner. Since the leave applications of the petitioner on medical ground have various irregularities and illegalities, so those leave applications were sent to the Medical Board on 10.03.2014 and the Medical Board declared that in absence of proper documents, his 316 days leave w.e.f. 06.10.2012 to 18.08.2013 was not justified. It is also contended that the petitioner joined the office of respondent No. 5, i.e. the Deputy General Manager, Electrical Division No. VI, Bagafa on 22.08.2013 and from 22.08.2013 to 23.06.2014, i.e. out of 306 days he had worked only 100 days and out of those 100 days, 99 days salary have been paid to him by office bill No. 20 dated 31.05.2014 through his bank account and mistakenly one day's salary, i.e. of 31.03.2014 was not paid to him due to oversight and that one day's salary will be paid to him. It is the stand of the

respondents that the petitioner habitually used to remain authorizedly absent and therefore four letters dated 13.11.2013, 09.12.2013, 02.05.2014 and 17.06.2014 were issued to him by the respondent No. 5 but out of those letters he submitted explanation only in respect of one letter regarding his absence for the period from 03.10.2013 to 22.10.2013 and 24.10.2013 to 30.01.2013 and he did not respond to the other letters. Though he is holding a responsible post but is negligent in his duty and the respondents were trying to somehow accommodate the petitioner though disciplinary proceedings could have been drawn for unauthorized absence or that the absence period could have been treated as dias non. The petitioner is reluctant and is not entitled to any relief as prayed for.

6. It is not disputed that the petitioner did not get his salary from the month of November, 2012. It is evident from the pleadings of both side that for the period from 03.10.2012 to 05.10.2012 the petitioner made application for earned leave but that application was returned and there is nothing in the pleadings as to whether the petitioner subsequently made any application for that period or not. The contention of by the respondents in their counter affidavit regarding absence of the petitioner from duty on different spell has not been controverted by the petitioner by filing any rejoinder affidavit. It is therefore evident that from the last part of 2012 till the date of filing of the writ petition the petitioner was absent from duty on different spell and he made leave applications but those leave applications were neither granted nor rejected. If a public servant remains absent from duty without authority it amounts to a serious misconduct and for that misconduct the disciplinary authority is bound to take action against the erring public servant. If the petitioner was frequently absent from duty without any authority, or sanction from the appropriate superior authority the respondents were under obligation to initiate legal action against the petitioner. The respondents, whereas, did not initiate any disciplinary action for misconduct but withheld his salary. Withholding of salary, without due process of law, amounts to a punishment which is not permissible. The respondents should not have withheld his salary save and except due process of law. The respondents would deal with the petitioner, for any alleged absence from duty unauthorizedly, according to law and would make payment of his salary for which he was entitled without any break. From the pleadings of the respondents it is clear that the petitioner was absent from duty on different spell and the petitioner submitted leave application with medical certificate and those medical certificates were sent to the medical board for opinion and that those leave has not been regularized as yet. The respondents are bound and are under obligation to regularize the leave period of the petitioner according to rules and cannot keep it pending for uncertain period and thereby withheld the pay of the petitioner. The petitioner also shall submit appropriate leave application for the period of absence including that of the period from 03.10.2012 to 05.10.2012 and also for any other period for which appropriate leave application has not been filed.

7. The writ petition therefore is disposed of with the direction to the petitioner to

submit appropriate leave application for the period from 03.10.2012 to 05.10.2012 and also for any other period for which leave application has not been filed and the respondents are directed to regularize the period of absence of the petitioner according to rules within 30(thirty) days from today and thereafter to make payment of salary to the petitioner for the period from November, 2012 and upto date.