
(2013) 11 MP CK 0098
In the Madhya Pradesh High Court
Case No : Writ Petition No. 7813 of 2003

Daya Shankar Sakyawar

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 28-11-2013

Acts Referred:

Citation : (2013) 11 MP CK 0098

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Vivek Jain, for the Appellant; Sangita Pachauri, Deputy Government Advocate for the State, for the Respondent

Final Decision : Disposed Off

Judgement

Sujoy Paul, J.—Since the matters are inter-connected, on the joint request of the parties were analogously heard and decided by this common order. In WP No. 7813/2003 the petitioner has prayed for grant of salary from 27.6.2000 to 24.6.2002. It is further prayed that earned leave sanctioned by Annexure A-6 dated 26.4.2002 be converted as medical leave. Subsequently, by amending the petition, the punishment order dated 22.1.2007 and the appellate order dated 15.10.2009 are also called in question.

2. In WP No. 694/2009 the petitioner has prayed for a direction to pay salary to him for the months of July, August and September, 2000 as per pay bill, Annexure P-6, with interest.

3. Shri Vivek Jain, learned counsel for the petitioner, submitted that the petitioner was absent for some time. Thereafter, by order Annexure A-VII(d) dated 6.7.2000, the petitioner's joining report was not accepted and it was directed that the petitioner should join with fitness certificate of the doctor. It is contended that Annexure P-6 in WP No. 694/2009 shows that the "Establishment Pay Bill" for the period in question was already passed. Shri Jain submits that once that bill is passed, it is clear that the period in question stood regularized.

The attention is drawn on internal page 5 of the punishment order dated 22.1.2007. Against the heading "Charge No. 1", it is mentioned that the payment has been made from 1.7.2000 to 30.9.2000. In other words, it is mentioned that the said period is regularized by granting leave. The contention is two fold. Firstly, once that period is regularized by granting leave, there is no question of treating the said period as unauthorized absence. Secondly, for said period once leave is granted and amount is sanctioned by way of pay bill, there is no justification in not making the actual payment.

4. Prayer is opposed by the other side.

5. No other point is pressed by learned counsel for the parties.

6. I have heard learned counsel for the parties.

7. In view of the stand of the parties, there appears to be an anomaly in the matter. On one hand, the respondents have proceeded against the petitioner for alleged unauthorized absence from 27.6.2000 to 24.6.2002 and, on the other hand, they have prepared a pay bill and gave a finding in punishment order dated 22.1.2007 that the said period is regularized by granting leave. If the period is regularized by granting leave, the question is whether it can be a subject matter of disciplinary proceedings. Whether after granting leave, for the same period employee can be held guilty for an allegation of unauthorized absence.

8. In the considered opinion of this Court, the petitioner should have raised these points in the appeal memo. The appellate order does not indicate that the petitioner has raised these points in appeal memo. The petitioner has not chosen to file his separate appeal in the proceedings.

9. However, in view of aforesaid factual backdrop, I find substance in the contention of Shri Jain, which needs to be considered by the authorities. Resultantly, I deem it proper to set aside the appellate order and remand the matter back to the appellate authority to consider following aspects:-

(i) Whether the period from 27.6.2000 to 24.6.2002 is regularized by granting leave to the petitioner. If yes, whether the respondents can proceed against the petitioner after grant of leave for the allegation of unauthorized absence?

(ii) Whether Establishment Pay Bill (Annexure P/6 in WP No. 694/2009)) is properly passed. If yes, whether payment is due in favour of the petitioner?

10. The Appellate Authority shall apply its mind minutely and pass appropriate orders within four months from the date of production of certified copy of this order. The appellate order dated 15.10.2009 without considering the aforesaid aspect is set aside. The Appellate Authority shall pass fresh appellate order in accordance with law and by addressing on the aforesaid points within the aforesaid time. Outcome and benefit (if any) arising thereto be passed on to the petitioner within four months. Petition stands disposed of. No costs.