
(2011) 07 AHC CK 0353

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 28716 of 2006

Dr. Krishna Nand Pandey

APPELLANT

Vs

Director North Central Zone Cultural Centre and another

RESPONDENT

Date of Decision : 21-07-2011

Acts Referred:

Citation : (2011) 131 FLR 518 : (2011) 3 UPLBEC 2299

Hon'ble Judges : Krishna Murari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Krishna Murari, J.—Heard learned Counsel for the petitioner and Sri Jagdev Singh for the respondents.

2. Pleadings have been exchanged between the parties and with the consent of the learned Counsel for the parties, the writ petition is being disposed of finally.

3. Facts are that petitioner is an employee of North Central Zone Cultural Centre, Allahabad working on the post of Assistant Programme Officer. Vide order dated 5.7.2005 he was transferred to Madhya Pradesh Adivasi Lokkala Academy, Bhopal. The order was put to challenge by the petitioner by filing writ petition No. 48847 of 2005. Initially vide order dated 19.7.2005 this Court passed an order to the effect that the petitioner shall not be compelled to join at Bhopal (Madhya Pradesh) and status-quo as of today with regard to the service of the petitioner shall be maintained. A specific case was set up by the respondents in the said writ petition that the petitioner has not been actually transferred to Bhopal neither he has been relieved from his service from North Central Zone Cultural Centre, Allahabad. He has been only asked to go Bhopal to do such thing as may be necessary, incidental or conducive to the attainment of the objectives of the Society which would be intimated to him from time to time though nothing specific has been said in the impugned order.

4. Learned Counsel appearing for the respondents in the said writ petition during

the course of argument admitted that the word "relieved" should not be read permanently in its normal meaning from the Central Zone and that the word "attachment" in the impugned order refers to only his reporting on duty at Bhopal through the Director of Bhopal Academy. It was also admitted that the petitioner shall be paid salary from Central Zone and shall also be paid entire other emoluments to which he would be entitled under the Rules for performing duties out of station. In view of the stand taken by the respondents in the said writ petition, this Court disposed of the same with the direction that the petitioner shall report to the Director, Central Zone, Allahabad within 48 hours and the respondents shall thereafter broadly assign the work which the petitioner has to perform while on duty for which he is being sent to Bhopal. In pursuance of the fresh assignment, the petitioner shall attend his duties at Bhopal Zone within 15 days. In respect of the grievance of the petitioner that he has not been paid salary for the period, he was permitted to move representation before the respondents who in turn were directed to dispose of the same by a speaking order within a period one month.

5. In pursuance of the aforesaid order, the petitioner is stated to have reported to the Director, Central Zone, Allahabad and thereafter, he was assigned work to be performed by him at Bhopal. With regards to the arrears of salary, he made a representation which was dismissed on the ground that after passing of the order dated 5.7.2005 since he was relieved from Central Zone Cultural Centre, Allahabad on 6.7.2005 and he did not join at Bhopal as such on the basis of the principle "No Work No Pay", he was not entitled to payment of arrears of salary. Aggrieved by the same, the petitioner, has approached this Court.

6. Admittedly, in writ petition No. 48847 of 2005 challenging the order dated 5.7.2005 by which he was transferred to Bhopal, this Court passed an order dated 19.7.2005 directing that the petitioner shall not be compelled to join at Bhopal. In paragraph 19 of the writ petition, it has been categorically asserted that despite interim order passed by this Court, the respondents intentionally did not permit the petitioner to join the duty at Allahabad. Reply to the averments made in paragraph 19 of the writ petition is contained in paragraph 14 of the counter affidavit. There is no specific denial to the averments that petitioner was not permitted to join at Allahabad. It has been stated in the said paragraph that the petitioner has either failed to understand the meaning of the judgment dated 21.2.2006 or he is trying to misinterpret the decision. During the period commencing 6.7.2005 to 22.2.2006 the petitioner has neither worked anywhere nor intended to do so as such his absence from work is willful for which he cannot be paid. Interim order dated 18.7.2005 is clear enough that during the period of absence, the petitioner was relieved from Allahabad office and it is his admission that he did not join at Bhopal under the umbrella of the interim order. These averments in the counter affidavit clearly demonstrate there is no denial by the respondents to the categorical averments made by the petitioner that they intentionally did not permit him to join the duty at Allahabad after he obtained the interim order. Interim order of this Court clearly provided that the

petitioner shall not be compelled to join at Bhopal. In effect it would mean that the petitioner would be permitted to continue at Allahabad.

7. Learned Counsel for the respondents has placed reliance upon the judgment of the Hon''ble Apex Court in the case of State of Rajasthan and Another Vs. Mohammed Ayub Naz, , in support of the contention that the petitioner is not entitled to payment of any arrears of salary on the principle of "No Work No Pay". In the said case the question for consideration before the Hon''ble Apex Court was with respect to the proportionality of punishment inflicted upon the employee during disciplinary proceeding and in context of the fact that the employee absented himself for three years without intimation to the Government the Court held that a deliberate absence for a period three years was in violation of the service Rules which contemplated removal from service and thus the employee would not be entitled to back wages and other emoluments for the period he was absent. The case in hand is clearly distinguishable on facts. Here it was the respondent authorities themselves who did not permit the petitioner to join despite interim order passed by this Court operating in his favour. In the case of Commissioner, Karnataka Housing Board v. C. Muddaiah, (2007) 7 SCC 689, it has been held that if in a given case, it was found that the person was willing to work but was illegally and unlawfully not allowed to do so then a direction can be issued to the authority to grant that person all benefits considering as if he had worked. In view of the facts narrated above, irresistible conclusion is that the petitioner after obtaining interim order from this Court was not permitted by the respondent authorities themselves to join and work at Allahabad. As such it cannot be said that he deliberately and intentionally absented himself so as to deprive him from the wages of the period. Since it was the respondent authorities themselves who did not allow the petitioner to join he would be entitled to payment of back wages for the period.

8. In view of above facts and discussions, the impugned order dated 20.3.2006 passed by the Director, North Central Zone Cultural Centre, Allahabad impugned in this petition is not liable to be sustained and is hereby quashed.

9. Writ petition stands allowed with the direction the petitioner would be entitled to payment of entire back wages and all consequential benefits for the period 5.7.2005 to 21.2.2006.