(2008) 03 PAT CK 0083

In the Patna High Court

Case No : LPA No. 810 of 2007

Dr. Sunil Kumar APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 17-03-2008

Acts Referred:

Citation : (2008) 03 PAT CK 0083

Hon'ble Judges : C.M. Prasad, J;Barin Ghosh, J

Bench : Division Bench

Advocate : Dhirendra Kumar Munna and V.K. Pandey, for the Appellant; Manu Shanker Mishra and Rajnikant Mishra, for the Respondent

Final Decision : Allowed

Judgement

1. Heard. On 18th November, 1990, the appellant joined as Civil Assistant Surgeon. On 27th September, 1991 ''he was relieved from his duties in order to undertake higher studies in the subject relevant to the appointment that was given to him. He returned on 2nd September, 1993. The absence of the petitioner from service from 27th September, 1991'' to 2nd September, 1993 for undergoing such higher studies has been treated by an order dated 1st June, 2006 as on extraordinary leave with a rider that the same shall not qualify for the purpose of pensionary benefits. This order dated 1st June, 2006 was the subject matter of challenge in the writ petition filed by the appellant. A learned Single Judge, who dealt with the writ petition took note of Rule 243 of the Bihar Service Code and found that in order to be eligible for extraordinary leave upto two years ordinarily and up to three years in very special circumstances, a temporary Government Servant must have worked in the Government continuously for a period exceeding one year and is proposing to utilize the period of such extraordinary leave for the purpose of undergoing an approved course of study or training. The learned Judge found that in view of the said provision, the petitioner was not entitle to extraordinary leave, for at the time of obtaining such leave, he had not completed discharge of Government duties for

one year continuously. The learned Judge found that since the petitioner was not entitle to such leave, grant of such leave would not be counted for pensionary benefits is not interfereable.

2. Extraordinary leave will entail payment of salaries and allowances have not been provided in the Service Code. The Service Code, however, entails payment of salaries and allowances for other kinds of leave dealt with in the service Code. At the same time, Rule 93 of the Bihar Pension Rules, 1950 has provided that time passed on leave without allowances does not count for pension. In such view of the matter, a dispute cropped up as to whether a Government employee on extraordinary leave is entitle to count the time spent on such leave for pension or not. The Government by an order dated 4th September, 1962 decided that all kinds of leave, including extraordinary leave will count for pension without any restriction with effect from 1st August, 1962. Therefore, in the event it is decided to grant extraordinary leave to a Government employee, in view of the decision of the Government dated 4th September, 1962, if such leave has been granted after 1st August, 1962, such leave shall count for pension without any restriction. In such view of the matter, even if, in view of Rule 243 of the Code, the appellant was not entitled to extraordinary leave for the period spent by him for the purpose of undergoing study for the period between 27th September, 1991 and 2nd September, 1993, but while granting extraordinary leave to the petitioner for the said period, in view of the aforementioned decision of the Government, a rider could not be put that the period spent on such leave shall not be counted for pensionary benefits. In such view of the matter, we allow the appeal and set aside the Judgment and Order under appeal and at the same time allow the writ petition by quashing that part of the impugned order by which while granting extraordinary leave for the period, as above, it was decided that the said period shall not be counted for the purpose of pensionary benefits.