
(2003) 01 GAU CK 0044
In the Gauhati High Court
Case No : WP (C) No. 584 (AP) of 2001

Hage Bida

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 07-01-2003

Acts Referred:

Central Civil Services (Leave) Rules, 1972 — Rule 12

Citation : (2003) 1 GLR 404 : (2003) 2 GLT 6

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : N. Grayu, for the Appellant; B.L. Singh, Sr. G.A., for the Respondent

Judgement

Iqbal Ahmed Ansari, J.—Will continued absence from duty of a Government employee for a period of almost seven years, without leave having been applied for or granted, automatically terminate the service of such a Government employee is the moot question, which this writ petition has raised for consideration of this Court.

2. By making this application under Article 226 of the Constitution of India, the petitioner has approached this Court seeking issuance of writ(s) commanding the respondents to allow the petitioner to resume his duties as Field Investigator in the Directorate, of Economics &" Statistics, Govt. of Arunachal Pradesh, Itanagar, and treat the period of absence of the petitioner from duty with effect from 25.10.1989 till the date of his resumption of duty on medical leave.

3. In a nutshell, petitioner"s case may be narrated as follows : The petitioner, who was initially working as a Village Field Asstt. under the Veterinary Department, Govt. of Arunachal Pradesh, was appointed as a Field Investigator under the Directorate of Economics and Statistics on 13.7.1979. While serving in the office of the District Statistical Officer. District Papumpare, the petitioner fell seriously ill. On 20.5.1989, the petitioner applied for leave and, on medical examination, he was found to have been suffering from Pulmonary Tuberculosis.

The petitioner applied for extension of leave on medical ground on 22.5.1989. The petitioner received treatment for his ailment at Kolkata and thereafter, the petitioner remained under treatment at North Lakhimpur from 26.6.1989 to 10.1.1993. The petitioner remained under treatment at District General Hospital, Zero, from 10.1.1993 to 6.4.1993. On being cured of his ailments, the petitioner submitted, on 8.4.1996, joining report to the District Statistical Officer, Papumpare, but on the direction given by the respondent No. 2, vide his letter, dated 29.5.1996 (Annexure-F to the writ petition) that the petitioner's joining report shall not be accepted since his right to continue in service had lapsed due to unauthorized absence, the petitioner was not allowed to rejoin his duty. The petitioner has accordingly approached this Court seeking the reliefs) as have been indicated hereinabove.

4. The respondents have contested this case by filing affidavit-in-opposition, their case being, briefly stated, thus: The petitioner remained absent from duty since 25.10.1988 and though he was granted earned leave for 50 days, he never rejoined his duty since 25.10.1988. The petitioner did not apply for either casual leave or medical leave. The application seeking extension of leave submitted by the petitioner was not in the prescribed form and, hence, the same could not be acted upon. The petitioner has been habitually absent from duty for no justified reasons and in this way, he remained absent from duty without making requisite leave application and without authority of law for almost 7 years. The petitioner, on 28.8.1987, submitted his resignation addressed to the respondent No. 2 indicating that he wished to start a business, but as the petitioner had claimed to have been suffering from Pulmonary Tuberculosis, the Government did not, out of sympathetic consideration, act upon the resignation letter so submitted by the petitioner. FR 18 read with Rule 12 of the CCS (Leave) Rules make it clear that unless the Governor, in view of the exceptional circumstances of the case otherwise determines, no Government servant shall be granted leave of any kind for a continuous period exceeding five years. Since the petitioner had remained absent from duty without any leave for long 7 years, he was rightly not allowed to rejoin his duties.

5. I have carefully perused the materials on record including the impugned letter, dated 29.5.1996, aforementioned issued by the respondent No. 2. I have heard Mr. N. Grayu, learned counsel for the petitioner, and Mr. B. L. Singh, learned Senior Govt. Advocate appearing on behalf of the respondents.

6. Upon perusal of the materials on record and upon hearing learned counsel for the parties, what catches my eyes, most prominently, is that the petitioner, admittedly, joined as a Village Field Assistant in the Veterinary Department of the State Government in 1974 and, upon his appointment as a Field Investigator on 13.7.79, he joined the Directorate of Economics and Statistics of the State Government and since then, notwithstanding the period of alleged unauthorized absence from duty, his service has not been terminated. In fact, even when the petitioner offered to resign from the post he was holding, his resignation letter

was not accepted by the State Government. The resultant effect was that the petitioner remained and has continued to remain till date a Government employee.

7. Neither FR 18 nor Rule 12 lays down anything to indicate that if a person remains absent from duty for a period of more than 5 years without having applied for, or having been granted, leave, his service would automatically stand terminated.

8. In view of the fact that the petitioner has remained a Government servant, he could not have been stopped from re-joining his duties as a Field Investigator, though the Government had the liberty of taking action in terms of the relevant provisions of the law for terminating his services. This apart, when the petitioner applied for leave on 8.4.1996, his leave application ought to have been considered in terms of FR 18 and upon such consideration, the same could have been, for reasons to be assigned, either accepted or rejected.

9. Considering, therefore, the matter in its entirety, I am of the view that the respondents have, most illegally, refused to allow the petitioner to rejoin his duties and the directions contained in the impugned letter, dated 29.5.1996 aforementioned will, if allowed to stand good on record, cause serious miscarriage of justice.

10. In the result and for the reasons discussed above, this writ petition partly succeeds. The impugned directions contained in the letter, dated 29.5.1996 (Annexure-F to the writ petition) are hereby set aside and quashed and the respondents are directed to allow the petitioner to rejoin his duties. The respondents are further directed to consider, in terms of the provisions of FR 18, the application made by the petitioner, on 8.4.1996, seeking leave for the period of his absence from duty. However, the respondents are left at liberty to take such step(s) or action(s) against the petitioner as may be deemed fit if the petitioner's application for leave made on 8.4.1996 is, upon consideration, turned down.

11. With the above observations and directions, this writ petition shall stand disposed of.

12. No order as to costs.