

(2017) 02 AHC CK 0096
In the Allahabad High Court
Case No : Writ A No. 2929 of 2014

Lalmani Ram Bharti

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 22-02-2017

Acts Referred:

Civil Service Regulations — Regulation 419(b), Regulation 420

Citation : (2017) 3 ADJ 367 : (2017) 2 AllWC 2073

Hon'ble Judges : Vivek Kumar Birla, J.

Bench : Single Bench

Advocate : Sanjeev Kumar Pandey, Advocate, for the Petitioner; Kashif Zaidi, C.S.C, for the Respondent

Final Decision : Dismissed

Judgement

Vivek Kumar Birla, J.— Heard Sri Sanjeev Kumar Pandey, learned counsel for the petitioner, learned Standing Counsel appearing for the respondent nos. 1 and 3 and Sri Kashif Zaidi, learned counsel appearing for the respondent no. 2.

2. Present petition has been filed challenging the order dated 18.5.2013 passed by respondent no. 3 - Additional Director, Treasury and Pension, Allahabad Division, Allahabad.

3. By the order dated 17.2.1993 while allowing the appeal against the order of termination the State Government provided that the petitioner shall be reinstated in service on the minimum pay scale of the Lower Division Clerk - I and the period from the date on which he was terminated and the date of his joining back shall be treated as extraordinary leave and for which he shall not be entitled for any salary etc. It was further provided that the period of absence shall be counted for the propose of pension and one adverse entry for unauthorized absence was also awarded. Challenging the aforesaid order of termination the petitioner filed Writ Petition No. 15447 of 1993 (Lal Mani Bharti v. State of U.P. and others), which was dismissed vide judgment dated 17.4.2003. Special

Appeal No. 464 of 2003 filed by the petitioner was dismissed as not maintainable vide order dated 16.9.2009. Thereafter, the petitioner filed SLP Civil No. 8533-8534 of 2010, which too was dismissed vide order dated 12.4.2013 and consequently, the order dated 17.2.1993 stood upheld upto the Hon'ble Apex Court.

4. Submission of learned counsel for the petitioner is that since, as per the order of punishment, the entire period of absence was treated as extraordinary leave but simultaneously it had been provided that the same shall be counted for the purpose of the pension and so far as misconduct of unauthorized absence of 17 days is concerned, adverse entry was awarded to the petitioner and he was reverted back to the minimum of the pay scale on the post of Lower Division Clerk-I, therefore, the interpretation that has been taken in the order impugned herein, is contrary to the order of punishment dated 17.2.1993 and discretion exercised by the authority concerned is illegal.

5. Per contra, learned Standing Counsel, whose arguments were adopted by Sri Kashif, submitted that there is no illegality in the order impugned herein inasmuch as, as per the provision contained in paragraph 4 (Chha) of the Government order dated 28.7.1989 period of extraordinary leave or leave without pay cannot be counted for the purpose of calculation of pensionary benefits. Attention was drawn to paragraph 11 of the counter affidavit and the Government Order dated 28.7.1989 annexed as Annexure - 1 to the counter affidavit.

6. In reply learned counsel for the petitioner drawing attention to paragraph 4 (Cha) (2) of the government order dated 28.7.1989 submitted that in case the extraordinary leave has been granted, the same shall be counted for qualifying service for the purpose of grant of pension.

7. I have considered the rival submissions and have perused the record.

8. Fate of present case depends on the interpretation of the order of punishment dated 17.2.1993, which is quoted as under:-

"1- Jh Hkkjrh dks izoj oxZ lgk;d ds U;wure osru esa iquZLFkkfir fd;k tk,A

2- Jh Hkkjrh dks Isok esa iquZLFkkfir fd;k tkrk gS rFkk Jh Hkkjrh dks IsokeqDr djus dh frFFk ls dk;ZHkkj xzg.k djus dh frFFk rd dh vof/k dks vlk/kkj.k vodk" k ekuk tk;sxk vkSj bl vof/k dk Jh Hkkjrh dks dksbZ osru vkfn ns; u gksxkA

3- vuqifLFkr dh vof/k dks isa"ku ds fy, tksM+k tk;sxk vkSj budks fcuk Lohd`fr ds vuqifLFkr jgus ds fy, fuEuor izfrdwy izfof"V mudk pfj= iaftdk esa vafdr dh tk;sxhA

Jh ykyeqfu jke Hkkjrh izoj oxZ lgk;d }kjk fcuk vuqefr ds eq[;ky; NksM+us rFkk fnukad 15-01-1986 ls fcuk vodk" k Lohd`fr dj;k;s dk;kZy; ls vuqifLFkr jgus ds fy, bUgsa izfrdwy izfof"V nh tkrh gSA"

(emphasis supplied)

9. Hence the aforesaid order provides as under:-

"for the misconduct order of termination was substituted by providing that

a) the petitioner was reverted to the minimum pay scale of Lower Division Clerk-I;

b) that he was reinstated in service with the condition that his period of absence from the date of termination till the date of joining back shall be treated as extraordinary leave for which no salary etc. shall be paid to him;

c) it was further provided that the period of absence shall be taken into account for the purpose of calculating for pension to the petitioner;

d) that he was awarded an adverse entry for his misconduct for remaining absence w.e.f. 15.1.1986."

10. The other paragraphs (Cha) and (Chha) of the government order dated 28.7.1989 are quoted as under:-

p& Isok esa O;o/kku dk izHkko%

1- fuEu ifjfLFkfr;ksa dks NksM+dj ,d ljdkjh Isod dks Isok esa O;o/kku ds dkj.k mldh iwoZ Isok O;ixr gks tkrh gS%&

1- ,slh vuqifLFkfr ftldk vodk"k izkf/kd`r dj fn;k gks]

2- vuf/kd`r vuqifLFkfr tks Lohd`r vodk"k dh fujUrjrk esa gqbZ gks] c"krZ fd IEcfU/kr in dks LFkk;h :i ls Hkj u fn;k x;k gks]

3- fuyEcu] ;fn ,sls fuyEcu dh lekfir ij ljdkjh Isod dks mlh in ij vFkok fdlh vU; in ij iquZLFkkfir dj fn;k x;k gks vFkok fti ljdkjh Isod dh e`R;q gks x;h rks vFkok ljdkjh Isod dh fuyEcu dh vof/k esa vfuok;Z :i ls Isokfuo`r dj fn;k x;k gks vFkok Isokfuo`r fr gsrq vuqefr iznku dj nh x;h gks]

4- ljdkjh Isod dks tufgr esa l{ke izkf/kdkjh }kjk fdlh ,sls vf/k"Bku us fu;qDr dj fn;k x;k gks tks ljdkjh Isok esa vkrk gks]

5- ,d in ls nwljs in ij gq, LFkkukUrj.k ds QyLo:i fy;k x;k dk;ZHkkj xzg.k dkyA

2- mijksDr izkfo/kkuksa ds cktwn fu;qfDr izkf/kdkjh fcuk vodk"k dh ,slh vuqifLFkfr dh vo/kh;ksa dks vklk/kkj.k vodk"k esa iwoZxkeh frfFk ls ifjofrZr dj ldrs gSa vkSj ,slh n"kk esa vlk/kkj.k vodk"k ls iwoZ dh Isok vof/k dks vgZdkjh Isok ekuk tk ldrk gSA

3- fuyEcu] ;fn ,sls fuyEcu dh lekfir ij ljdkjh Isod dks mlh in ij vFkok fdlh vU; in ij iquZLFkkfir dj fn;k x;k gks vFkok fti ljdkjh Isod dh e`R;q gks x;h rks vFkok ljdkjh Isod dh fuyEcu dh vof/k esa vfuok;Z :i ls Isokfuo`r dj fn;k x;k gks vFkok Isokfuo`r fr gsrq vuqefr iznku dj nh x;h gks]

4- ljdkjh Isod dks tufgr esa l{ke izkf/kdkjh }kjk fdlh ,sls vf/k"Bku us fu;qDr dj fn;k x;k gks tks ljdkjh Isok esa vkrk gks]

5- ,d in ls nwljs in ij gq, LFkkukUrj.k ds QyLo:i fy;k x;k dk;ZHkkj xzg.k dkyA

2- mijksDr izkfo/kkuksa ds cktwn fu;qfDr izkf/kdkjh fcuk vodk" k dh ,slh vuqifLFkfr dh vof/k;ka dks vlk/kj.k vodk" k esa iwoZxkeh frfFk ls ifjofrZr dj ldrs gSa vkSj ,slh n"kk esa vlk/kkj.k vodk" k ls iwoZ dh lsok vof/k dks vgZdkjh lsok ekuk tk ldrk gSA

N& vodk" k dk izHkko %

flfoy lfoZl jsxqys" kUl ds vuqPNsn 400] 419ch rFkk 487 ds vUrxZr losru vodk" k dh vof/k vgZdkjh lsok ekuh tkrh gS fdUrq ;fn lsokdky esa dqN vof/k vlk/kkj.k vodk" k vFkkZr fcuk osru dh gks rks mls vgZdkjh lsok esa lfEefyr ugha ekuk tk;sxk tc rd vlk/kkj.k vodk" k fuEu dkj.kksa ds vk/kkj ij Lohd`r u fd;k x;k gks&

1- l{ke fpfdRlk vf/kdkjh }kjk fn;s x;s fpfdRlk izek.ki= ds vk/kkj ijA

2- ukxfjd v"kkfUr ds dkj.k M~;wVh ij vkus vFkok iqu% tkus esa vleFkZrk ds dkj.k]

3- mPp rduhdh vkSj oSKkfud v/;uksa esa vuq" khyu ds dkj.k]

4- vU; vk/kkjksa ij fy;k x;k vlk/kkj.k vodk" k vgZdkjh lsok esa ugha ekuk tk;sxk vkSj ml vof/k ds lECU/k esa lsok iqfLrdk esa rn~uqlkj izfof"V dj nh tk;sxA"

(emphasis supplied)

11. From perusal of record it appears that the petitioner disappeared from office on 15.1.1986 without taking leave from the authority concerned and the petitioner was absent from office in an unauthorized manner from 15.1.1986 and reported back on 31.1.1986 and was placed under suspension on 1.2.1986. Thereafter, after conducting disciplinary proceedings his services were terminated, therefore, as per Clause 3 of the punishment order dated 17.2.1993 the duration of absence from service is from 15.1.1986 to 31.1.1986 (17 days) only and it is thereafter he was placed under suspension and disciplinary proceedings were initiated against him, therefore, for this misconduct of unauthorized absence of 17 days he has been reverted back to the minimum of the pay scale and he has also been awarded adverse entry. As per Clause 2 of the punishment order dated 17.2.1993 the period from termination of service and reinstatement (joining back) is from 25.9.1986 to 6.3.1993.

12. Further, Civil Service Regulation 419 (b) provides for a discretion with the authority for the period of break in service between the date of dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement, and the period of suspension (if any) shall not count unless regularised as duty or leave by a specific order of the authority which passed the order of reinstatement.

13. For convenience Regulation 419 of the Civil Service Regulations is also quoted as under:-

"419. (a) a Government servant who is dismissed, removed or 6 compulsorily

retired from public service, but is reinstated on appeals or revision, is entitled to count his past service.

(b) the period of break in service between the date of dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement, and the period of suspension (if any) shall not count unless regularised as duty or leave by a specific order of the authority which passed the order of reinstatement."

(emphasis supplied)

14. This clearly suggest that the discretion is with the authority as to whether or not this break in service is to be counted towards calculation of his pension.

15. From perusal of the order of punishment it appears that the unauthorized absence of the petitioner from duty from 15.1.1986 to 31.1.1986 and the second period of absence from duty is the period during which he was under termination up to the date of reinstatement i.e. 25.9.1986 to 6.3.1993. It appears that the period of absence from duty for the reason of termination of service and rejoining has been dealt with in the second paragraph of the punishment order which clearly provides that from the date of termination i.e. 25.9.1986 till the date of rejoining the period shall be counted as extraordinary leave for which he shall not be entitled for any salary. The another period of absence which is due to unauthorized absence is from 15.1.1986 to 31.1.1986 has been dealt with in paragraph 3 of the punishment order for which he has also been awarded adverse entry. The impugned order thus, clearly indicates that this duration of absence has been dealt with in two parts and they have been dealt with in two separate paragraphs of the punishment order as noticed above.

16. In the light of the provisions of Regulation 419 (b) of the Civil Service Regulations the discretion is undisputedly with the authority to decide as to whether this break in service to be counted towards calculation of his pension, which admittedly has been exercised against the petitioner in the present case. This also appears to have been clarified in Clause 4 (Chha) of the government order dated 28.7.1989, which deals with the effect of the leave and provides that the extraordinary leave shall not be counted in service unless for the reasons given in the aforesaid paragraph are existing. The first three exceptions are not applicable to the present case and Clause 4 (Chha) clearly provides that the extraordinary leave for any other reason shall not be treated as qualifying service for grant of pension. Therefore, the bifurcation of absence from duty as done in the punishment order has consciously been done by the authority and intention was to extend the benefit of such break in service from the date of termination from service and till the date of reinstatement and joining by converting it into extraordinary leave.

17. In so far as provision of Clause (Cha) (2) is concerned, it provides for interruption of service of an officer entails for forfeiture of his past service and refers to Regulation 420 of the Civil Service Regulations and therefore, operates

in a different field. Even otherwise, in view of the fact that the absence from duty in the present case has been bifurcated by the punishing authority in two periods as already indicated, it is very much apparent that the discretion was exercised against the petitioner by the punishing authority. The claim of the petitioner, for claiming pensionary benefit by including the period for which he has not been paid salary etc., is thus, liable to be rejected and in such view of the matter, I do not find any legal infirmity in the order impugned herein.

18. Present petition lacks merit and is accordingly dismissed.