
(2019) 07 PAT CK 0243

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 13867 Of 2019

Manju Diwarkar Sharma

APPELLANT

Vs

Union Of India Through And Ors

RESPONDENT

Date of Decision : 11-07-2019

Acts Referred:

Citation : (2019) 07 PAT CK 0243

Hon'ble Judges : Amreshwar Pratap Sahi, Cj;Anjana Mishra, J

Bench : Division Bench

Advocate : Sanjeet Kumar, S.D. Sanjay, Jai Prakash Verma

Final Decision : Dismissed

Judgement

Heard learned counsel for the petitioner and the learned counsel for the respondents No. 2 to 5.

The challenge raised is to the order of the Tribunal dated 19th of February, 2019 contending that the petitioner's request for the extension of the deputation was pending and, even otherwise, the respondents had taken work from the petitioner even after the expiry of the period of deputation. In such circumstances, the petitioner is entitled to the salary for the period during which she has worked as well as other such pecuniary benefits, including counting the period of alleged overstay towards her services as well. The petitioner was working as a Junior Engineer in Andaman Lakshdweep Harbour, at Port Blair. She came to be appointed on deputation with the Employees' Provident Fund Organization and the letter of appointment is dated 1st February, 2013, copy whereof is Annexure-2 to the petition. The terms and conditions of appointment categorically provide that the tenure shall be three years and no overstay was made permissible. Clause-(i), (iv) and (v) of the letters of appointment is extracted hereinunder:-

"(i) The period of deputation will be for three (03) years only unless further orders are issued before the completion of the prescribed three years.

(iv) On expiry of three years from the date of joining the post, the deputationist officer will be deemed to have been relieved on the date of expiry of the deputation period unless the competent authority has with requisite approvals, extended the period of deputation, in writing, prior to the date of its expiry. The date of relieving will be mentioned in the order of appointment of the officer and no further orders for relieving the official will be necessary.

(v) In the event of the officer overstaying for any reason whatsoever, he/she is liable for disciplinary action and other adverse Civil/Service consequences which would include that the period of unauthorized overstay shall not count against service for the purpose of pension and that any increment due during the period of unauthorized overstay shall be deferred with cumulative effect, till the date on which the officer rejoins his parent cadre."

The petitioner joined her services on deputation at Patna on 6th of February, 2014 and a copy of the joining report is Annexure-3 to the writ petition.

According to the terms and conditions of appointment, it is the date of joining which has to be taken into account and, therefore, the three years' period would come to an end on 5th of February, 2017.

It appears that the petitioner still continued at Patna and then an order had to be issued by the Regional Provident Fund Commissioner on 20th March, 2017 for relieving her. A copy of the said order is Annexure-7 to the petition.

It appears that the petitioner even continued to overstay thereafter and a letter was dispatched vide office order on 31st May, 2018 by the Assistant Provident Fund Commissioner, Regional Office where it was noted that she is still marking her attendance in the attendance register and, accordingly, it was directed that she be not permitted to now mark her attendance and handover all files and documents relating to the concerned officials.

Learned counsel for the petitioner submits that the aforesaid facts and also the facts that were stated in the rejoinder affidavit indicate that the petitioner had continued to function and, in effect, was entitled to the emoluments as also for getting her service counted in the Organization itself.

It is with this background that the petitioner approached the Tribunal challenging the action of the respondents not allowing her to mark the attendance which was examined by the Tribunal and after contest it was held that the petitioner was not entitled to any relief and it was, accordingly, dismissed.

The petitioner has come up before this Court contending that the action of the respondents without even considering her request for extension or passing an order including the request for making payments of the said period of alleged overstay is not in conformity with Rules and, therefore, the Tribunal has committed an error in dismissing the claimpetition.

We have considered the submissions raised and in view of the categorical terms

and conditions as prescribed in the letter of appointment itself neither was there any vested right in the petitioner to claim continuance nor any right did accrue when the letter of appointment categorically states that any period of overstay shall be discounted in the manner as described in the terms and conditions itself. In the absence of any legally enforceable rights, the claim of the petitioner for consideration of extension was out of question, inasmuch as an extension could have been considered had there been any period contemplated as such for extending the deputation of services.

We do not find any such recital contained in the letter of appointment nor was there any document which may indicate that the petitioner's claim for extension was liable to be considered.

Any correspondence in this regard was totally against the letter of appointment and the terms and conditions in respect thereof. As a matter of fact the petitioner was compelled not to sign the attendance register whereafter she was reluctantly elbowed out from the office. The petition, therefore, does not raise any legal issue worth consideration.

It is, accordingly, rejected.