
(2005) 09 PAT CK 0024
In the Patna High Court
Case No : CWJC No. 5193 of 2001

Nand Jee Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-09-2005

Acts Referred:

Citation : (2005) 4 PLJR 706

Hon'ble Judges : Rekha Kumari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rekha Kumari, J.—The petitioner by filing this writ application has prayed for directing the respondents for full payment of 225 days of unutilised earned leave instead of 182 days to the petitioner, together with interest over the said amount. The case of the petitioner is that he was appointed as Assistant Teacher and superannuated on 30.6.2000 as Assistant Teacher, Rajkiya Middle School, Bharhopur, Ekma, District Saran. It is stated that in the month of February, 1999 the teachers of Government Primary and Secondary Schools went on strike all over the State, but the petitioner at that time being at the verge of retirement did not join the said strike. He remained present in the school every day during the strike period, i.e. February, 1999 to May, 1999 and had signed over the attendance register (photo copy Annexure 1) on each and every working day. A certificate to this effect was forwarded by the Area Education Officer, Ekma-1, Saran to the D.S.E., Saran. The School Committee also certified that the petitioner did not participate in the said strike and performed his duty in the abovementioned period (Annexure 2). In the circumstances, the petitioner was entitled for payment of 225 days unutilised leave encashment after retirement but he was given leave encashment only for 182 days instead of 225 days and thus, suffered a loss to the tune of Rs. 14,638/-. It is also stated that the D.S.E. issued office order vide Memo No. 3013 dated 8.11.2000 sanctioning leave encashment for 225 days, but subsequently another order was issued under the

same Memo number and date sanctioning leave encashment only for 182 days (Annexures 3 and 4). The petitioner learnt that the Area Education Officer issued an office order vide Memo No. 586 dated 27.3.2000 stating therein that the petitioner was absent due to strike for the period 2.2.1999 to 21.3.1999. But as a matter of fact the petitioner had not gone on strike in the said period (Annexure 5). Vide Annexures 6 and 7 also the Area Education Officer informed the D.S.E., Saran that the petitioner did not participate in the strike in question. It was also learnt by the petitioner that the D.S.E., Saran then approved and sanctioned for payment of unutilised leave for the period of 225 days, but drawing and the disbursing authority has sanctioned for payment of leave encashment for only 182 days. Thus, leave encashment for 48 days to the tune of Rs. 14,638/- was wrongly deducted. Hence, this writ application.

2. Counter affidavit has been filed on behalf of respondent No. 2 only in which it has been alleged that the petitioner himself had applied to respondent No. 3 (the Area Education Officer, Manjhi-Ekma) through respondent No. 4 (the Headmaster, Madhya Vidyalaya, Bharhopur, Ekma, Saran) for sanctioning earned leave for the period 2.2.1999 to 21.3.1999 i.e. for 48 days in a prescribed form (Annexure A). Respondent No. 3 had sanctioned earned leave from 2.2.1999 to 31.3.1999 i.e. for 48 days vide Memo No. 586 dated 27.3.2000 (Annexure B). From the above it was obvious that the petitioner had gone on strike and got the leave sanctioned and after that he signed the attendance register of the School in a deceptive and clandestine manner. In the garb of this writ petition the petitioner has tried to deceit the respondent authority as well the Hon'ble Court also. Therefore, the prayer of the petitioner is not fit to be allowed and the writ application is fit to be dismissed.

3. Learned counsel for the petitioner tried to explain Annexure "A" (the application for earned leave in prescribed form filed by the petitioner himself for the period of 2.2.1999 to 21.3.1999=48 days) and submitted that as delay was being caused in grant of retirement benefits as also encashment of unutilised earned leave, and illegal gratification was being demanded from him for release of the above benefits, the petitioner was compelled to file the above application. In fact, learned counsel further submitted that, the Annexure 1 of the writ application would clearly show that the petitioner has worked on each and every day and has also signed the attendance register and that the authorities concerned have also issued certificate to that effect, hence, the petitioner is entitled to get leave encashment for 48 more days and that Annexure A is a document which had to be filed by the petitioner under pressure.

4. Learned counsel for the respondents opposed the prayer and submitted that the petitioner has not filed any rejoinder to the counter affidavit filed by respondent No. 3. The verbal submission that illegal gratification was being demanded from him and that to avoid the said situation the application for earned leave was filed, is not fit to be accepted. Moreover, the certificate under Annexure 6 has been granted by the Area Education Officer, Manjhi, who was not

supposed to be present in the school premises. Hence, on the basis of his certificate it cannot be said that the petitioner really discharged his duties in the days of strike also and that Annexure 1 (photo copy of the attendance register) cannot be believed in view of glaring fact appearing from Annexure A, a document signed by the petitioner himself applying for earned leave and Annexure B a document signed by Area Education Officer himself granting leave to the petitioner for the aforesaid period. Annexures B and 6 signed by the same person, i.e. Area Education Officer are contradicting each other. The petitioner retired in the month of June, 2000 whereas the application for leave has been forwarded by the Headmaster of the Government Middle School, Bharhopur Anchal, Ekma on a date in March, 2000. The retirement benefits alongwith leave encashment become payable only after retirement. Hence, the question of demanding illegal gratification in the month of March, prior to retirement of the petitioner does not arise. He, therefore, submitted that there is no merit in the case of the petitioner and the writ petition is fit to be dismissed.

5. After hearing the submissions made on behalf of both the parties as also considering the documents annexed by them alongwith their pleadings, I also find that in view of leave application (Annexure A) and sanctioning the leave of the petitioner by the Area Education Officer (Annexure B), Annexure 1 and Annexure 6 become doubtful. I fail to understand how come the Area Education Officer, granting earned leave to the petitioner, is also issuing a certificate to the effect that Nand Jee Singh (petitioner) was not on strike in between February, 1999 to May, 1999. The said information alleged to have been given by the petitioner to the A.E.O. as mentioned in Annexure 6 has also not been filed by the petitioner or the said Area Education Officer granting certificate under Annexure 6. It is not expected nor it can be believed that the said information was an oral one. Therefore, in view of Annexure B and Annexure 6, the verbal submission made on behalf of the petitioner that Annexure A was filed under pressure cannot be believed nor is convincing. Accordingly, this writ application being without, any merit, is hereby dismissed.