(2014) 06 PAT CK 0063

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.22570 of 2013

Pattamadai Natarajasarma Narayanan APPELLANT

Vs

State of Bihar RESPONDENT

Date of Decision : 17-06-2014

Acts Referred:

Citation : (2014) 3 BBCJ 413

Hon'ble Judges : Hemant Kumar Srivastava, J.

Bench : Single Bench

Advocate : Mr. Rama Kant Sharma, Senior Advocate, for the Petitioner; Mr. Alok Ranjan, Advocate. AC to GA-13, for the State; Mr. Lalit Kishore, Senior Advocate and Mrs. Binita Singh, Advocate, for the Respondent Nos. 3 to 5

Final Decision : Allowed

Judgement

Hemant Kumar Srivastava, J.(Oral)—This writ petition has been filed on behalf of the petitioner for issuance of appropriate writs, directing the respondents-authorities to grant the leave salary/leave encashment with interest since 25th August, 2011.

2. The petitioner was an Indian Administrative Service Officer and took voluntary retirement on 25-08-2006 and, thereafter, he was appointed as Commissioner, State Information Commission and joined the above-said post on 26th day of August, 2006. He demitted the office of Commissioner, State Information Commission on 25-08-2011 after completion of 5 years in the said office. Before demitting the office, he applied for seven days'' casual leave from 29-09-2010 to 07-10-2010 and made prayer to prefix the aforesaid casual leave with Puja holidays from 08-10-2010 to 17-10-2010 and to combine restricted leave for 18-10-2010. The Accountant General, having found 148 days earned leave and 70 days half pay leave to the account of the petitioner wrote letter No. 615 dated 23-08-2011 to General Administration Department, Bihar for sanction of the above-stated leave. The Accountant General sent several reminders to General Administration Department, Bihar, Patna and thereafter, it was informed by

General Administration Department, Bihar, Patna that for sanction of earned leave, the matter has been referred to His Excellency Governor of Bihar and lastly, the Governor of Bihar sanctioned the earned leave of the petitioner after converting the casual leave, Puja holidays and restricted holidays from 29-09-2010 to 18-10-2010 into earned leave.

3. The stand of the respondent No, 1 is that the aforesaid deduction of 20 days from earned leave of the petitioner has been made as per Appendix 13(B) of Bihar Service Code and as a matter of fact, the proposal for sanction of 20 days earned leave was sent to the Governor Secretariat on 25-03-2011 and the concerned file returned from Governor Secretariat to General Administration Department on 30-12-2013. After return of the file, the 20 days earned leave was sanctioned to the petitioner vide Notification No. 1076 dated 24-01-2014 and the Accountant General, Bihar, Patna was requested for sending fresh leave admissibility report. It has also been pleaded that the sanction order shall be issued after receipt of leave admissibility report from the Accountant General, Bihar, Patna.

4. Learned counsel, appearing for the petitioner submits that the petitioner is not an employee of Bihar Government and, therefore, Bihar Service Code is not applicable in the case of the petitioner. He further submits that as a matter of fact, the petitioner is entitled to get earned leave according to All India Services (leave) Rules and in All India Services (Leave) Rules, there is a provision to prefix or suffix the casual leave with Sundays and close holidays. He further submits that according to All India Services (leave) Rules, Public holidays and weekly offs falling within a period of casual leave should not be counted as part of the casual leave and similarly, restricted holidays can also be prefixed or suffixed to casual leave and, therefore, the respondents wrongly converted the casual leave and restricted holidays into earned leave.

5. Since the aforesaid 20 days casual leave and holidays were converted into earned leave by the concerned respondents during pendency of this writ petition, by the Notification No. 1076 dated 24-01-2014, the petitioner has challenged the aforesaid notification No. 1076 dated 24-01-2014 by filing interlocutory application No. 3023 of 2014.

6. On the other hand, learned counsel appearing for the State submits that according to Appendix 13(B) of Bihar Service Code, casual leave cannot be combined with vacation or other kind of leave and should not arbitrarily extend more than 16 days in any one calendar year and in the present case, the petitioner prefixed casual leave with holidays and restricted holidays for more than 16 days and, therefore, the aforesaid leave was rightly converted into earned leave.

7. Certain facts are admitted between the parties. It is an admitted position that the petitioner demitted his office on 25-08-2011 after completion of five years term as State Information Commissioner. It is also an admitted position that the

petitioner applied for casual leave from 29-09-2010 to 07-10-2010 and prayed to suffix his casual leave with ensuing Puja holidays starting from 08-10-2010 to 17-10-2010 and also for grant of restricted holiday, falling on 18-10-2010. It is also an admitted position that the State-respondent sent the proposal to Governor of Bihar for converting the aforesaid leave into earned leave under Appendix 13(ii) of Bihar Service Code and, thereafter, the Governor of Bihar converted the above-stated casual leave, holidays and restricted holiday into earned leave and sanctioned the earned leave for the aforesaid period.

8. The Service Condition of State Information Commissioner has been given in Section-16 (5) of the Right to Information Act, 2005 which runs as follows: The salaries and allowances payable to and other terms and conditions of service of-

(a) the State Chief Information Commissioner shall be the same as that of an Election Commissioner;

(b) the State Information Commissioner shall be the same as that of the Chief Secretary to the State Government;

Provided that if the State Chief Information Commissioner or a State Information Commissioner, at the time of his appointment is, in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the State Chief Information Commissioner or a State Information Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent or retirement gratuity:

Provided further that where the State Chief Information Commissioner or a State Information Commissioner if, at the time of his appointment is, in respect of retirement benefits in respect of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central Government or the State Government, his salary in respect of the service as the State Chief Information Commissioner or the State Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits.

Provided also that the salaries, allowances and other conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall not be varied to their disadvantage after their appointment."

9. In the light of Section-16(5)(B) of Right to Information Act, 2005, the State Government fixed the salary, allowances and terms and conditions of service of State Information Commissioner equivalent to the salary, allowances and terms and conditions of service of Chief Secretary of State vide memo No. 8655 dated 22-08-2007 and also decided to grant cash in lieu of earned leave, equivalent to the Chief Secretary of State and informed the Accountant General Bihar, Patna, accordingly. In Clause 6 of the memo No. 8655 dated 22-08-2007, it has clearly

been mentioned that the annual casual leave, admissible to the Chief Secretary shall also be admissible to the State Information Commissioner. Again, the aforesaid letter No. 8655 dated 22-08-2007 was modified by the State Government by issuing letter No. 1867 dated 26-02-2010 and made a provision to grant cash in lieu of earned leave. By the above-said letter No. 1867 dated 26-02-2010, the following paragraphs in Clause 6 of letter No. 8655 dated 22-08-2007 was added:-

"A person who, immediately before the date of assuming office as State Information Commissioner was in service of Government may be granted during his tenure of office but not thereafter, leave in accordance with the rules for the time being applicable to service to which he belonged before such date and he shall be entitled to carry forward the amount of leave standing at his credit on such date.

Any other person who is appointed as State Information Commissioner may be granted leave in accordance with such rules as are applicable to a member of the Indian Administrative Service.

The power to grant or refuse leave to the State Information Commissioner and to revoke of curtail leave granted to him shall vest in the Governor. The State Information Commissioner on his demitting office except by resignation shall be entitled to claim encashment of earned leave in respect of the earned leave at their credit subject to a maximum period prescribed for encashment of such leave under the All India Service (leave) Rules, 1955 as amended from time to time.

In case they demit office by resignation they are entitled to encashment of leave at their credit on the date of cessation of service to the extent of half of such leave at their credit subject to half of the maximum period stated above.

Provided that the encashment of earned leave, if any, already availed before joining the Commission and the period of earned leave being encashed in the Commission together shall in no case exceed the maximum period as stipulated under All India Service (leave) Rules, 1955."

10. Admittedly, before joining as State Information Commissioner, the petitioner belonged to All India Services and the All India Services (leave) Rules, 1955 was applicable to him. From perusal of letter No. 1867 dated 26-02-2010, it goes to show that when the petitioner joined as State Information Officer, All India Services (leave) Rules 1955 was applicable to him. No doubt, Section-16(5)(b) of Right to Information Act 2005 says that the salaries and allowances payable to and other terms and conditions of service of State Information Commissioner shall be the same as that of the Chief Secretary to the State Government but it does not mean that the State Information Commissioner should be treated at par with the Chief Secretary of that State. Admittedly, Bihar Service Code is applicable to all government servants under the rule making control of the State Government but the salary and other service conditions of the petitioner has

been determined by Section-16(5)(b) of the Right to Information Act 2005 which is a self-contained Act and the Bihar Service Code does not have any overriding effect on the aforesaid Right to Information Act 2005. Moreover, the State Government has admitted in letter No. 1867 dated 26-02-2010 that the All India Services (leave) Rules 1955 shall apply to the petitioner and there is no provision in All India Services (leave) Rules 1955 that a member of All India Services is not entitled to prefix or suffix casual leave with holidays and restricted holidays for more than 16 days and, therefore, in my view, the respondents committed an error in converting the casual leave prefixed and suffixed with holidays and restricted holidays into earned leave.

11. No doubt, the Governor of Bihar has got power to grant or refuse leave to the State Information Commissioner but in the present case, the General Administration Department, Bihar sent a proposal for converting the casual leave prefixed and suffixed with holidays and restricted holidays into earned leave and on the proposal of General Administration Department, Bihar, Patna, the Governor of State of Bihar converted the casual leave of the petitioner into earned leave and, thereafter, the State Government issued Notification No. 1076 dated 24-01-2014. It is pertinent to mention here that the petitioner never applied for grant of earned leave or for conversion of his casual leave and holidays into earned leave and without any prayer of the petitioner, the concerned respondents sent the proposal for conversion of casual leave of the petitioner into earned leave to Governor of State of Bihar. Hence in my view, the Notification No. 1076 dated 24-01-2014 is liable to be quashed.

12. Accordingly, I.A. No. 3023 of 2014 as well as this writ petition are allowed and the Notification No. 1076 dated 24-01-2014 is, hereby, quashed and the respondent No. 1/concerned respondents are directed to take steps for sanction of earned leave to the petitioner including the period from 29-09-2010 to 18-10-2010 in accordance with the admissibility report sent by the Accountant General, Bihar, Patna vide its letter No. GE-1-614 dated 23-08-2011 and ensure the payment of earned leave sanctioned to the petitioner along with 12 per cent penal interest till the date of its realization within three months from the date of receipt/production of copy of this order.