

(2006) 08 JH CK 0127
In the Jharkhand High Court

Raj Kumar Neeraj

APPELLANT

Vs

Ranchi Kshetriya Gramin Bank and Others

RESPONDENT

Date of Decision : 08-08-2006

Acts Referred:

Citation : (2006) 4 JCR 650

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.

Bench : Single Bench

Judgement

S.J. Mukhopadhaya, A.C.J.

1. This application has been preferred by the petitioner against the order, contained in Memo No. 2780 dated 19th September, 2000, whereby and whereunder, it has been ordered to recover 40. salary from the petitioner, on the ground that he was unauthorizedly absent during the said period. Further prayer has been made to set aside the order, contained in Memo No. 3014, dated 21st October, 2000, whereby and whereunder, salary of the petitioner for a period of 149 days has been deducted on account of unauthorized absence from service.

2. As the case can be disposed of on short points, it is not necessary to discuss ill the facts, except the relevant one.

3. Admittedly, the petitioner had not attended the duty for about 40 days i.e., from 3rd June, 2000 to 11th July, 2000.

With regard to certain other period, I he respondents have also alleged that the petitioner was uauthorizedly absent from duty for about 149 days, as detailed in letter No. 3014, dated 21st October, 2000.

4. So far as unauthorized absence for a period of 40 days is concerned, the petitioner has pointed out that he sustained leg injury and, therefore, could not attend the duty. With regard to unauthorized absence for 149 days, relating to different period, the petitioner has disputed certain dates.

5. After notice, the respondents issued the impugned orders dated 19th September, 2000 and 21st October, 2000.

6. If it is true that no person can claim leave as a matter of right, but under the Rules, for specific reason, a person may be allowed different types of leave, such as, casual leave, earned leave, medical leave etc. In case no such leave is available, the persons are allowed to take extra ordinary leave, which is commonly known as leave without salary.

7. A person may remain unauthorizedly absent from duty for certain good ground and in some cases it may be deliberate. If unauthorized absence from duty is deliberate and amounts to misconduct, an enquiry is required to be held and on the basis of the report, the competent authority can determine as to whether it should be treated to be misconduct and whether the period of absence should be treated as break in service or not.

8. On the other hand, in case it is found that if a person had to remain on unauthorized absence from duty on good ground, such as, illness etc., the competent authority is supposed to regularize the period of leave by allowing casual leave, earned leave, half day earned leave, medical leave or extra ordinary leave i.e., leave without salary, as the case may be, on the availability of leave. These are the issues to be determined by the authorities and can not be determined by this Court under writ jurisdiction.

9. In the present case, no enquiry was made to find out whether the petitioner was unauthorizedly absent from duty intentionally and thereby, it was a misconduct on his part or it was unauthorized absence for certain good ground. In any case, the petitioner having disputed such absence for one or other period, without deciding the issue no order should have been passed by the authority. Further, if the authorities are of the opinion that the unauthorized absence from duty was uncalled for but refrained themselves from imposing any punishment on the ground of misconduct, they should have determined as to how the period should be counted i.e., what sort of leave the petitioner should be allowed, if available. If no leave was available to the petitioner, he could have been allowed the extra ordinary leave i.e., leave without salary for such period, but the authorities should not have ordered to deduct the salary without deciding the aforesaid issue.

10. In the facts and circumstances, the impugned orders, contained in Memo No. 2780, dated 19th September, 2000 and Memo No. 2014, dated 21st October, 2000 are hereby set aside and the case is remitted with a direction to the respondents to determine as to how the period of 40 days and 149 days, the alleged absence, be counted and what is the salary, to which the petitioner is entitled for such period of absence. On such decision, if it is found that the excess amount has been paid to the petitioner, they may recover the same after hearing the petitioner. It will be open to the petitioner to produce the relevant evidence in support of medical leave, if he was actually ill during one or other

period.

11. The writ petition stands disposed of with the aforesaid observations.