

(2013) 12 MP CK 0082
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2346 of 2012

Rajesh Kumar Tiwari

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 02-12-2013

Acts Referred:

Citation : (2013) 12 MP CK 0082

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : M.P. Shukla, for the Appellant; Sharda Dubey, Panel Lawyer for the State, for the Respondent

Final Decision : Disposed Off

Judgement

Rajendra Menon, J.—Challenging the action of the respondents in treating the period from July, 2004 to 26/10/2005 on the principles of no work no wages and by treating this period to be unauthorized absent and refusing the salary, petitioner has filed this petition. Petitioner is working as teacher in the Government Middle School, Barha Tola, Baghwa, District Sidhi. It is stated that on 2nd July 2004, petitioner suddenly fell ill and after submitting an application for leave on 03/07/2004 proceeded to his native place Rewa. He is said to have been under treatment at Rewa and during the period of treatment had intimated on 05/07/2004, 12/07/2004 and on various other dates to the competent authority the fact of his illness. He submitted application to the competent authority informing about his ailment and sought for leave. It is stated that on 27/07/2009 he received his payment for the previous month. After being medically fit vide Annexure P/1 petitioner is said to have returned for joining duties on around October, 2004 to the Principal of the institute, it is stated that the petitioner's case was forwarded seeking permission for joining by the principal vide Annexure P/1 on 09/10/2004. In the meanwhile petitioner was also directed to perform certain election duties on 03/01/2005 which he did. However, matter was kept pending and by the impugned mala fide action salary from

03/07/2004 to 26/07/2005 has not been granted as treating this period unauthorized absent under the principles of no work no wages. It is stated that even though the petitioner was under medical treatment from 03/07/2004 and he had reported for duties along with medical certificate on 06/07/2004 but he was never permitted to join duties, the principle had referred the matter and now salary is not being paid by applying the principles no work no wages.

2. Respondents have filed reply and they say that from 2004 to October 2005 petitioner was unauthorizedly absent. It is stated by the respondents that even though petitioner was directed to perform certain election work but he did not perform the same and remained absent.

3. As far as the report submitted by the petitioner for joining to the Principal and the communication with regard to action to be taken for joining is concerned, it is said by the respondents that Joint Director issued the show-cause notice to the Principle asking him as to why the petitioner was not permitted when he reported for joining, the Principle vide reply Annexure R/3 is said to have intimated that petitioner never reported for joining the duties. The respondent by filing documents Annexure R/3, R/4 and R/5 have come out with a case that petitioner has unauthorizedly absent and did not report for joining as alleged in the petition. Therefore, he was treated as unauthorizedly absent and the period is regularized by the respondents treating him on leave without wages.

4. Petitioner has filed rejoinder and is trying to indicate that Principal has not stated the correct facts and by referring certain documents available on record particularly Annexure P/3 tries to emphasis that the petitioner had reported to the Principal but the Principal did not permit him joining.

5. From the fact that have come on record as per the counter affidavits filed by both side, it is clear that the question as to whether petitioner had reported for joining and the Principal did not permit, the same is a disputed question of fact and there are divergent contentions in this regard. Be that as it may be when the petitioner has come out with a case that he had reported to the principal on 06/07/2004 and the principal did not permit to join duties, the Director Public Instruction instead of relying upon the report of Principal to pass the order should have decided the question of petitioner's unauthorized absent after hearing his contention, his documents, defence, explanation and thereafter take a decision after due inquiry into the matter, this having not being done, this court is of the view that matter should be remanded back to the respondents with a direction to cause an inquiry into the matter and thereafter decide the same in accordance with law.

6. Accordingly, it is directed that on the petitioner filing certified copy of this order along with relevant documents with regard to his absence for the period in question before the respondent No. 2, the said respondent after hearing the petitioner, considering the material and documents available with the department in the matter shall decide the question with regard to payment of salary or

otherwise within two months from the date of receipt of certified copy of this order and if the petitioner found entitled for salary for the aforesaid period shall be granted else the claim can be decided by a speaking order within a period of two months.

7. With the aforesaid, petitioner stands disposed of. Certified copy as per rules.