
(2013) 01 PAT CK 0051
In the Patna High Court
Case No : CWJC No. 18012 of 2012

Saket Bihari Sharma

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-01-2013

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2013) 2 PLJR 596

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : Bankey Bihari Singh, Sanjay Kumar and Shailendra Prasad, for the Appellant; Nilima Kumari, for the Respondent

Judgement

Navaniti Pd. Singh, J.—Petitioner being an Assistant Teacher was officiating as Incharge, Headmaster of a nationalized school. It is not in dispute that schools are designated as vacation departments. There is a Summer Vacation and a Durga Puja Vacation. Upon petitioner's superannuating, he became entitled to 300 days of earned leave. As per his service book, he had accumulated earned leave. According to his service book, he has 256 days of earned leave. Apart from this, as petitioner had been engaged in BPL survey work during vacation, he seeks credit of 11 further days. Thus, the total earned leave available for encashment was 267 days. However, the District Education Officer, Nawada sanctioned only 183 days of earned leave, thus, depriving petitioner of 84 days. Petitioner represented as to the reasons for disallowing of 84 days of earned leave. He was informed that even though he had worked during vacations, he had worked in an election related work, census related work and BPL survey wherein he was paid certain allowances. Accordingly, there cannot be a double benefit given that is a vacation and an earned leave.

2. Petitioner moved this Court and this Court directed petitioner to make a formal application in the Department of Human Resources Development. Accordingly, the order, as contained in Annexure-A to the counter affidavit, has been passed

by the Deputy Secretary, Directorate of Secondary Education, Government of Bihar, Patna being Order No. 174 dated 20.1.2011 which is now under challenge. In the said order, it has been stated that in consultation with the Finance Department, the plea of the petitioner, with respect to Rule 184 of the Bihar Service Code, cannot be accepted as that may amount to double benefit.

3. Learned counsel for the petitioner submits that there is no question of double benefit. Schools being vacation department and vacation period being treated as a duty period, if petitioner is made to work in the vacation period for any governmental work, then that would be taken to be disallowing the enjoyment of the vacation period. Mere payment of certain allowances is not payment for the period worked as full salary payment is not made for these periods. Paltry allowances are paid for extra works done beyond the scope of employment. Learned counsel further submits that the leave entitled arises from Rule 184 of Bihar Service Code which is statutory in nature. The same cannot be read down or modified by a mere letter of a Deputy Secretary without substantive amendment of the Rule itself. He further submits that Bihar Service Code, 1952 is relatable to Article 309 of the Constitution and being a statutory provision, thus, can only be amended or modified in the same manner as it had been promulgated. That having not been done, the order, as contained in Annexure-A to the counter affidavit, is not legal nor sustainable.

4. Having considered the matter, in my view, the writ petition must succeed. The fact that petitioner had worked during vacation in a vacation department is not in dispute. The quantum of leave earned by virtue of this work is also not in dispute. The dispute is with regard to entitlement. It is not in dispute that if Rule 184 of the Rules were applied as it is, petitioner would become entitled to 84 days of additional earned leave. The same is being denied on the ground that for those extra works, petitioner had received certain allowances. It is not averred that the allowances were in lieu of full pay for the said period. They were allowances for doing work beyond the scope of employment. Thus seen, in my view, the logic given by the learned Deputy Secretary cannot be accepted.

5. I may further note that if by Rule 184 of the Bihar Service Code, the entitlement is there then merely by a letter of the Deputy Secretary, the entitlement cannot be taken away for that would be amending the Code which has statutory force. Bihar Service Code, 1952 is a Code relatable to Article 309 of the Constitution. It could only be amended by the State Government. It can at best be clarified by Government instructions but, by no means, it can be amended by instructions.

6. Thus, in my view, Annexure-A cannot be sustained nor can it be held that it rightly deprived the petitioner of his 84 days of earned leave.

7. In that view of the matter, the writ petition is allowed. Annexure-A, to the extent it deprives the petitioner of 84 days of earned leave, is set aside.

8. Authorities are now directed to compute the value of 84 days of earned leave

of petitioner in accordance with law and pay the same. The Director, Secondary Education would be responsible to see that the same is done promptly and the amount paid to the credit of the petitioner within one month of production of a copy of this order before him. It shall be his sole responsibility to ensure timely compliance of orders of this Court.