
(2012) 01 SHI CK 0009
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 5424 of 2011-F

Sh. Liaq Ram Sharma

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 02-01-2012

Acts Referred:

Citation : (2012) 01 SHI CK 0009

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Judgement

Rajiv Sharma, J.—Petitioner was transferred from Government High School, Purag to Government Middle School, Darkoti vide office order dated 17.05.2006. He was relieved in absentia on 29.05.2006. The office order dated 17.05.2006 was modified vide office order dated 31.07.2006, whereby the petitioner was adjusted at Government Senior Secondary School, Kotkhai. He submitted medical certificates vide Annexures P-4 and P-5. Thereafter, the medical leave was sanctioned by the Principal, Government Senior Secondary School, Kotkhai on 06.10.2006 vide office order Annexure P-6. This leave was sanctioned for the period w.e.f. 19.05.2006 to 02.08.2006. The Principal also submitted a proforma for release of salary to the petitioner to the competent authority. Petitioner was legitimately expecting that on the basis of Annexure P-6 his salary for the relevant period shall also be released. However, it appears from the record that after a gap of more than three years, the respondent No. 4 has again taken up the matter with respondents No. 1 and 2. The respondent No 1 rejected the case of the petitioner on the basis of instructions dated 17.06.2004 and 11.08.2008 issued by the department on 18.08.2010. The Director was directed to take necessary action as per instructions dated 17.06.2004 and 11.8.2008. Ultimately, the respondent No. 4 issued a letter to the petitioner on 13.05.2011, whereby the period w.e.f. 19.05.2006 to 02.08.2006 was to be treated as leave without pay (without break in service) and the salary for the period w.e.f. 19.05.2006 to 31.05.2006 and 01.08.2006 & 02.08.2006, i.e., 15 days pay was to be recovered as wrongly drawn on surplus basis in accordance with

Government instructions for teachers dated 17.06.2004 and 11.08.2008.

2. Mr. L.N. Sharma, learned counsel for the petitioner has strenuously argued that once the medical leave of the petitioner has been duly sanctioned vide Annexure P-6, dated 06.10.2006, Annexure P-8, dated 18.08.2010, Annexures P-10 and P-11, dated 13.05.2011 could not be issued. He further argued that the matter has been re-opened by the respondents after a considerable period, resulting in miscarriage of justice.

3. Mr. Vikas Rathore, learned Deputy Advocate General has vehemently argued that the decision has been taken by the competent authority on the basis of instructions dated 17.06.2004 and 11.08.2008.

4. I have heard the learned counsel for the parties and gone through the pleadings carefully.

5. The medical leave of the petitioner was sanctioned by respondent No. 4 vide Annexure P-6 for the period w.e.f. 19.05.2006 to 02.08.2006. It has been sanctioned as per the Central Civil Services (Leave) Rules, 1972. It is not borne out from the records why the case of petitioner has been reopened after more than three years, which has led to the issuance of Annexure P-8, dated 18.08.2010, Annexures P-10 and P-11, dated 13.05.2011. It is clear from the instructions dated 17th June, 2004 that it would apply to those teachers who remained absent without leave instead of joining their duties at the new place of posting.

6. In the instant case, the leave of the petitioner has been duly sanctioned and the same cannot be curtailed on the basis of instructions dated 17.06.2004 and 11.08.2008. The fact of issuance of Annexure P-8, dated 18.08.2010 is that the period w.e.f. 19.05.2006 to 02.08.2006 has been directed to be treated as leave without pay (without break in service) and the petitioner has been denied the salary for 15 days as well. Petitioner has also not been heard before the issuance of Annexure P-8, dated 18.08.2010 and Annexure P-10 dated 13.05.2011. Petitioner has suffered civil and evil consequences. The instructions dated 17.06.2004 and 11.08.2008 cannot substitute the Central Civil Services (Leave) Rules, 1972. It is reiterated that the leave of the petitioner has been duly sanctioned and the same was to be acted upon and the issuance of Annexure P-8, dated 18.08.2010, Annexures P-10 and P-11, dated 13.05.2011 is declared illegal.

7. Accordingly, in view of the observations and discussions made hereinabove, the petition is allowed. Annexure P-8, dated 18.08.2010 and Annexures P-10 & P-11, dated 13.05.2011 are quashed and set aside. The pending application(s), if any, also stands disposed of.