
(2019) 01 JH CK 0047

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2412 Of 2014

Shankar Prasad Singh

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 17-01-2019

Acts Referred:

Jharkhand Service Code, 2001 — Rule 14, 252, 252(b)(ii)

Citation : (2019) 01 JH CK 0047

Hon'ble Judges : Rajesh Kumar, J

Bench : Single Bench

Advocate : Rajeev Kumar, Prashant Kr. Singh, Radha Krishan Gupta

Final Decision : Disposed Off

Judgement

Heard the parties.

The petitioner had approached this Court for quashing of Memo No. 5529 dated 24.06.2013 (Annexure-3) wherein the petitioner has been granted extraordinary leave for the period from 10.01.2012 to 18.05.2012 on the ground that it is beyond the application of the petitioner and in violation of principles of natural justice and also contrary to Jharkhand Service Code.

The petitioner, who is a member of Jharkhand Administrative Service, was posted as a BDO in Devipur (Deoghar) in the year 2011. He proceeded on leave on 09.05.2011 to 14.05.2011. The reason was marriage of his daughter but, due to medical problem, he has to overstay and as such, he has made a prayer for extension of leave on the ground of medical problem.

Ultimately, the petitioner joined in the Headquarter on 30.12.2011, the ground for joining in Headquarter was notification order no. 59 of 2011 (Annexure-6) wherein Mr. Shailesh Kumar has been posted in place of petitioner vide order dated 03.05.2011.

The disputed period is from 30.12.2011 to 18.05.2012, as the petitioner had

submitted his joining on 30.12.2011 in the Headquarter and he had been given posting as B.D.O. of Mahagama (Godda) on 18.05.2012.

The counsel for the petitioner has drawn attention of the Court to Annexure-1, which is the representation of the petitioner and has submitted that it was a specific prayer of the petitioner that the period from 30.12.2011 to 18.05.2012 should be treated as period of waiting for posting as per rule and accordingly, the salary may be released to the petitioner.

To buttress this point, the counsel for the petitioner has relied upon Rule 252(b) (ii) read with Rule-14 of Jharkhand Service Code which is quoted hereinbelow:-

"Rule 252. - Joining time may be granted to a Government servant to enable him.

(a) to join a new post to which he is appointed while on duty in his old post; or

(b) to join a new post-

(i) on return from leave on average pay of not more than four month's duration; or

(ii) when he has not had sufficient notice of his appointment to the new post, on return from leave other than that specified in sub-clause (i); or

(c) to travel from the port of debarkation and organise his domestic establishment when he returns from leave out of India of more than four month's duration; or

(d) on departure on or return from leave, to proceed from or to the place at which he is posted to or from specified stations when the place concerned is in a locality which has been declared by the State Government to be remote and difficult of access; or

(e) on departure to or return from a course of training exceeding three months, to proceed to the place of training or return from it to the station to which he is posted.

If vacation is prefixed to leave, the total period of vacation and leave combined should be taken into account for determining whether joining time is admissible under Clause (b) (i) or Clause (c) of this rule.

Rule 14- Duty.- (a) Duty includes,-

(i) service in India, as a probationer or apprentice, if such service is followed by confirmation or by appointment to Government service;

(ii) joining time;

(iii) extra leave on average pay granted to a Government servant undergoing treatment at a Pasteur Institute."

The argument advanced by counsel for the petitioner that firstly, the decision

taken by the authority is contrary to the application, as authority has proceeded on the ground that the petitioner has prayed for leave.

Further, the authorities who have taken decision contrary to the demand of petitioner was supposed to give notice before taking decision contrary to the application of the petitioner. It has been argued that notice gives jurisdiction to the authority and without giving notice, they can't take any decision on the claim of petitioner.

Further argument has been advanced that the respondent has tried to justify their decision by supplementing reason through counter affidavit which not permissible as has been declared by Hon'ble Apex Court reported in the case of Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others (AIR 1978, 851) Para-8 is quoted hereinbelow:-

8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. In *Gordhandas Bhanji* (AIR 1952 SC 16) (at p. 18):

"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself".

Thus, words used in common parlance "waiting for posting" is covered by phrase "joining time", as stipulated in Rule 252 (b) (ii) (Supra). Further, joining time has been declared as duty by Rule-14 (Supra).

The disputed period is covered by joining time, as petitioner was waiting for posting. It is duty period by operation of Rule and it has to be treated accordingly.

Further, law is clear on the point that the order has to be seen on the face of it, words are the reflection of the reason and words used therein is the reflection of mind of the decision maker, any addition or deletion will not reflect the mental condition of the decision maker.

Counsel for the State, on the other hand, has submitted that even if it is presumed that the impugned period has to be treated as period spent on duty, the petitioner was absent from the duty, as he has not marked attendance and taking lenient view of the matter the authorities has sanctioned extraordinary leave without pay.

Heard the counsel for the parties.

The petitioner has not come to this Court for giving thanks to the mercy shown by the petitioner rather has approached this Court for claiming his right and it has to be decided in accordance with law. The law is clear on the issue that the disputed period has to be treated as duty period, discussed above.

Joint reading of Rule 252 & Rule 14 makes it clear that period, "waiting for posting" is nothing but "joining time". It is short of leave, but by operation of Rules to be treated as duty period.

Further, it is clear that the respondent has acted in complete negation of the principles of natural justice, as the petitioner has not been informed or noticed and decision is beyond application of petitioner.

In view of above discussion, the portion of impugned Memo No. dated 5529 dated 24.06.2013 (Annexure-3) relating to period 10.01.2012 to 18.05.2012 is, hereby, quashed. It is made clear that rest of the portion is not being disturbed. The matter is remanded to the concerned authorities to take a fresh decision in accordance with law for the period from 30.12.2011 to 18.05.2011.

This writ petition stands disposed of.