

(2018) 07 RAJ CK 0182

In the Rajasthan High Court

Case No : Civil Writs No. 14211, 14214 of 2018

Shanti Devi @APPELLANT@Hash State of Rajasthan & Ors

Date of Decision : 13-07-2018

Acts Referred:

General Clauses Act, 1897 — Section 3(35), 3(66)
Constitution of India, 1950 — Article 217(2)

Citation : (2018) 07 RAJ CK 0182

Hon'ble Judges : Veerendr Singh Siradhana, J

Bench : Single Bench

Advocate : Ram Pratap Saini

Final Decision : Disposed Off

Judgement

According to learned counsel for the petitioner the period of medical leave has not been reckoned for the purpose of experience, contrary to the

statutory rules and interpretation by a Coordinate Bench of this Court at Principal Seat, Jodhpur, in the case of Rajendra Parihar Vs. State of

Rajasthan & Ors.: SBCWP No. 5877/2015, decided on 15th June, 2016, observing thus: "For reaching of this conclusion, the definition of the terms

'month' and 'year' as provided in the general clauses Act, 1897 (for short, 'the Act of 1897') need to be looked at. 'Month' is defined in Section 3 (35)

of the Act of 1897 and 'year' is defined in Section 3(66) of the Act of 1897 and need as below:-

3(35) "month" shall mean a month reckoned according to the British calendar.

3(66) "year" shall mean a year reckoned according to the British calendar.

Thus, while calculating the experience of the petitioner between 31.1.2010 to 28.2.2013, these definitions would definitely have to be kept in mind. The

stand of the respondents that the absence of the petitioner be it on medical grounds for a period of 56 days has to be excluded while issuing experience

certificate is totally unacceptable.

For dealing with the issue, analogy can be drawn from Article 217(2) of the Constitution of India which deals with appointments on the post of a

High Court Judge and reads as below: Article 217(2)

(2) A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and (a) has for at least ten years

held a judicial office in the territory of India; or

(b) has for at least ten years been an advocate of a High Court or of two or more such Courts in succession; Explanation For the purpose of this

clause

(a) In computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has

held any judicial office, during which the person has been an Advocate of a High Court or has held the office of a member of a tribunal or any post,

under the Union or a State, requiring special knowledge of law;

(aa) in computing the period during which a person has been an advocate of a High Court, there shall be included any period during which the person

has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he

became an advocate;

(b) in computing the period during which a person has held judicial office in the territory of India or been an advocate of High Court, there shall be

included any period before the commencement of this Constitution during which he has held judicial office in any area which was comprised before

the fifteenth day of August, 1947, within India as defined by the Government of India Act, 1935, or has been an advocate of any High Court in any

such area, as the case may be.

If the interpretation of the word "experience" as adopted by the respondents is accepted, then the period of summer vacations enjoyed by a judicial

officer/advocate or other holidays which fall during the course of such ten years working period would have to be excluded. It would give rise to an

absolutely absurd proposition. The entire service period or the professional career as the case may be has to be accounted for while calculating the

experience required by a person to be appointed as High Court Judge.

The medical leave which the petitioner took has been sanctioned as per the case set up by him in an additional affidavit. It is not the case of the respondents that the absence period of 56 days was declared to be 'dies non'. Thus, merely because the petitioner had remained absent for a few days during the contractual service owing to his illness, such period cannot be excluded from his experience in terms of the specific provisions of the General Clauses Act.

As per the Oxford English Dictionary, the word 'experience' is defined as practical contact with and observations of facts or events : the knowledge or skill acquired by such means over a period of time, especially that gained in a particular profession by someone at work.

A person who works as a nurse in a hospital on contractual basis for a period in excess of 3 years gains experience over the entire length of service.

Absence during the said period unless highly excessive cannot be eschewed from the period of experience. Thus, merely because the petitioner

was forced to go on medical leave for a certain duration because of his illing health, the said period cannot be excluded while assessing his experience

for being appointed as a Nurse Grade-I. The work put in by the petitioner over a length of three years and the skills gained by him for such extended

period of time cannot be curtailed merely because he had to undergo medical treatment for a short duration in this entire span of more than three

years, more particularly, because the period of absence was not declared to be 'dies non'.

Consequently, the action of the respondent no.4 in deducting the period of 56 days (availed by the petitioner as medical leave) during his contractual

assignment between 31.1.2010 to 28.2.2013 while issuing him the experience certificate cannot be approved as being unjust and arbitrary.

Resultantly, the instant writ petition deserves to be and is hereby allowed. The respondent no. 4 is directed to issue experience certificate to the

petitioner for the entire period of his contractual assignment commencing from 31.1.2010 and ending on 28.2.2013. The recruiting authority shall

acknowledge such experience certificate and give benefit of 15 % bonus marks to the petitioner and shall consider his case for recruitment to the post

of Nurse Grade-II in the questioned recruitment process. The entire exercise as directed above shall be completed within a period of 3 months from

today.

Stay petitions also stand disposed of.

No order as to cost.â??

In view of the above, learned counsel further urged that for the present the petitioner would be satisfied, if the State respondents are directed to

consider and decide the representation within a time frame, which the petitioner is ready and willing to address within two weeks hereinafter.

In view of the limited prayer addressed; the instant writ proceedings are closed with a direction to the petitioner to address a comprehensive

representation to the respondents ventilating her grievances.

In case, a representation is so addressed within the aforesaid period, the State respondents are directed to consider and decide the same by a

reasoned and speaking order as expeditiously as possible in accordance with law; preferably within ten weeks from the date of receipt of the

representation along with a certified copy of this order.

With the observations and directions, as indicated above, the writ as well as stay application stand disposed off.