
(2014) 02 MP CK 0074

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4840 of 2013

Shree Bhagwan Gupta

APPELLANT

Vs

Jiwaji University and Another

RESPONDENT

Date of Decision : 10-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 02 MP CK 0074

Hon'ble Judges : Rohit Arya, J

Bench : Single Bench

Advocate : S.C. Sharma in W.P. No. 5932/13 and Mr. Mahesh Goyal in W.P. No. 4840/2013, for the Appellant; Tapan Trivedi, for the Respondent

Final Decision : Allowed

Judgement

Rohit Arya, J.—This order shall govern disposal of W.P. No. 4840/2013 and W.P. No. 5932/13 as common and identical question is involved in both the cases, For the facility of disposal of both the petitions, the facts in W.P. No. 5932/13 have been dealt with.

2. By this petition under Article 226 of the Constitution of India, challenge is made to order dated 17/04/2013 (Annexure P/15) passed by respondent No. 1/ Jiwaji University, Gwalior.

3. The Facts in a nutshell necessary for disposal of this petition are that the petitioner submitted that on his application for sanction of the earned leave with effect from 24/03/2003 to 22/07/2003 though sanctioned the earned leave from a later date, i.e., with effect from 01/04/2013 to 22/07/2003 vide order dated 27/03/2003 (Annexure P/1) but, on account of administrative exigency and heavy work in the office of Cash and Accounts Section of the establishment of respondent No. 1, the petitioner was not relieved to avail the sanctioned leave, therefore, he had no option than to work during the aforesaid period. The respondents have passed an order to that effect on 25/03/2003 (Annexure P/2).

Therefore, in fact and in effect, the petitioner was unable to avail the sanctioned earned leave with effect from 24/03/2003 to 22/07/2003.

4. The petitioner submits that though he had applied for encashment of leave to his credit including the sanctioned earned leave period, during which he actually performed the duties, on attaining the age of superannuation. The respondents have not accorded the said benefit. The petitioner further submits that in the matter of similarly situated employees who were though sanctioned the earned leave but not relieved to avail it and, therefore, discharged duties, the respondents had extended the benefit of leave encashment in their cases. Instances whereof have been stated in paragraph 5.6 of the petition (Annexures P/3 to P/7). However, the petitioner has been given a different treatment by way of not extending the benefit of leave encashment for the period for which he actually worked though sanctioned, on account of exigency of service and heavy work in the Cash and Accounts Section of the respondents. The petitioner under such circumstances, seeks parity and equity for availing the benefit of leave encashment. The petitioner further submits that he made several representations but of no avail as the respondents did not pay any head to them. As a result, W.P. No. 5802/2006(S) was filed wherein this Court vide order dated 06/02/2012 directed the respondents to consider the petitioner's representation in that behalf.

5. The respondents by impugned order dated 17/04/2013 (Annexure P/15) in purported compliance of the order passed by this Court in W.P. No. 5802/2006(S) (Supra) have decided not to allow the encashment of earned leave on the pretext that there was no order for cancellation of the sanctioned earned leave and treated that the petitioner refused to avail the sanctioned earned leave and, therefore, not entitled for leave encashment.

6. There is no dispute that during the period in question, the petitioner was sanctioned the earned leave, however, he was not relieved to avail it on the pretext of exigency of administration due to heavy work in the Cash and Accounts Section of the respondent No. 1/employer and did perform the work. Besides, the respondents have not mentioned any provision or rule in the impugned order to show the authority of the respondents to deny the encashment of leave to the petitioner for the period he has actually rendered the service. There is no response from the respondents also to the effect that under similar circumstances several other employees who were sanctioned earned leave had not been relieved but, in their case extended the benefit of leave encashment for the period of sanctioned leave. The petitioner has been shown a different yardstick in that behalf.

7. The impugned order passed by the respondents for refusing the encashment of sanctioned leave appears to be not justified for want of authority under law. The impugned order also is not sustainable by applying the principle of parity and equity which is required to be maintained with other similarly placed employees vis-?-vis the petitioner by the respondents/employer. Under these circumstances,

the petitioner cannot be subjected to discriminatory treatment without any justifiable reason. In view of the aforesaid, both the petitions are allowed and impugned order dated 17/04/2013 (Annexure P/15) passed in W.P. No. 5932/13 and impugned order dated 01/07/2013 passed in W.P. No. 4840/2013 (Annexure P/1) are quashed. The respondents are directed to treat the respective sanctioned leave period of both the petitioners with effect from the date of their entitlement for the purpose of encashment of leave. Since both the petitioners stood retired from service, necessary orders for releasing the monetary benefits in favour of the petitioners be passed within a period of three months from the date of production of copy of this order.

Certified copy as per rules.