
(2018) 08 GAU CK 0010
In the Gauhati High Court
Case No : Writ Petition (C) No. 4872 of 2016

Shrikant S. Karnase

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 07-08-2018

Acts Referred:

Services (Temporary Service) Rules, 1965 — Rule 5
Fundamental Rules — Rule 54

Citation : (2018) 08 GAU CK 0010

Hon'ble Judges : NELSON SAILO, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. Heard Mr. N. Upadhyay, the learned counsel for the petitioner as well as Ms. A. Gayan, the learned CGC who appears for all the respondents.

2. By filing this writ petition, the petitioner has challenged the order dated 20.02.2015 by which, the period between his termination from service and reinstatement i.e. w.e.f 23.11.2007 to 04.02.2011 has been treated as not on duty for any purpose including leave, increment and pension etc. but without break in service.

3. Brief facts of the cases for disposing the writ petition may be narrated at the outset. The writ petitioner was appointed as Constable General Duty (Constable GD) by the respondent No. 5 vide Memorandum dated 05.10.2005. As per the appointment order, he is to be on probation for a period of 2 years from the date of his appointment extendable by another year. While he was in his probationary period, the petitioner on 03.11.2007 availed for 15 (fifteen) days Casual Leave (CL) w.e.f. 05.11.2007 to 22.11.2007. The petitioner on availing the CL proceeded to his home in the State of

Maharashtra and during his leave period, on account of an accident, he sustained a fracture on his leg i.e. fracture of Shaft Femur. Therefore, he

sought for extension of his leave and forwarded his medical documents to the respondent No. 5. However instead of granting him leave extension, he

was asked to rejoin his duty vide communication dated 21.02.2007. As the petitioner failed to rejoin his duty, he was terminated from service w.e.f

23.11.2007 by invoking Rule 5 of the Temporary Service Rules and the provisions of CRPF Act and Rules vide notice of termination dated

28.01.2008.

4. Being aggrieved, the petitioner approached the High Court of Bombay by filing WP(C) No.3763/2008, which was however dismissed. The intra

Court appeal preferred by the petitioner was also rejected and consequently, the petitioner approach the Apex Court by filing SLP (C) No. 20125/09),

which was converted into Civil Appeal No. 9108/2010. The Civil Appeal was heard and disposed by the Apex Court vide order dated 18.10.10 on the

submission of the Additional Solicitor General appearing for the Union of India that the authorities concerned will pass a fresh order within a period of

two months after considering the genuineness of the medical certificate that was claimed to have been sent by the petitioner. In the said order, the Apex

Court also observed that the authorities will be entitled to consider all the claims if necessary by hearing the petitioner if he prays for the same.

5. Pursuant to the order passed by the Apex Court, the respondent authorities vide order dated 09.01.2011 took a decision to reconsider the case of

the petitioner in the light of the order passed by the Apex Court. Thereafter vide Office Order dated 04.02.2011, the petitioner was reinstated into

service but the period of his removal from service w.e.f 23.11.2007 till the date of his rejoining of his service on 23.01.2011 was directed to be treated

as extra ordinarily leave (Dies-non).

6. Against the order dated 04.02.2011, the petitioner again approached the High Court of Bombay by filling WP(C) 901/2014 on the ground that the

petitioner was not given an opportunity before passing the order in terms of Rule 54 of the Fundamental Rules. The writ petition was then disposed of

vide order dated 05.01.2015 by directing the respondent authority concerned to specify as to how the period between 23.11.2007 to 23.01.2011 was to

be treated. Thereafter, the respondent No. 5 passed the impugned order dated

22.02.2015 directing that the period between 23.11.2007 to

04.02.2011 will not be counted for any purpose including leave, increment and pension etc. That is how the petitioner is before this Court.

7. The learned counsel Mr. N. Upadhyay submits that the reason for the petitioner overstaying his leave was only on account of his medical condition.

Though the petitioner sought for extension of his leave by submitting an application with medical documents, the respondent authorities concerned

refused to extend his leave. The respondent authority ought to have given him leave extension instead of terminating him from service under the

Temporary Service Rules. He submits that it was only upon the intervention of the Apex Court that the petitioner was reinstated into service and since

the reason for his absence has been explained and it was the respondent authority who did not allow him to join his duty after he recovered from his

ailment, the period w.e.f 23.11.2007 to 04.02.2011 should be treated as on duty and all the benefits be given to him. In support of his submission, he

relies upon the decision of the Apex Court in the case of Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) & Ors.

reported in (2013) 10 SCC 324.

8. Ms. A. Gayan, the learned CGC on the other hand, by relying upon the affidavit-in-opposition filed by the respondent No. 5 on 15.09.2017 submits

that the petitioner did not intimate the respondent authorities concerned about his illness and his whereabouts let alone, the accident, injury or

hospitalization at any stage. The petitioner absented himself willfully without any intimation to the authority concerned and therefore, there was option

left to the respondent authority but to issue him notices asking him to rejoin his duty. But despite the notices, the petitioner failed to join his duty and

therefore, he was terminated his service. However, upon considering the order passed by the Apex Court, the respondent authority decided to recall

the order of termination and in doing so, as the petitioner being a probationer did not have any leave to his credit, the period of his absence w.e.f

23.11.2007 to 04.02.2011 was treated as extra ordinarily leave and will not be counted for any purpose including leave increment, pension etc. but will

not be a break in service. Under the circumstance, the petitioner cannot have any legitimate grievance and the writ petitioner should be dismissed.

9. I have considered the submissions made by the learned counsels for the rival

parties and I have perused the materials available on record. As can be seen the petitioner was appointed vide memorandum dated 05.10.2005 and when he availed CL on 03.11.2007, he was still a probationer. Although, the petitioner claims to have submitted an application for extension of his leave with medical certificates, there is nothing on record to show that he had indeed applied for the same with supporting documents. His writ petition filed before the High Court of Bombay was also dismissed and thereafter, on further appeal was upheld by the appellate court. However, when he approached the Apex Court, it was only in consideration of the submission made by the concerned Additional Solicitor General of India that his termination was reconsidered in the light of the medical documents claimant to have been submitted by him. Thereafter, the respondent authorities took a lenient view on the matter and decided to reinstate him. As for the period during which he was out of service, the same was regularized by granting him extraordinary leave without counting the period for any purpose including leave, increment, pension etc.

10. Although, the learned counsel for the petitioner submits that the petitioner was not given an opportunity of hearing prior to passing of the impugned order as was observed by the Apex Court in its order dated 18.10.2010, there is however no whisper in the pleadings of the writ petitioner that he had indeed asked for an opportunity to be heard but was denied. Therefore, the submission of the learned counsel for the petitioner about the denial of an opportunity to the petitioner to be heard cannot be accepted. The petitioner being a probationer admittedly could not have any leave to his account and therefore, the respondent authority concerned in my considered opinion was only justified in passing the impugned order dated 22.02.2015.

11. The case of Deepali Gundu Surwase (supra) referred to by the learned counsel for the petitioner is also found to have no application to the instant case inasmuch as the issue that was raised before the Apex Court is not similar to the present case. The Apex Court after coming to a finding that the appellant therein was wrongfully and illegally terminated held that she will be entitled to all the benefits including back wages on her reinstatement. In the present case, the legality of the impugned order dated 22.02.2015 itself has not been questioned and claim has been made only for continuity in service for the period w.e.f 23.11.2007 to 04.02.2011 and for monetary benefits.

Further, as may be noticed, after the petitioner was reinstated into service and the period he was out of service treated as extraordinary leave and dies-non, he being aggrieved, had approached the Nagpur Bench of the High Court of Bombay by filing W.P.(C) No.901/ 2014 and the High Court was only pleased to direct the respondent authority concerned to pass a specific or a clarificatory order for the period in question.

12. Therefore, under the given facts and circumstances, I do not find any merit in the writ petition and accordingly, the same is dismissed. Parties are directed to bear their own costs.