

(2010) 06 UK CK 0165
In the Uttarakhand High Court

State of Uttaranchal and Others

APPELLANT

Vs

Vijendramani Nautiyal and Another

RESPONDENT

Date of Decision : 08-06-2010

Acts Referred:

Citation : (2010) 06 UK CK 0165

Hon'ble Judges : J.S. Khehar, C.J.;Sudhanshu Dhulia, J

Bench : Division Bench

Judgement

J.S. Khehar, C.J.—Respondent No. 1 filed Claim Petition No. 184/T/2002 before the Public Services Tribunal, Uttaranchal at Dehradun impugning the orders dated 8.2.1994 and 19.8.1998. By the aforesaid impugned orders dated 8.2.1994 and 19.8.1998, respondent No. 1 was denied the right to resume his duties after he had absented himself for a period of 442 days.

2. The Public Services Tribunal, Uttaranchal at Dehradun allowed Claim Petition No. 184/T/2002 by an order dated 29.5.2003. In allowing the aforesaid Claim Petition, the impugned orders dated 8.2.1994 and 19.8.1998 were set aside. The petitioners were directed to reinstate respondent No. 1. In addition thereto, the petitioners were directed to sanction leave to respondent No. 1 as per the rules.

3. During the course of hearing, it is not disputed at the hands of the learned Counsel for the petitioners, that respondent No. 1 was mentally disturbed, and as such, had been taking treatment at the District Hospital, the Mental Hospital and the Medical College. Having acknowledged that respondent No. 1 was not deliberately absent from duty, learned Counsel for the petitioners does not press the finding recorded by the Public Services Tribunal, Uttaranchal at Dehradun, insofar as the reinstatement of respondent No. 1 is concerned.

4. Despite the aforesaid, it is the vehement contention of the learned Counsel for the petitioners, that respondent No. 1 was not entitled to any leave for his absence for a period of 442 days. Learned Counsel for the petitioners has invited our attention to the rules applicable to respondent No. 1 insofar as the issue of

leave is concerned. The following rule has been brought to our notice:

Leave:

The following paid leave will be admissible, to the work charged employee:

(A) National Holiday:

1. Republic Day 26th Jan 1 2. Independence Day 15th Aug 1 3. Mahatma Gandhi Birthday 2nd Oct 1 ---- 3 ---- (B) Festival Holidays:

1. Idul-Zuha 1 2. Shiv Ratri 1 3. Moharram 1 4. Holi 2 5. Good Friday 1 6. Dashehra 1 7. Jan Masthami 1 8. Idul-Fitre 1 9. Diwali 2 10. Kartik Purnima 1 11. Christmas Day 1 ---- 13 ---- (C) Weekly Off Day:

All employee shall be entitled to an off-day, after every six working days. These off days shall be so regulated that no work is stopped totally in a particular week.

Other Leave:

Employees shall be granted 9 days casual leave & 15 days earned leave, in a year (July 1 to June 30) which shall not be accumulated. Such leave will be admissible in proportion to the 30.

In addition, extra ordinary leave, with pay, may be granted of an employee, who donate blood, in a Government Hospital, free of cost, upto a maximum of three days, if so recommended, by the medical officer of that hospital. Similarly, leave not exceeding six days may be granted, on account of the sterilization operation on the recommendation of the medical officer concerned.

It is, therefore, submitted that respondent No. 1 was not entitled to any leave whatsoever under the rules, whereby his conditions of service were regulated.

5. In response to the contention advanced by the learned Counsel for the petitioners on the issue of leave, it is the submission of the learned Counsel for respondent No. 1 that respondent No. 1 will be satisfied, in case respondent No. 1 is granted leave "without pay" for the period of his absence.

6. Learned Counsel for the petitioners states, that since the financial liability of the petitioners shall impliedly be set off by the statement made by the learned Counsel for respondent No. 1, he has no objection, if leave "without pay" is granted to respondent No. 1 for the period of his absence.

7. In view of the above, we hereby modify the impugned order passed by the Public Services Tribunal, Uttaranchal, Dehradun so as to hold that respondent No. 1 shall not be entitled to any pay during the period of his absence, and that for the period of 442 days, he shall be treated as on "leave without pay".

8. Learned Counsel for the rival parties are also agreed that no further arrears of salary shall be paid to respondent No. 1 in addition to what has already been paid to him.

9. The instant Writ Petition is disposed of in the aforesaid terms.