

(2024) 05 GAU CK 0064

In the Gauhati High Court

Case No : Writ Petition (C) No. 2859 Of 2023

Sunil Kumar Modak

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 10-05-2024

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2024) 05 GAU CK 0064

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : D P Chaliha, M. Roy, P. Das

Final Decision : Dismissed

Judgement

1. Heard Shri DP Chaliha, learned Senior Counsel assisted by Ms. M. Roy, learned counsel for the petitioner. Also heard Ms. P. Das, learned Standing Counsel, Secondary Education Department.

2. Considering the subject matter and also the fact that the affidavit-in-opposition has been filed by the respondent no. 3 followed by a rejoinder affidavit, the instant writ petition is taken up for disposal at the admission stage.

3. The facts projected in the petition is that the petitioner was appointed as Grade-IV employee in the Ballamguri High School in the district of Kokrajhar vide an order dated 30.09.1989. The aforesaid post has been claimed to a sanctioned post. It has also been averred that though the initial appointment was for a period of 3(three) months, the petitioner was allowed to continue. Vide an order dated 15.02.1996, the services of the petitioner was transferred to the Chhagolia High School in the district of Dhubri.

4. It is the case of the petitioner that he suffered from Tuberculosis from 01.05.2016 to 31.05.2016 for which he was granted special leave by the concerned Inspector of Schools vide order dated 30.12.2016. The petitioner has further contended that as he was not fully recovered, he could not be present for

his duties from 11.05.2017 to 20.06.2017. However, without considering his case, a letter dated 21.06.2020 was issued by the Headmaster of the school asking for an explanation which was followed by another communication dated 31.07.2017 directing the petitioner to show cause. It is submitted that the petitioner could not be present in the school and not able to inform his condition in time.

5. The petitioner claims to have reported for his duties after May, 2017. However, it is projected that due to non-sanction of the leave period from 11.05.2017 to 20.06.2017, he has not been paid his salary. It is contended that though the petitioner has been requesting the authorities for sanction of the leave for the aforesaid period and consequent payment of his salaries, no steps have been taken and accordingly the instant writ petition has been filed.

6. Shri Chaliha, learned Senior Counsel for the petitioner has submitted that there were cogent reasons for the petitioner for not attending the duties for the period from 11.05.2017 to 20.06.2017 and in this regard, sanction of leave was prayed for on medical ground. It is submitted that there were no discernible reasons for not granting the said leave as a result of which the petitioner has not been allowed to discharge his duties thereafter. It is submitted that the petitioner is entitled to the salaries for the remaining period as his age of superannuation was also approaching.

7. Per contra, Ms. Das, learned Standing Counsel, Secondary Education Department by referring to the affidavit-in-opposition filed on 21.02.2024 has drawn the attention of this Court to the averments made in paragraphs 3 and 4 thereof. Reference has also been made to the enclosures of the said affidavit-in-opposition, as per which the petitioner was initially granted medical leave for 92 days from 01.03.2016 to 31.05.2016. However, the petitioner was found to be unauthorizedly absent w.e.f. 11.05.2017 for which the Inspector of Schools, Dhubri had issued a show-cause notice dated 02.08.2017 which was not replied to. The details of the leave encashment have also been annexed to the said affidavit-in-opposition. The Headmaster of the school had issued notices dated 21.06.2017 and 11.07.2017. The Headmaster had also issued intimation to the Inspector of Schools, Dhubri regarding the aspect of unauthorized absence of the petitioner vide communications dated 14.12.2017, 30.11.2018, 10.08.2020 and 28.12.2021. It has been categorically averred in the affidavit-in-opposition that from 11.05.2017, the petitioner never came to attend the school for discharging of his duties.

8. Shri Chaliha, learned Senior Counsel for the petitioner has however clarified that the petitioner had indeed reported for discharging his duties. However, he was not allowed to discharge his duties and also not allowed to put his signature in the attendance register.

9. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

10. The prayer in the writ petition reads as follows:

"It is therefore prayed that the Hon'ble Court be pleased to admit the application, call for the records of the case and issue a rule calling upon the respondents to show cause as to why the leave under Medical grounds should not be sanctioned and as to why the salary from 11/05/2017 should not be released till today and after hearing of the parties, perusal of the records and causes that may be shown make the rule absolute and or pass such order or orders as the Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

11. The documents annexed by the petitioner himself would show that the leave on medical ground was granted to the petitioner for a period of 92 days. The projected case is that even thereafter from 11.05.2017 to 20.06.2017, the petitioner could not attend his duties on medical ground and therefore leave was sought for. Even assuming that a case for issuing a direction to grant medical leave for the aforesaid period is made out, what is intriguing is that there is neither any averment nor any documents annexed by the petitioner to show that from the period post 20.06.2017, he had attended his duties. On the contrary, the documents placed on record by the respondents through the affidavit-in-opposition filed on 21.02.2024 would show that the petitioner was unauthorizedly absent from 11.05.2017 to 20.06.2017 and continuously thereafter. The Inspector of School had also issued a show-cause notice to the petitioner on 31.07.2017 which however was replied to by the petitioner after about a year on 22.10.2018. The reasons shown for such delay is that the petitioner was suffering from ailments. However, the period of ailment has been mentioned as 11.05.2017 to 20.06.2017 and therefore the explanation granted would not be relevant at all as the reply has been filed admittedly on 22.10.2018. Be that as it may, the materials on record would show that the petitioner was not attending his duties post 11.05.2017. The contention that the petitioner had gone to discharge his duties but was not allowed is but a question of fact which is disputed by the respondents and such disputed questions of fact would not come within the ambit of adjudication by this Court in exercise of powers under Article 226 of the Constitution of India. The categorical averments made by the respondents in paragraphs 3 and 5 would also be relevant which are extracted hereinbelow-

"3. That, as regards to the statements made in paragraph Nos. 4 of the writ petition, the answering deponent herein begs to state that the petitioner is a grade IV of Chhagali High School availed last T.B leave with Pay for 92 days w.e.f. 01.03.2016 to 31.05.2016 vide Inspector of Schools D.D.C Dhubri order memo No.PC/E-6/LEB/79/84/532-33 dated 19.01.2016 and joined in his service on 01.06.2016. At that time the petitioner availed Earned Leave for 450 days with Pay Extra-Ordinary Leave for 234 days without pay and 441 days T.B. leave with pay, all together he got 1125 days. All the leaves are sanctioned by the Inspector of School D.D.C. Dhubri.

5. That, as regards to the statements made in paragraph Nos. 6 of the writ petition, the answering deponent herein begs to state that the petitioner submitted an application dated 26.03.2022 for sanctioning T.B. Leave for the period from 11.05.2017 to 20.06.2017 but the petitioner has been absent from the School and his duties without any cooperation with the School authority as well as higher authority for a long period since 11.05.2017 to till date."

12. In view of the aforesaid discussions and the rival stands of the parties, this Court is not in a position to grant any relief to the petitioner and accordingly, the writ petition is dismissed.

13. The respondents however may consider the aspect of grant of medical leave for the period from 11.05.2017 to 20.06.2017, if permissible under the law and grant any consequential benefits they may accrue to the petitioner for the said period.