
(2022) 12 SHI CK 0026
In the High Court Of Himachal Pradesh
Case No : CWPOA No. 4065 Of 2020

Surjeet Singh

APPELLANT

Vs

State Of H.P. & Another

RESPONDENT

Date of Decision : 12-12-2022

Acts Referred:

Central Civil Services (Leave) Rules, 1972 — Rule 50(5)(i)

Citation : (2022) 12 SHI CK 0026

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Ramesh Kaundal, Desh Raj Thakur, Narender Thakur

Final Decision : Dismissed

Judgement

Satyen Vaidya, J

1. By way of instant petition, petitioner has prayed for the following substantive relief:-

"i). That the impugned rejection letter dated 12.9.2001 Annexure A-5, letter dated 4.6.2002, Annexure A-7 and letter dated 11.12.2017, Annexure A-10 may kindly be quashed and set aside.

ii) That the respondents may kindly be directed to sanction study leave to the applicant for the period 9.8.1995 to 27.3.1996 and also to release the pay for this period.

iii) That the respondents may kindly be directed to grant the higher pay scale of Lecturer School Cadre at par with other similarly situated DPEs who were allowed the same after judgment dated 21.7.2016 (Annexure A - 6) of this Hon'ble Tribunal."

2. Brief facts necessary for adjudication of petition are that the petitioner was initially appointed as Physical Education Teacher (PET) on adhoc/tenure basis in Education Department of the State and had joined as such on 3.10.1987. His

services were regularized w.e.f. 1.4.1994.

3. Respondent No.1 vide order dated 17.5.1995 had permitted the petitioner to undergo MPED Training during the sessions 1995-96 subject, however, to the condition that petitioner was to apply for leave due and admissible to him under the rules to cover the period of his absence from duty to undergo the said training.

4. Petitioner completed the MPED training and for such purpose remained absent from duty w.e.f. 8.9.1995 to 19.10.1995 and 16.11.1995 to 29.3.1996 for total 177 days. Petitioner applied for sanction of study leave for the aforesaid period but his request was rejected by respondent No.1 and was communicated to the petitioner vide letter dated 12.9.2001. Petitioner again represented to respondent No.2 but his representation met with the same fate and vide communication dated 4.6.2002, petitioner was intimated about rejection of his request.

5. Petitioner accepted the aforesaid rejection and did not assail the same. Petitioner was one of the applicants in T.A. No. 4641 of 2015, titled as Lalit Chauhan & others vs. State of H.P. & others, decided by the erstwhile H.P. State Administrative Tribunal vide order dated 21.7.2016. A direction was issued to the respondents therein to grant higher scale of School Lecturer to all the applicants therein w.e.f. 1.6.2008 with all consequential benefits. During the implementation of aforesaid judgment, it was found that the case of petitioner was rejected by respondents with the observation that earned leave availed by him to undertake the MPED had not been mentioned in his service book. On the basis of such observation of respondents, petitioner approached the erstwhile Tribunal by filing O.A. No. 1251 of 2018, which after abolition of the Tribunal came to be transferred to this Court and was registered as CWPOA No. 4065 of 2020 i.e. the instant petition.

6. Petitioner has assailed the rejection of his request for grant of study leave and communicated to him vide letter dated 12.9.2001 (Annexure A-5) and 4.6.2002 (Annexure A-7). In addition, he has also sought direction to the respondents to sanction study leave in his favour and also to grant higher pay scale of Lecturer School Cadre, in terms of judgment dated 21.7.2016.

7. Respondent No.2 has contested the claim of the petitioner by alleging that petitioner was not entitled to study leave as he had not completed five years of regular service at the relevant time. As per respondents, the services of petitioner were regularized w.e.f. 1.4.1994 and in such circumstances, regular service of the petitioner was much shorter than the required five years to make him eligible for study leave. The absence of 177 days w.e.f. 8.9.1995 to 19.10.1995 and 16.11.1995 to 29.3.1996 was stated to have been regularized as extra ordinary leave (without pay and without break in service).

8. During the proceedings of instant petition, respondents have placed on record office order dated 27.4.2019, issued by respondent Non.2, whereby the absence

of petitioner for the aforesaid period of 177 days was regularized as extra ordinary leave (without pay and without break in service) and necessary directions were issued to release all due and admissible benefits of revised pay fixation to the petitioner. The petitioner has not denied such fact situation, rather in the rejoinder filed on his behalf, it has been admitted that the respondents had released the benefit of higher pay to the petitioner in accordance with judgment in TA No. 4641 of 2015. In view of such development, the third relief, as prayed for by petitioner has become infructuous. Even otherwise, such relief could not be claimed by petitioner by way of instant petition and the order passed by the erstwhile Tribunal in T.A. No. 4641 of 2015 could be executed by seeking recourse to appropriate remedy under law.

9. As regards the other reliefs sought by petitioner, in my considered view, the petitioner cannot be held entitled. Rule 50 (5)(i) of CCA (Leave) Rules 1972 provides as under:-

"50(5)(i)-study leave may be granted to a government servant who has satisfactorily completed period of probation and has rendered not less than five years regular continuous service including period of probation under the government".

10. Admittedly, petitioner did not fulfill the aforesaid condition. His services were regularized on 1.4.1994 and had undergone the MPED training during 1995-96 sessions. Since the petitioner was ineligible for study leave, no right can be said to be vested in him so as to enforce it by seeking direction from this Court.

11. The claim of the petitioner otherwise also suffers from delay and laches. The respondents had rejected his request for grant of study leave in the year 2001-02. The cause of action, if any, to assail such rejection had accrued to the petitioner at that relevant time. Petitioner did not assail the rejection of his request and at belated stage preferred Original Application before the erstwhile Tribunal in the year 2018. Non implementation of order passed in T.A. No. 4641 of 2015 could not have provided a fresh cause of action to petitioner. The claim regarding non implementation of order passed by learned Tribunal in T.A. No. 4641 of 2015 was not justiciable separately, save and except by filing execution for implementation of such order. Merely because non implementation of said order was indirect result of non sanctioning of study leave in favour of the petitioner, it cannot be said to have afforded to petitioner a fresh cause of action to assail rejection to his request for study leave communicated to him in the year 2001-02.

12. In light of above discussion, there is no merit in the petition and the same is accordingly dismissed. Pending applications, if any, also stand disposed of.