
(2022) 10 JH CK 0005
In the Jharkhand High Court
Case No : Writ Petition (S) No. 4013 Of 2013

Tipan Sao

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 10-10-2022

Acts Referred:

Citation : (2022) 10 JH CK 0005

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Ramawatar Sharma, Shreshtha Mehta

Final Decision : Disposed Of

Judgement

Anubha Rawat Choudhary, J

1. Learned counsel for the parties are present.
2. This writ petition has been filed for the following relief:

"For quashing of the order dated 20.10.2010 and 29.11.2012 as contained in Annexure – 1, passed by respondent nos.3 and 4 respectively, whereby and whereunder they refused to grant earned leave but directed that the petitioner will be on unpaid leave for the concerned period."

Arguments of the Petitioner

3. Learned counsel for the petitioner submit that the petitioner was initially appointed as peon on temporary basis and joined the post on 29.11.1999 at Seraikella, Kharsawan and he was deputed from Pilot Project Centre, Bengabad to District Industry Centre, Giridih for some time and was transferred. Lastly the petitioner was transferred from Agra Pariyojna Kendra, Bengabad to Agra Pariyojna Kendra, Garhwa. The learned counsel submits that the petitioner had moved this Court for quashing of the order of transfer dated 22.10.2009 in W.P. (S) No. 5631/2009 but the writ petition was withdrawn vide order dated 13th

August, 2012 as the order of transfer dated 3rd August, 2012 was withdrawn by the respondents themselves.

4. The learned counsel submits that the petitioner was under treatment between the period from 10.11.2009 to 11.02.2010 and under compelling circumstances, he could not join his duty at Agra Pariyojna Kendra, Nagar Untari, Garhwa. The learned counsel submits that the petitioner had informed the concerned respondent and prayed for grant of earned leave for the period of his absence due to illness, but on 20.10.2010, the respondent No. 3 rejected the aforesaid prayer of the petitioner and directed that the petitioner will be treated on leave without pay between 08.11.2009 to 11.02.2010. The learned counsel submits that further on 29.11.2012, the respondent No. 4 refused to grant earned leave for the period from 04.03.2012 to 22.03.2012 and the said period was treated as unauthorized absence from duty. The learned counsel submits that the petitioner had enough leave to his credit and accordingly, the respondents ought to have adjusted the earned leave for period of absence and therefore, the impugned order dated 20.10.2010, whereby the period from 08.11.2009 to 11.02.2010 was treated as leave without pay and further the impugned order dated 29.11.2012, whereby the period from 04.03.2012 to 22.03.2012 was treated as unauthorized absence, calls for interference by this Court.

Arguments of the Respondents

5. Learned counsel appearing on behalf of the respondents, on the other hand, has referred to the counter-affidavit and submitted that as per Rule 55 of Jharkhand Service Code, the whole time of a Government servant is at the disposal of the Government which pays him, and he may be employed in any manner require by proper authority without claim for additional remuneration and that a Government servant can be employed by Government in any manner and he has no claim to any remuneration or overtime allowances, he cannot be absent from his headquarters even on holidays without obtaining the previous permission of the competent authority.

6. The learned counsel has further referred to Rule 180 (b) of the Jharkhand Service Code and submits that as per Rule 180 (b) of the Code, the authority empowered to sanction leave may grant extraordinary leave in combination with, or in continuation of, any leave that is admissible and may commute retrospectively period of absence without leave into extraordinary leave and the Note-2 to Rule 180 (b) clearly provides that the power of commuting period of absence without leave into extraordinary leave under sub-rule (b) is absolute and such action is permissible even when other leave was admissible to Government servant at the time of his absence without leave. The learned counsel has also referred to Rule 152 of the Jharkhand Service Code to submit that leave cannot be claimed as a matter of right.

7. The learned counsel submits that the petitioner remained absent from duty during the period from 08.11.2009 to 25.01.2010 without giving any information

to the competent authority and even during the period in 2012, no intimation was given and the petitioner has no explanation even in the writ petition for his absence from duty in the year 2012.

8. Learned counsel for the respondents has also referred to para-11 of the counter-affidavit dated 30.01.2015 to submit that in terms of Rule 55, 152 and 180(b) of the Jharkhand Service Code, the controlling/appointing authority sanctioned extraordinary leave to the petitioner from 08.11.2009 to 11.02.2010, which was communicated to the petitioner vide letter dated 20.10.2010 (Annexure-1 to the writ petition).

Rejoinder of the Petitioner

9. At this, learned counsel for the petitioner has referred to supplementary counter affidavit dated 20.04.2016 to submit that earned leave up to 29.02.2016 has been shown as 289 days and half pay leave up to 2015 has been shown as 239 days as per Annexure-A and B to the supplementary counter affidavit. He submits that the period of absence could have been adjusted against the aforesaid earned leave/ half pay leave.

Findings of this Court

10. The petitioner is aggrieved by two orders. So far as order dated 20.10.2010 (Annexure – 1) is concerned, the same relates to the period of absence from 08.11.2009 to 11.02.2010 and as per the impugned order as well as counter-affidavit, the same has been treated as extraordinary leave to the petitioner and admittedly, the petitioner will not be entitled to any salary for the said period.

11. Rule 154 of Jharkhand Service Code clearly provides that the leave is earned by duty only and Rule 152 of the Code provides that leave cannot be claimed as of right and the discretion to refuse leave is reserved with the authority empowered to grant it.

12. The provisions of Jharkhand Service Code for the purposes of this case are quoted as under: -

“152. Leave cannot be claimed as of the right. When the exigencies of the public service so require, discretion to refuse or revoke leave of any description is reserved to the authority empowered to grant it.

154. Leave is earned by duty only. For the purpose of this rule a period spent in foreign service counts as duty if contribution towards leave salary is paid on account of such period.

180. (a) In special circumstances and when no other leave is under these rules admissible, extraordinary leave may be granted. Such leave is not debited against the leave account. No leave-salary is admissible during such leave.

(b) The authority empowered to sanction leave may grant extraordinary leave in combination with, or in continuation of, any leave that is admissible, and may

commute retrospectively period of absence without leave also extraordinary leave.

Note 1. – The State Government may for special reasons dispense with the condition that extraordinary leave may be granted only when no other leave is by rule admissible, provided that a government servant cannot be compelled to take extraordinary leave when leave with allowances is admissible to him.

Note 2. – The power of commuting period of absence without leave into extraordinary leave under sub-rule (b) is absolute; in other words, such commutation is permissible even when other leave was admissible to Government servant at the time his absence without leave commenced.”

13. As per Rule 180 (b) of Jharkhand Service Code, the authority empowers to sanction leave may grant extraordinary leave in combination with or in continuation of any leave i.e., admissible and may commute retrospectively period of absence without leave also as extraordinary leave. Note -2 of Rule 180 of Jharkhand Service code clearly provides that the power of commuting period of absence without leave into extraordinary leave under sub-rule (b) is absolute; in other words, such commutation is permissible even when other leave was admissible to Government servant at the time his absence without leave commenced.

14. It appears from the counter-affidavit that the petitioner had absented from duty from 08.11.2009 to 11.02.2010 without giving any information to his competent officer and obtaining prior permission of the competent authority. No rejoinder has been filed to the counter affidavit. It is a case of absence without leave which attracts Note-2 of Rule 180 of Jharkhand Service Code, and thus the respondents had the power and jurisdiction to treat the period of absence as extraordinary leave even when other leave was admissible to Government servant at the time his absence without leave commenced. The law is very clear that leave cannot be claimed as a matter of right and the competent authority has the necessary jurisdiction and discretion as to how the period of absence without leave is to be treated. Accordingly, this Court does not find any illegality or perversity in the impugned order dated 20.10.2010 (Annexure-1) treating his absence from 08.11.2009 to 11.02.2010 as extraordinary leave.

15. In view of the aforesaid facts and circumstances, this Court is of the considered view that the petitioner does not have a legal right to say that his absence without leave is required to be adjusted against earned leave and not against extraordinary leave. The manner of adjustment of leave is left to the discretion of the competent authority. The petitioner has not been able to demonstrate any arbitrariness or illegality in the exercise of power in treating his period of absence from 08.11.2009 to 11.02.2010 as extraordinary leave. The respondents have acted in terms of Rule 180 (b) of Jharkhand Service Code. Therefore, no interference is called for so far as impugned order as contained in Annexure -1 dated 20.10.2010 is concerned.

16. So far as the other impugned order dated 29.11.2012 (Annexure – 2) is concerned, this Court finds that the petitioner has not brought on record the application relating to his unauthorized absence from duty during the period from 04.03.2012 to 22.03.2012 which was the subject matter of consideration while issuing Annexure-2. The Annexure-2 also does not reflect as to how this period has been treated by the respondents in the light of the rules governing leave under Jharkhand Service Code. By the Annexure-2, it has been simply communicated that the period of absence was unauthorized and the petitioner had absconded from duty. With regard to period involved in Annexure-2, there is nothing on record mentioning available leave of the petitioner during the period of his absence from 04.03.2012 to 22.03.2012. Annexure-2 merely observes that the petitioner has remained unauthorizedly absent and has remained absconder from duty during the period from 04.03.2012 to 22.03.2012 and this letter was forwarded for information and necessary action by the respondent Agra Pariyojna Padadhipkari, Garhwa to Agra Priyojana, Padadhipkari, Giridih and a copy of this letter was forwarded to the petitioner with a warning that he should make communication with the department in accordance with the provisions of Jharkhand Service Code. The aforesaid communication at Annexure-2 alleges that the petitioner had photocopied certain documents of the department in unauthorized manner and has utilized them in his application.

17. The counter-affidavit filed in the present case is totally silent with regard to the period of absence from 04.03.2012 to 22.03.2012 and the statement made by the petitioner in para 12 of the writ petition that by the letter dated 29.11.2012 (Annexure – 2), the respondent no.4 refused to grant earned leave for the period from 04.03.2012 to 22.03.2012 and directed that the petitioner will be on leave without pay is not reflecting from the order contained in Annexure – 2 to the writ petition.

18. Thus, the impugned order dated 29.11.2012 (Annexure – 2) does not finally decide as to how the period of absence of the petitioner from 04.03.2012 to 22.03.2012 was to be treated and whether the said period of absence could be adjusted against any available leave. It is further not clear as to what happened after the issuance of letter dated 29.11.2012.

19. It is for the respondents to take a decision with regard to the period of absence from 04.03.2012 to 22.03.2012 as mentioned in Annexure-2 and proceed in accordance with law including on the point of adjustment against available leave in terms of the provisions of Jharkhand Service Code. Accordingly, with regard to the period of absence from 04.03.2012 to 22.03.2012, this writ petition is disposed of enabling the respondents to take a decision as to how this period is to be treated and whether the petitioner will be entitled to adjustment of any available leave in terms of the rules. Such decision is to be taken by the Respondent no.2 upon filing of a representation by the petitioner within a period of one month from today taking into consideration, the leave records of the petitioner and in the light of the provisions of Jharkhand Service Code.

20. As a cumulative effect of the aforesaid findings, no interference is called for in Annexure-1 to the writ petition and with regard to period involved in Annexure-2, appropriate direction has been issued as aforesaid.

21. This writ petition is accordingly disposed of.