

(2014) 11 KL CK 0026

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 24532 of 2011 (N)

Vinod K.

APPELLANT

Vs

Kerala State Co-Operative Hospital Complex and Centre for
Advanced Medical Services Ltd.

RESPONDENT

Date of Decision : 13-11-2014

Acts Referred:

Citation : (2014) 11 KL CK 0026

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : Mahesh V. Ramakrishnan, Advocate for the Appellant; Sunitha Vinod, Government Pleader, P.V. Surendranath, Advocate and Bindhumol Joseph, SC, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—The petitioner, who is an Assistant Engineer (Civil) working under the 1st respondent - Co-operative Society, was sanctioned Leave Without Allowance for travelling abroad for the period between 10.11.2008 and 9.11.2013. He was accordingly relieved on 27.11.2008. The petitioner, however, did not avail the entire period of leave that was sanctioned to him and therefore, returned to the country and preferred Ext. P3 application dated 10.06.2011 before the 1st respondent, for cancelling the remainder of the leave period and for permission to rejoin duty. The said application did not yield any response from the 1st respondent. The position continued even after Ext. P4 reminder dated 1.8.2011 was preferred by the petitioner. Thereafter, by Ext. P5 application dated 18.8.2011 the petitioner approached the 2nd respondent who, by Ext. P6 order dated 2.9.2011, issued directions to the 1st respondent to permit the petitioner to rejoin duty forthwith and report the fact to the 2nd respondent. When, despite Ext. P6 order also, the 1st respondent did not permit the petitioner to rejoin duty, he was constrained to approach this Court through the present writ petition.

2. By an interim order dated 7.9.2011, this Court directed the 1st respondent to

permit the petitioner to rejoin service on the petitioner producing a copy of the interim order passed by this Court. It is submitted that pursuant to the interim order, the petitioner rejoined duty on 10.9.2011. The prayer of the petitioner in the writ petition is for treating him as having rejoined service with effect from 10.6.2011, which is the date on which he preferred Ext. P3 application to cancel the remainder of the leave and sought permission for rejoining duty.

3. I have heard Sri. Mahesh V. Ramakrishnan, learned counsel for the petitioner, Sri. P.V. Surendranath, learned counsel appearing on behalf of the 1st respondent - Society and the learned Government Pleader appearing for respondents 2 and 3.

4. On a consideration of the facts and circumstances of the case, as also the submissions made across the Bar, I note that the petitioner has, pursuant to the interim order passed by this Court dated 7.9.2011, rejoined duty on 10.9.2011. Counsel for the 1st respondent refers to the circular dated 20.3.1990 issued by the Commissioner and Secretary (Finance) of the Finance (Rules) Department of the Government of Kerala, which deals with the procedure to be followed for cancelling the un-availed portion of Leave Without Allowance granted for taking up employment abroad. As per the said circular, the employees on Leave without Allowance for taking up employment abroad, who wish to rejoin duty after cancelling the un-availed portion of the leave, are required to apply for the same to the authority competent to issue posting orders, at least three months in advance. It is pointed that in the instant case, the application preferred by the petitioner was dated 10.6.2011 and he was permitted to rejoin duty on 10.9.2011, which is three months after the date of his application. It is seen from the said circular that the time gap between the date of request/reporting and the actual date of rejoining duty in the case of employees who requested for cancellation of un-availed leave, would be treated as part/extension of Leave Without Allowances that was sanctioned to them. In the case of the petitioner, therefore, it is clear that, for the period between 10.6.2011 and 10.9.2011 he would be treated as continuing on the Leave Without Allowance that was sanctioned to him by Ext. P1 order. The period after 10.9.2011 would be treated as regular service pursuant to the cancellation of the un-availed portion of the Leave Without Allowance that was sanctioned to him.

5. In view of the circular that is brought to my notice by the counsel for the 1st respondent, I dispose the Writ petition by declaring the petitioner as having rejoined duty on 10.09.2011 and further, that the period between 10.6.2011 and 10.9.2011 shall be treated as a continuation of the leave that was sanctioned to him by Ext. P1 Order. I also make it clear that the respondents shall treat the un-availed portion of the leave after 10.9.2011 as cancelled for the purposes of determining the service benefits of the petitioner.

The Writ Petition is disposed of as above.