

(2001) 08 JH CK 0010

Jharkhand High Court

Case No: CWJC No. 643 of 2000

Serajuddin Ansari

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision: Aug. 9, 2001

Hon'ble Judges: M.Y. Eqbal, J

Bench: Single Bench

Advocate: M.S. Anwar, Rajesh Kumar and Ruby Praveen, for the Appellant; R.K. Merathia and A.B. Mahto, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M.Y. Eqbal, J.

The petitioner has prayed for quashing the letter dated 29.12.99 issued under the signature of Additional Secretary, Science & Technology Department, Government of Bihar. Patna communicating the decision of the Government declaring the period from 13.11.1981 to 27.10.1986 as unauthorised absence and rejecting the application filed by the petitioner for grant of extraordinary leave for the aforesaid period.

2. The petitioner was appointed as Assistant Professor in Electrical Engineering on regular basis on the recommendation of the Bihar Public Service Commission through a notification dated 19.8.74. The petitioner was confirmed in the said post with effect from 29.8.75. In 1981 the petitioner was appointed as Senior Electrical Engineer in Nigeria and accordingly, he applied for leave. The Government through its letter dated 6.11.81 granted permission and sanctioned leave and, accordingly, the petitioner joined his service in Nigeria and, remained there till 1986.

3. Petitioner's case is that during his stay at Nigeria, he sent applications to the respondents for extension of his leave from time to time. The petitioner returned back to India and submitted his joining in the Secretariat at Patna on 28.10.86. He

regularly attended the department and ultimately by notification dated 17.1.87, he was transferred and posted at Government Polytechnic, Ranchi on the post of Assistant Professor. The petitioner Joined his transferred place at Government Polytechnic, Ranchi and remained posted till November. 1994 when his resignation was accepted on 14.11.94 with immediate effect. However, the applications, time to time sent by the petitioner for grant of extraordinary leave from 13.11.81 to 27.10.86 remained pending. Even after his joining in the Government Polytechnic. Ranchi in 1987, he was not paid his salary. The petitioner filed several representations for payment of his gratuity, arrears of salary, leave encashment etc. but nothing was done. The petitioner then moved this Court by filing CWJC No. 2807/98(R). The said writ application was disposed of on 5.11.99 with a direction to the respondents to take a decision on the pending applications of the petitioner for grant of extraordinary leave.

4. The respondents, in compliance of the aforesaid direction, though belatedly, issued letter dated 29.12.99 informing the petitioner that leave application for the period from 13.11.81 to 27.10.86 has been rejected.

5. Mr. Anwar, learned counsel for the petitioner submitted that the impugned order/decision of the respondents is illegal, arbitrary and mala fide as there is complete non- application of mind. Learned counsel submitted that the leave application has been rejected by the respondents without assigning any reason, whatsoever. Learned counsel further submitted that the petitioner had been sending applications for extension of his leave regularly from Nigeria but neither the applications were disposed of nor the petitioner was called upon to return immediately and the petitioner had reasonable belief that extension of leave has been granted by the Government. Learned counsel further advanced his argument by submitting that similarly situated persons have been granted extraordinary leave but the case of the petitioner has been discriminated.

6. On the other hand, Mr. Merathia, learned G.P. 2 has drawn my attention to the relevant paras of the counter affidavit and submitted that the petitioner was granted leave for one year only but he returned from Nigeria after five years which is against the order issued by the Government granting permission to the petitioner. It is further submitted that the application for extension of leave was never received in the department concerned. He further submits that extraordinary leave application of the petitioner has been rejected by the Government, according to the rules and, as such, question of discrimination does not arise. Learned counsel submitted that even if other similarly situated persons have been illegally granted extraordinary leave, the same illegality cannot be perpetuated.

7. As noticed above, the petitioner earlier filed CWJC No. 2807/98(R) claiming his arrears of salary and other benefits on the ground that inspite of acceptance of his resignation in 1994, nothing has been paid. In that case, inspite of repeated adjournments granted by the Court, the respondents did not file counter affidavit.

Ultimately this Court passed an order for personal appearance of Additional Secretary, Department of Science & Technology, Bihar and the Principal, Govt. Polytechnic, Ranchi. Pursuant to that the Additional Secretary appeared in Court on 5.11.99 and submitted that the relief claimed by the petitioner shall be considered only after his leave from 1981 to 1986 is sanctioned by the Government, i.e. by the Cabinet. Relevant portion of the order dated 5.11.99 is reproduced hereinbelow :--

"Having regard to the submission made by G.P. 2 on instruction of the Additional Secretary, who is present in Court, this writ application is disposed of at this stage. The Additional Secretary personally appeared and submitted that the relief claimed by the petitioner shall be considered only after his leave from 1981 to 1986 is sanctioned by the Government and approved by the Cabinet. In the event leave is sanctioned and approved by the Government then the case of the petitioner shall be processed for taking final decision in the matter and this will take reasonable time.

Having regard to the statement made by Additional Secretary, I direct him to send all relevant papers to the Government, within one month from today for necessary approval and sanction. In the event Government approves/sanctions leave then the respondents shall further look into the matter and take final decision within one month from the date of sanction of leave granted by the Government,

With the aforesaid direction this writ application is disposed of. It goes without saying that the final decision that shall be taken by the respondents shall be communicated to the petitioner."

8. This Court by order dated 2.3.2001 directed the respondents to file supplementary counter affidavit annexing copy of the order by which the prayer of the petitioner for extraordinary leave was rejected. Pursuant to that order, supplementary counter affidavit was filed annexing a copy of the order as Annexure A to the counter affidavit. It appears that the same Additional Secretary, who appeared in Court on 5.11.99 placed a note to the Secretary stating, inter alia, that pursuant to the order passed by the High Court, he had to appear in Court on 5.11.99 and to tender apology. He has mentioned in his note that since the application of the petitioner for extension of leave was not forwarded through high commission, the same could not be entertained and, therefore, granting sanction of extraordinary leave will be against the interest of the Government. The Secretary forwarded the note to the Minister on 9.11.99 simply stating that he agrees with the view taken by the Additional Secretary. The Minister accordingly put his signature on the said note and the file was placed before the Chief Minister who also simply put his signature on the note. It is, therefore, clear that it is the Additional Secretary who took a decision in his note that sanction should not be granted for the reason that it will be against the Interest of the Government. The note-sheet of the Additional Secretary begins with his remark that he had to appear in Court and to tender apology for non-filing of the counter affidavit and then he sent the recommendation for rejection of the application for grant of extraordinary leave. The Secretary and

the Minister agreed with his recommendation without applying their independent mind and without assigning any reason. By evaluating the facts and circumstances of the case, it is clear that the Additional Secretary, because of his appearance in Court and tendering apology by him, became biased and placed the note for rejection of the petitioner's application. Curiously enough the Secretary and the Minister did not apply their minds on the notes submitted by the Additional Secretary and simply approved the said note. In this connection I must refer one of the decisions of the Apex Court on the subject rendered in the case of [State of West Bengal and Others Vs. Shivananda Pathak and Others](#), where their Lordships have observed :--

"Bias, as pointed out earlier, is a condition of mind and, therefore, it may not always be possible to furnish actual proof of bias. But the courts, for this reason, cannot be said to be in a crippled State. There are many ways to discover bias, for example, by evaluating the facts and circumstances of the case or applying the tests of "real likelihood of bias" or "reasonable suspicion of bias. De Smith in Judicial Review of Administrative Action, 1980 Edn. 262, 264 has explained that reasonable suspicion" test looks mainly to outward appearances while "real likelihood" test focuses on the court's own evaluation of the probabilities."

9. Not only that in paras 19 and 20 of the writ application the petitioner has made air a case of discrimination. It is stated by the petitioner that the State Government has granted similar extraordinary leave to similarly situated employees to the State Government. One Dr. Smt. Saroj Anish who had gone to Saudi Arabia even without leave and whose leave application was earlier rejected and she was directed to join her duty which she did not do, However, she was granted extraordinary leave for about five years A copy of the order dated 12.12.97 granting leave to Dr. Smt. Saroj Anish has been annexed as Annexure 8 to the writ application. Similarly in Para 21 of the writ application it is stated that in several other cases, the State Government has allowed extraordinary leave for a long period even for more than five years. In the case of Dr. Hari Kishore Verma, Dr. Ramdeo Roy, Suresh Prasad Sharma. Dr. Madan Mohan Dubey, Dr. Dhaneshwarlal. Dr. Hari Narayan "Sinha and others of the Health & Family Welfare Department, extraordinary leave was granted after their return from abroad. These facts have not been denied by the respondents in the counter affidavit.

10. The contention of the petitioner finds support from Annexure 8 to the writ application whereby extraordinary leave was" granted to Dr. Smt. Saroj Anish. She was granted one month's leave for going abroad with specific condition that no further extension of leave would be granted. She left India in 1981 and then made application for extension of leave which was rejected. In 1996 she returned back and submitted her joining. Thereafter, the rejected "applications of Smt. Saroj Anish were reconsidered and she was granted extraordinary leave without pay in 1997. It is therefore a case of hostile discrimination.

11. In my view rejection of the application of the petitioner on the basis of the notes submitted by the Additional Secretary, who was biased because of his appearance in Court vis-a- vis sanctioning leave to similarly situated persons, amounts to serious hostile discrimination. Reference may be made to a decision of the Apex Court in the case of Surya Kant Kadam v. State of Karnataka and Ors. AIR 2001 SCW 2386.

12. Regard being had to the entire facts and circumstances of the case and the law discussed hereinabove. I am of the opinion that the impugned order passed by the respondents rejecting the claim of the petitioner for grant of extraordinary leave cannot be sustained in law.

13. This writ application is, therefore, allowed. The impugned order of rejection of the petitioner's leave application is set aside. It is held that the petitioner is entitled to grant of extraordinary leave without pay for the aforesaid period. The respondents are, therefore, directed to release all the dues payable to the petitioner as expeditiously as possible.

14. Writ application allowed.