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Serajuddin Ansari Vs State of Bihar and Others

CWJC No. 643 of 2000

Court: Jharkhand High Court

Date of Decision: Aug. 9, 2001

Citation: (2001) 08 JH CK 0010

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 lien. 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 siraniv d similar extraordinary leave to similarly situated employees to the Stale 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 joir 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 grunting 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 Mohair 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 arc, therefore, directed to release all the

dues pay able to the petitioner as expeditiously as possible.

14. Writ application allowed.