

Party Name : NANIGOPAL DEBNATH Vs THE STATE OF TRIPURA & ORS

THE HONBLE MR. JUSTICE S.TALAPATRA

Heard Mr. P.K. Pal, learned counsel appearing for the petitioner as well as Mr. S. Deb, learned senior counsel, assisted by Mr. B. Debnath, learned counsel appearing for the respondents.

The grievance of the petitioner as canvassed in the writ petition is that on 27.11.2014 he was suffering from viral fever and he duly informed the respondent No.3, the Headmaster of the Sishu Bihar H.S. School that he would not be able to attend the duty on that day. There was some inspection by the respondent No.2 on that very day and the petitioner was found absenting from his duty. On the following day when the petitioner reported to the duty, he filed an application for granting casual leave for 27.11.2014. But, by the impugned Memorandum No.F.13(3-44)SE/GL-I/2014 dated 28.11.2014, Annexure-2 to the writ petition, the absence of the petitioner on 27.11.2014 has been declared dies-non without break in service. It has been further declared that no salary shall be paid for the above-mentioned day.

Mr. Pal, learned counsel appearing for the petitioner has submitted that the said leave application dated 28.11.2014 was supported by the illness and fitness certificate issued by the competent Medical Officer and those certificates are part of Annexure-1 to the writ petition. That apart, Mr. Pal, learned counsel has stated that the petitioner gave the prior information to the controlling officer, the Headmaster of the Sishu Bihar school so that there is no dislocation in the functioning of the school for his absence. Finally, Mr. Pal, learned counsel has submitted that giving of prior information has been admitted by the respondents in their counter-affidavit in the following terms :

"The letter of the respondent No.3 bearing No.F.2(26)-HM/SBHS/2008-2010/2090 dated 06.12.2014 (Annexure B supra) reveals that the petitioner informed the respondent No.3 on 27.11.2014 over mobile phone about his inability to attend his duty on 27.11.2014 due to ailment arising out of viral fever. Taking into consideration the facts mentioned above, the contention of the petitioner that he informed the respondent No.3 over cell phone about his sudden attack by viral fever on the same day i.e. on 27.11.2014 prior to starting of school hours is not tenable and appears to be dubious vis-a-vis his prayer signed by himself on 27.11.2014 and presented through the Head Clerk to the respondent No.3 seeking for a casual leave to be granted on the following day on 28.11.2014. While the absence on 27.11.2014 was not settled, the petitioner sought for leave of absence on 28.11.2014 by a petition in advance. Also as claimed by him was sick on 27.11.2014, he could have applied for casual leave for 2(two) days, 27.11.2014 & 28.11.2014 through his application dated 27.11.2014 which was doubtful."

Mr. Pal, learned counsel has submitted, having regard to the rejoinder that the application that was filed on 27.11.2014 was not filed by the petitioner. It is a mischief played on the petitioner.

On apparent comparison of the purported signatures of the petitioner on the applications dated 27.11.2014 and 28.11.2014, it appears that the signatures are not identical. However, this court will not brood much over that aspect of the matter as it is not in dispute that the petitioner filed a comprehensive application on 28.11.2014, where there is no reference of the earlier application, only there is reference that he was suffering from viral fever on 27.11.2014 and he could not attend the duty on medical advice.

Mr. Deb, learned senior counsel appearing for the respondents has submitted that the respondent No.3 informed the respondent No.2 by the letter dated 25.04.2015 that no casual leave was granted in favour of the petitioner for 28.11.2014.

This court fails to understand how this letter dated 25.04.2015 can have any relevance over the dispute projected in the writ petition. Moreover, this court finds that the petitioner was not granted any opportunity to have his say, nor any show cause notice was issued asking why 27.11.2014 shall be declared dies-non with or without break in service. Before the impugned order was passed, no opportunity was given to the petitioner to have his say over the absence on 27.11.2014. It is well-settled that when dies-non is to be declared under FR 17A the employee concerned shall have the opportunity to defend himself, either in a Departmental Proceeding or at least following the principles of natural justice, but in this case, the said process is totally conspicuous by absence. On this ground alone, the impugned memorandum dated 28.11.2014, Annexure-2 to the writ petition, is liable to be set aside and quashed. Accordingly, it is set aside and quashed.

Now, the question of granting the liberty to the respondents to proceed further for taking appropriate decision on the absence of the petitioner on 27.11.2014. Having regard to the admission made by the respondent No.3 as reflected in the composite counter-affidavit filed by the respondents No. 1, 2 and 3, this court is of the considered opinion that the leave in the nature of 'Casual Leave' has been provided in the Leave Rules so that uncertain requirements can be attended by the employee concerned. In this case, it has been established without any amount of doubt that the petitioner even informed the respondent No.3 that he would not be able to attend the duty on 27.11.2014 for his ailment.

In these circumstances, this court is not inclined to grant any liberty to the respondents to proceed further on the absence of the petitioner on 27.11.2014. It is expected that the respondents shall sanction the leave of the petitioner on 27.11.2014 within a short while. As the impugned memorandum dated 28.11.2014 has been set aside by this court, the respondents, after sanction of the leave, shall release the pay of the petitioner. The entire exercise shall be completed within 8(eight) weeks from today.

There shall be no order as to costs.