

HIGH COURT OF CHHATTISGARH : BILASPUR

WRIT PETITION NO.101 OF 2006

Petitioner

Smt. Mrudula Rishi

Versus

Respondents

State of Chhattisgarh & Others

Single Bench : Hon'ble Shri Justice Prashant Kumar Mishra

Present :- Shri S.S. Rajput & Shri T.R. Dahire, Advocates for the petitioner.
Shri P.K. Bhaduri, Panel Lawyer for the State.

ORAL ORDER

(Passed on this 30th day of October, 2013)

1. The petitioner has challenged the legality and validity of the order Annexure – P/11 passed by the Government of Chhattisgarh on 29-6-2004 declaring the period of absence from 28-2-2003 to 12-10-2013 (227 days) as '*dies non*'.
2. While working as Project Officer, Integrated Child Development Project, the petitioner appears to have proceeded on leave without informing the superiors. It is manifest that the petitioner has been transferred from Bilha to Kasdol, Raipur, on 7-2-2003 where she submitted joining on 27-2-2003 and applied for leave for the period from 1-3-2003 to 3-3-2003, however, she remained absent from her duties till 12-10-2003. It is this period, which has been treated as '*dies non*'.
3. Learned counsel appearing for the petitioner would submit that the impugned order has been passed without affording any opportunity of hearing to the petitioner, therefore, the same having adverse consequences like withholding of salary, reduction of pension, etc. It could not have been passed without following the basic principles of natural justice.

4. On the other hand, learned counsel appearing for the State would submit that the respondents have shown sympathy on the petitioner by not imposing any major penalty against her, even though she remained absent from her duties without giving any information to the superior officers.
5. The matter to be considered by this Court is – whether in the given facts situation the impugned order could have been passed without holding a regular enquiry or without adhering to the principles of natural justice ?
6. Chhattisgarh Civil Services (Leave) Rules, 1977 (for short “the Rules, 1977”) particularly Rule 24 thereof makes provision regarding absence after expiry of leave.
7. Sub-rule (1) Rule 24 of the Rules, 1977 provides that unless the authority competent to grant leave extends the leave, Government servant who remains absent after the end of leave is entitled to no leave salary for the period of such absence and that period shall be debited against his leave account as though it were half pay leave to the extent such leave is due, the period in excess of such leave due being treated as extraordinary leave. Sub-rule (2) provides that wilful absence from duty after the expiry of leave renders a Government servant liable to disciplinary action.
8. In the case in hand, petitioner applied for 3 days leave from 1-3-2003 to 3-3-2003 and remained absence from duty after expiry of leave, however, without proceeding departmentally in view of the procedure laid down under the provisions of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (for short “the Rules,

1966”), the respondents have straightaway passed the impugned order declaring the absence of the petitioner for a period of 227 days as ‘*dies non*’.

9. In the opinion of this Court, an order adverse to the Government servant, who has remained willfully absent after expiry of leave, cannot be passed without initiating any disciplinary proceeding, as provided under Rule 24 (2) of the Rules, 1977. While holding so this Court would take assistance of the law laid down by the High Court of Madhya Pradesh in *Ali Hussian (Dr.) v. State of M.P.*¹ and *Mahesh Kumar Shrivastava v. State of M.P. and others*².
10. In *Battilal v. Union of India and Others*³, the High Court of Madhya Pradesh has held as under :

“3.....When the Authority directs that the period will be treated ‘*dies-non*’, it means that continuity of service is maintained, but the period treated as ‘*dies-non*’ will not count for leave, salary, increment and pension. In fact, F.R. 54 (1) casts such a duty on the authority. It provides that when a Government servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review, the authority competent, to order reinstatement shall consider and make a specific order-

(a) regarding the pay and allowances to be paid to the government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.”

¹ 1984 JLJ 67

² 2007 (3) MPLJ 525

³ 2005 (3) MPHT 32 (DB)

Thus, the law is well settled that while the disciplinary authority is competent to direct the period of willful absence as *dies non*, as a measure of penalty, such order cannot be passed unless the concerned employee has been proceeded departmentally under the provisions of Rule 24 (2) of the Rules, 1977 read with the Rules, 1966.

11. For the foregoing, the impugned order dated 29-6-2004 (Annexure – P/11) is set aside. However, liberty is reserved in favour of the respondent authorities to initiate departmental enquiry and proceed to take proper action against the petitioner, in accordance with law and on its own merits.
12. As an upshot, the writ petition is allowed to the extent indicated above, leaving the parties to bear their own costs.

Gowri

J u d g e