



## J U D G E M E N T

OA-684 of 2018

The instant application has been filed praying for following relief :-

- a) A direction do issue upon the concerned respondent authorities to forthwith set aside/cancel/quash the impugned Notification No. HF/O/MA/241/IP-126-2016/1(11) dated 12.03.2018 of the Joint Secretary to the Government of West Bengal, Department of Health and Family Welfare being Annexure-C herein as well as to disburse pay and allowances from 01.04.2016 to 04.12.2016 treating the same as his Earn leave in terms of his applications, being Annexure-A herein and to command them to act strictly in accordance with law;
- b) A direction do issue upon the concerned respondent authorities to forthwith produce and/or cause to be produced entire records relating to the applicant's case and on such production being made, render conscionable justice upon persuing the same;
- c) And/or to pass such other or further Order or Orders as to this Hon'ble Tribunal may deem fit and proper.

As per the applicant, he joined West Bengal Health Service on 13.11.1998 and after serving at different places as Trainees, the applicant joined at Swasthya

Bhavan as Medical Officer (Supy) on 15.11.2015. However due to illness of his parents, the applicant took Earned Leave from 01.02.2016 to 30.03.2016 and thereafter had joined his duty on 31.03.2016 and prayed for further Earned Leave from 01.04.2016 to 01.10.2016. In the meantime, he joined his duty on 05.12.2016, when he was transferred and released vide order dated 05.12.2016 from his erstwhile posting to Diamond Harbour District Hospital and reported therein on 06.12.2016 before the C.M.O.H and joined the duty on 07.12.2016. Thereafter, he made representation to the Director of Health Services, Swasthya Bhawan on 15.12.2016 stating that he had applied and availed of Earned Leave from 01.12.2016 to 04.12.2016 and also applied for home posting. However, his salary was held up from February, 2016. Therefore, he requested for release of his salary and to issue L.P.C. (Annexure-D).

However, the applicant was served upon the impugned Notification dated 12.03.2018 issued by the Joint Secretary to the Govt. of West Bengal, Health & Family Welfare Department treating the period from 01.04.2016 to 04.12.2016 as unauthorized leave, which was regularized and said period of absence was treated as "Dies Non" for all purposes in terms of Rule 34 of W.B.S.R., Part-I. Being aggrieved with, the applicant has filed the instant application.

According to the applicant, Rule 34 of W.B.S.R., Part-I stipulates power to the Governor to treat any absence as "Dies Non" only after conclusion of Departmental Proceedings. However, even after assuming that the applicant has committed any mistake, like unauthorized absence from 01.04.2016 to 04.12.2016 in that case as per rule, departmental proceedings including an enquiry has to be drawn against applicant and after conclusion of such departmental proceedings the Governor empowered to declare the said period as "Dies Non". Since the said "Dies Non" is adverse effect on the service of the employee, therefore, he has prayed for quashing of the said order dated 12.03.2018.

No reply has been filed. However, the counsel for the respondent has submitted that admittedly the applicant was unauthorisedly absent for the aforesaid period.

Heard both the parties and perused the records.

Rule 34 of W.B.S.R, Part –I stipulates interalia :-

- a) “When a temporary Government employee asks for leave in excess of the limits prescribed in clause(b) of the proviso to sub-rule (2) of rule 175 and if the circumstances are exceptional the leave sanctioning authorities shall take decision in consultation with the Finance Department as to whether further leave in excess of the limit shall be allowed.
- b) When a Government employee applies for leave beyond the prescribed limit of extraordinary leave and the leave sanctioning authority is not satisfied with the genuineness of the grounds on which further leave has been asked for, nor does it consider the ground as exceptional, the leave cannot be granted. In such a case the Government employee shall be asked to rejoin duty within a specified date failing which he would render himself liable to disciplinary action. Disobedience of orders to rejoin duty within the specified period would afford good and sufficient reasons for initiating disciplinary action under the West Bengal Services (Classification, Control and Appeal) Rules, 1971. If he rejoins duty by the stipulated date, he may be taken back in service and the period of absence not covered by leave would be treated as over stayal and such overstayal shall be regularized in accordance with the provisions of this rule.  
If the Government employee does not join duty by the stipulated date, it would be open to the disciplinary authority to institute disciplinary

action against him. If during the course of the disciplinary proceedings he comes for rejoining duty he shall be allowed to do so without prejudice to the disciplinary action already initiated against him (unless he is placed under suspension) and the disciplinary action concluded as quickly as possible. The question of regularization of the period of overstayal of leave shall be left over for consideration till the finalization of the disciplinary proceedings.

- c) If a Government employee absents himself abruptly or applies for leave which is refused in the exigencies of public service and still happens to absent himself from duty he shall be told of the consequences, viz., that the entire period of absence shall be treated as unauthorized absence entailing loss of pay for the period in the question under the proviso to rule 26, thereby resulting in break in service. If, however, he reports for duty before or after initiation of disciplinary proceedings, he may be taken back for duty because he was not placed under suspension. The disciplinary action may be concluded and the period of absence treated as unauthorized absence resulting in loss of pay and allowances under the proviso to rule 26 and thus a break in service. The question whether the break should be condoned or not and treated as 'dies non' shall be considered only after conclusion of the disciplinary proceedings and that too after Government employee represents in this regard."

As per the respondents, the aforesaid period of absence was not sanctioned by the authority and in such cases of willful absence from duty for such period of absence not covered by grant of leave, may be treated as "dies-non".

As no reply has been filed by the respondents since 2018, it cannot be ascertained whether the applications of applicant to grant leave was ever rejected or the applicant was directed to join duty or not. However, to declare the absence period as “Dies Non’, as per Rules, disciplinary proceedings should be initiated at first instance.

In the instant case, as per the applicant, without any Departmental Proceedings, the respondent authority has declared the said period as “dies-non” which is not permissible as per Rule 34 of W.B.S.R., Part-I. Accordingly, I quash and set aside the impugned order dated 12.03.2018. However, the respondents would be at liberty to take appropriate steps as per rules and settled principles of law. In view of the above,, OA is disposed of with no order as to costs.

URMITA DATTA (SEN)  
MEMBER (J)