

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.**

CWP No.8458 of 2011-G

Decided on : 31.7.2012

Ranjeet Singh, S/o Sh. Ram Singh, R/o village & P.O. Bhuana,
Tehsil Palampur, District Kangra, H.P.

..... Petitioner.

Versus

1. State of Himachal Pradesh through Principal Secretary Education to the Government of Himachal Pradesh, Shimla-2.
2. Director Elementary Education, Shimla-1.
3. Deputy Director of Elementary Education Kangra at Dharamshala.

...Respondents

Civil Writ Petition under Article 226 of the Constitution of India

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting? No

For the Petitioner : Mr. Dalip K. Sharma, Advocate.

For the respondents : Mr. Ram Murti Bisht, Dy. Advocate
General.

Justice Sanjay Karol, J. (oral)

Vide Office order dated 22nd May, 2009 (Annexure P-1), petitioner was transferred from GSSS, Palampur to GMS, Bardiuk. He did not join there within time. Since there was a delay of 43 days in his joining at the place of his transfer, he applied for leave on medical grounds, which was duly sanctioned by the Principal, Government Sr. Sec. School, Aund, District

Kangra vide office Order dated 7.7.2010 (Annexure P-2). The matter however did not rest there and in terms of the impugned order dated 7.7.2010, the Government took a decision that his period of leave w.e.f. 1.6.2009 to 6.6.2009 be treated as *dies non* (without break in service). It is this action of the respondents which has been assailed by the petitioner.

2. The fact that petitioner did not join pursuant to his order of transfer is not in dispute. That he applied for earned leave on medical grounds for his period of absence is also not in dispute. Petitioner submitted medical record in support of his application and based thereupon, the competent authority sanctioned his leave, which is also evident from Office order dated 7.9.2009 (Annexure P-3). Petitioner has placed on record medical prescription slip to substantiate the reason of his not joining at the place of his posting. Under these circumstances, action of the respondents in converting the petitioner's leave from that of earned leave on medical grounds to *dies non* cannot be said to be just and proper. It is not that no leave of the kind due was available to the petitioner.

3. Consequently, impugned order dated 30.6.2010 (Annexure P-10) is quashed and respondents are directed to accord all benefits and release petitioner's salary/other monetary benefits as may be found due and admissible, if any, in accordance with law. Needful be done within a period of three

months from the date of receipt of certified copy of this judgment, failing which, then thereafter, petitioner shall be entitled to interest @ 9% per annum on the admissible and due amounts which shall be personally recovered from the erring official(s).

Pending application(s) if any, also stand disposed of.

July 31, 2012
k.sharma

**(Sanjay Karol),
Judge**