

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P(C) NO.322 OF 2008

Smti. Maitreyi Debnath,
Deputy General Manager (P),
in the Corporate Office of Tripura State
Electricity Corporation Limited, Agartala
..... Petitioner

– Vs –

1. The State of Tripura,
represented by the Commissioner and Secretary
to the Government of Tripura,
Department of Power, Agartala, West Tripura
2. The Chief Engineer (Electrical),
Government of Tripura, Agartala
3. The Tripura State Electricity
Corporation Limited,
through the Secretary to the Corporation
Agartala, West Tripura
-Respondents

B E F O R E
THE HON’BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Mr. S.M. Chakraborty, Sr. Advocate
Mr. P. Datta, Advocate,
Ms. B. Chakraborty, Advocate

For the respondents : Mr. G.S. Bhattacharjee, Advocate
Mr. Nepal Majumder, Advocate

Date of hearing : 10.02.2015

Date of judgment & order : 30.04.2015

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER

By means of this writ petition, the petitioner has challenged the decision contained in the communication under No-F.1(32)-CEE/89(S)/34694-95 dated 21.11.2007, Annexure P/21 to the writ petition and the order under No. F.1(32)-TSECL/89/S/3017-20, dated 05.02.2009, Annexure P/27 to the writ petition.

2. By the communication dated 21.11.2007, the petitioner was informed that her case was carefully examined "for processing the matter for finalization under Rule F.R.17(1)." By the order dated 05.02.2009, the petitioner's prayer for voluntary retirement with reference to her application dated 01.11.2008 was regretted. This court finds that the writ petition has been drawn in a sloppy manner. Even the order dated 16.04.2005 under No. F.1(32)-CEE/89(Shadow)/6781-84 has not been challenged. It allows to reverify the Office Order No.464 dated 03.09.2002, Annexure-14 to the writ petition, where it has been provided as under:

"In cancellation of this office earlier order No.190 dt.14.03.02, 854 days extra ordinary leave with effect from 1.10.99 to 31.01.02 without pay is hereby sanctioned in favour of Smt. Maitreyi Debnath, Assistant Engineer(Elect.) on the ground of personal affairs (Higher Scientific Study). This refers to letter No.F. 1(32)-CEE/89/20162-64, dt.23.09.1999."

3. Such sanction of extraordinary leave has also been reflected in the communication under No.F.1(A)/53/ED-IV/UDP/13354-55, dated 25.03.2003, addressed to the Superintending Engineer, Electrical Circle No.I, Udaipur, South Tripura. Be that as it may, for appreciating the challenge, the essential fact as arrayed in this writ petition, may briefly be stated.

4. The petitioner, while functioning as the Assistant Engineer (Electrical) in the Department of Power, Govt. of Tripura, applied for study leave for admission in the course of M. Tech(C) Level Computer Education under DOEACC Society. But the said prayer for grating study leave was not acceded to by the competent authority and the petitioner was apprised of the same by the communication under No.F.1(32)-CEE/89/20162-64, dated 23.09.1999. By the said communication, the petitioner has further been apprised as under:

"With reference to the application dated 31.07.1999 of Smt.Maitreyi Debnath, Assistant Engineer(Elec.) addressed to the Secretary(Power), Govt. of Tripura, I am directed to inform you that the study leave applied for cannot be considered. She may however be permitted to take up the course by availing of leave at her credit. Smt. Debnath A.E.(Elec) may be intimated accordingly." [Emphasis supplied]

It has been clearly indicated by the said communication dated 23.09.1999 that the petitioner might take up the course by availing the 'leave at her credit'.

5. By construing the said decision, the petitioner proceeded for the said course, but admittedly she had no sufficient ordinary leave in her credit for completing the course. As a result, she applied for extraordinary leave (EOL). The competent authority sanctioned her EOL. But on a subsequent point of time, the sanction of extraordinary leave from the period from 01.10.1999 to 31.01.2002 has been re-opened for consideration by the superior authority, when the petitioner prayed for release of her periodical increments. It appears from the communication dated 16.04.2005, Annexure-19 to the writ petition, that the Finance Department had decided to verify the position.

6. Later on, the impugned communication dated 21.11.2007, Annexure 21 to the writ petition, was issued by the Tripura State Electricity Corporation Limited, as the petitioner's service in the course of time was placed under their control. Till filing of the writ petition, no adverse decision was taken except refusing the petitioner from resigning from the service voluntarily with effect from 01.02.2009. It would be evident from the impugned communication that the Tripura State Electricity Corporation Limited regretted her prayer.

7. It appears that the communication under No.F.3(1)-COMMR/FIN(CORR)/06, dated 15.09.2006 has not reached the petitioner or the petitioner was not communicated of the said decision. From the said communication dated 15.09.2006, which has

been placed before this Court by the respondent No.1, it reflects that the sanction of the EOL for 854 days has been held to be in gross of violation of rules and sanction of the EOL for 854 days, according to the respondents, was irregular. Hence, counting this period for purpose of release of increments does not arise. It has been observed that, the so called sanction of the EOL for 854 days, being in violation of leave rules, may be cancelled and the said period be treated as dies-non. It appears that the petitioner was allowed to resume duty on 01.02.2002. From the records produced by the writ petitioner as well as by the respondent No.1 and the other respondents alongwith the writ petition and the counter affidavits, it does not appear that any communication has been made to the writ petitioner in terms of the communication dated 15.09.2006.

8. Mr. S.M. Chakraborty, learned senior counsel appearing for the petitioner, has submitted that cancellation of extraordinary leave would cause severe injustice as the petitioner was permitted to proceed for the course by availing of leave at her credit. It cannot be denied that in terms of provision of Rule 31 of Tripura State Civil Services (Leave) Rules, 1986, a Government servant may be granted extraordinary leave when no other leave is admissible and when the Government servant applies in writing for the grant of extraordinary leave. Only restriction is that, more than three months of EOL cannot be granted to a government servant who is not permanent. When the government servant is permanent he may be granted more EOL.

9. Mr. Chakraborty, learned senior counsel, having referred to the counter affidavit filed by the respondent No.1, where it has been contended that the Finance Department by the Note dated 15.09.2006, has stated that the so called sanction of extraordinary leave for 854 days being in violation of Leave Rules may be cancelled and the period be treated as dies-non. But no communication has been made to the petitioner about cancellation of sanction of the EOL by the Superintending Engineer, Electrical Circle No.1, Udaipur, South Tripura. Apart that, Mr. Chakraborty, learned senior counsel, has submitted that for declaring a period of absence as wilful or as dies-non, the procedure as provided under F.R.17(1) shall be followed by the authority. F.R.17(1) is reproduced as under :

"Subject to any exceptions specifically made in these rules and to the provision of sub-rule(2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date then he assumes the duties of that post, and shall cease to draw them as on as he ceases to discharge those duties:

Provided that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence."

10. In such premises, Mr. Chakraborty, learned senior counsel appearing for the petitioner has urged this court to strike down the impugned order and to command the respondents to accept the voluntary retirement of the petitioner, and to release all financial benefits including the retrial benefits etc. forthwith.

11. Mr. N. Majumder, learned counsel, appearing for the Tripura State Electricity Corporation Limited and its officer, the respondent No.3, has submitted that the EOL granted by the Order under No.190, dated 14.03.2002 and Order No.464, dated 03.09.2002 for personal affairs (higher studies) in favour of the petitioner was highly irregular. Accordingly, the Finance Department has suggested cancelling the said sanction. Having regard to that, the prayer of the petitioner for voluntary retirement or for releasing her periodical increments has not been acted upon favourably. He has placed the service records of the petitioner, where the following note is available :

"The period of absence not covered by grant of leave shall have to be treated as "dies non" for all purposes, viz,, increment, leave and pension. Such absence without leave where it stands singly and not in continuation of any authorised leave of absence will constitute an interruption of service for the purpose of pension and unless the pension sanctioning authority exercises its powers under Article 421, Civil Service Regulations[now Rule 27 of the Central Civil Services (Pension) Rules] to treat the period as leave without allowance, the entire past service will stand forfeited.

[C.&A.G.,U.O.No.1947-A/438-58,dated the 12th September 1958 in G.I., M.F. File No.11 (52)-E, V/58.]"

12. Mr. N. Majumder as well as Mr. G.S. Bhattacharjee, learned counsel appearing for the respondents, have submitted that the Executive Engineer had no authority to grant such leave inasmuch as that he cannot come under the definition of the Controlling Officer and Head of the Department. Mr. Majumder, learned counsel having placed a copy of the show cause notice dated

23.11.2009, has submitted that the petitioner has not resumed her duty w.e.f. 01.11.2008 even though her prayer for voluntary retirement was not accepted by the Tripura State Electricity Corporation Limited. By the said show cause dated 23.11.2009, the petitioner was asked why her absents from duty thereafter shall not be treated as unauthorised. This controversy however, has not been raised by the writ petitioner in this writ petition and as such this aspect would not be considered.

13. Having regard to the counter affidavit filed by the respondent No.3, Mr. Majumder, learned counsel, has submitted that sanction of EOL is entirely with the discretion of the authority and no Government employee, as a matter of right can claim sanction for EOL. The leave is for enjoyment but, subject to due sanction by the competent authority. Mr. Majumder, learned counsel has admitted that no specific order has been communicated or passed cancelling the sanctioned leave is available on record. But the advice of the Finance Department as referred is available. He has contended that the employer has no obligation to regularise any period of absence by EOL.

14. From the rival submissions, what has surfaced is that, the entire controversy hinges on the following questions :

- (i) Whether the leave for the period from 01.10.1999 to 31.01.2002 has been sanctioned in view of the decision of

the respondents as reflected in the communication dated 23.09.1999, Annexure-1 to the writ petition?

- (ii) Whether denial to release the periodical increments is just and reasonable and whether the denial of voluntary retirement was proper?

15. It has not been denied by the respondents that the petitioner was permitted to take up the course by availing of leave at her credit. It is also not in dispute that her prayer for study leave was not acceded to by the Government. On the basis of the said permission so granted by the communication dated 23.09.1999, the petitioner completed the said course, but by the ordinary leave credited on her account the entire period of study could not be covered. As a result, she applied for EOL for the remaining period. Executive Engineer (Electrical), Division No. IV granted the leave. After such leave was granted, the petitioner prayed for release of her periodical increments for the year 2000, 2001 and 2002. On the face of such demand, by the communication dated 16.04.2005 the petitioner was apprised as under :

"You are requested to send the Service Book of Smti. Maitreyee Debnath, Assistant Engineer (Elect) under your Division for verification as suggested by the Finance Department regarding Extra Ordinary Leave for 854 days w.e.f. from 1-10-1999 to 31-01-2002 as granted on personal affairs (Higher Study) by the then Executive Engineer (Elect) Divn. No.-IV, Udaipur, Sri Naresh Ch.Das, which is reproduced below :

- 1. Action against the Head of Office(E.E) for sanction of leave in violation of Rules.**

- 2. No periodical increment may be allowed for the period of leave.**
- 3. The so called degree obtained by the incumbent should not be recorded in her Service Book.**
- 4. After taking above actions the Department may confirm. On receipt of confirmation further decision on continuity of service may be communicated from the Finance Department."**

16. It appears that stoppage of periodical increments is restricted to the period of leave. It further appears that the respondent No.3 has denied the petitioner's prayer for going on voluntary retirement for the reason that unless the period under the EOL is added to the period of service, the petitioner has actually served, the petitioner would not be qualified to go on voluntary retirement and in view of that her prayer for going on voluntary retirement has been regretted. Thus, on the cumulative reading, questions would melt down to a solitary question : whether the respondents have any obligation to grant the petitioner EOL in view of their permission as reflected in communication dated 23.09.1999.

17. It appears from the said communication dated 23.09.1999 that the petitioner has been permitted to take up the course by availing the leave at her credit. It cannot be denied that except the casual leave other types of leave are always subject to sanction by the competent authority. So is equally true in respect of EOL. From a bare reading of Rule 31 of the Tripura State Civil Services(Leave) Rules, 1986, it would be apparent that "when no

other leave is admissible, the extraordinary leave may be granted to a Government servant in such circumstances". It is not disputed by the respondents that for completing the said course, the petitioner had no other admissible leave. Hence, she applied for EOL. The permission granted by the communication dated 23.09.1999, is couched with an assurance that the petitioner would be granted leave availed to her credit. Otherwise the order would have been that the petitioner would not be allowed to take up that course.

18. Having regard to the provision of Rule 31 of the Tripura State Civil Services (Leave) Rules, 1986 that since the petitioner had no other admissible leave and she had been granted permission to take up the course by availing the leave to her credit, the extraordinary leave for the period from 01.10.1999 to 31.01.2002 be made available to the petitioner by way of sanction.

19. Whether the leave has been granted by a competent person or not, cannot have much relevance in the context. The petitioner had applied for the leave in due course and that was sanctioned. How the sanction was accorded, it hardly matters. The petitioner cannot be blamed for any defect in the intra-department decision making process. Moreover, nowhere it is reflected that at the time of verification the aspect of granting her permission was considered by any competent authority. Mr. N. Majumder, learned counsel appearing for the respondents, has submitted that in terms of the provision of Delegation of Financial Power Rules, 1994, the

Executive Engineer cannot be termed as the Controlling Officer or the Head of the Department. The said rules do not have any relevance *ipso facto* so far the management and control of the person working under the respondent No.3 as he has failed to produce any adoption order. However, in view of the said procedural aspect, this court is of the opinion that in sanctioning EOL there is no infirmity as such. Had it been issued by any officer, not competent to do so that should have been ratified by the competent authority in view of the communication dated 23.09.1999.

20. As a result, the consequence that would follow as regards release of the periodical increments or acceptance of the prayer for the voluntary retirement is that since the respondent No.3 has taken a categorical stand that as the period from 01.10.1999 to 31.01.2002 cannot be added to the service tenure of the petitioner, she has been refused her voluntary retirement and as this court has held that there was no infirmity in the sanction of EOL, the respondents are estopped by permission to contend that they are not under obligation to regularise the service of the petitioner that has been taken for purpose of higher studies.

21. Having held so, it is directed that the voluntary retirement of the petitioner be accepted with effect from 01.02.2009, as according to the respondents there is no other embargo. The respondent No.3 shall pass necessary order accepting her prayer for voluntary retirement with effect from 01.02.2009. On the face of

such observation and direction, the impugned decision reflected in communication dated 21.11.2007, Annexure-P/21 to the writ petition, and the order dated 05.02.2009, Annexure P/27 to the writ petition, are interfered with and set aside. The respondents are directed to pass the necessary orders without fail in view of this order within a period of 3(three) months from the day when they would receive a copy of this order from the petitioner or otherwise.

22. In the result, this writ petition stands allowed. However, there shall be no order as to costs.

JUDGE

Moumita