



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

230

CWP-6213-2021 (O&M)

Date of decision: 16.01.2025

Dr. Shiv Prakash

...Petitioner

VERSUS

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. S. K. Verma, Advocate for the petitioner

Mr. Tapan Kumar, DAG Haryana.

VINOD S. BHARDWAJ, J. (Oral)

1. Seeking directions to the respondents to release his salary from 26.09.2019 to 13.02.2020 alongwith all the consequential benefits and interest thereupon @18%, the petitioner has approached this Court.
2. Learned counsel appearing on behalf of the petitioner has argued that the petitioner was appointed as a Medical Officer on 01.12.2017 under HCMS Cadre on a regular basis and joined at General Hospital, Jind. He was posted as Medical Officer on deputation basis at CHC Kharak Ramji, Jind and has also done Jail duty as well as duty in Emergency Department at General Hospital Jind. On the fateful day i.e. 28.08.2019, the petitioner was present in the IT Cell of the office of Civil Surgeon, Jind for video conferencing for Court evidence. He has informed that condition of his wife had worsened as a side effect of Anti Tubercular Treatment, which she was undergoing during her advanced stages of pregnancy. After the



video conferencing, the petitioner went to the office of respondent No.3- Civil Surgeon, Jind to intimate about the ill-health of his wife and to apply for casual/station leave, however, as the Civil Surgeon was busy in meeting at that time, hence, the petitioner intimated of the same to the staff of respondent No.3. He also sent a whatsapp message, on the same day, to the Medical Officer at CHC Kharak Ramji, Jind intimating about his circumstances.

3. On the same day i.e. 28.08.2019 at about 11.38 AM, the petitioner received a whatsapp message from Mr. Neeraj, DEO at CHC Kharak Ramji, Jind to the effect that he has been relieved from CHC Kharak Ramji w.e.f. 27.08.2019 and had been deputed to the District Jail, Jind. A deputation order dated 07.08.2019 was also sent to the petitioner through whatsapp. He contends that even though the said order was dated 07.08.2019, however, intimation in this regard was received by the petitioner only on 28.08.2019. He contends that be that as it may, since the health of his wife was not good, the petitioner submitted an application for grant of casual/station leave through email as well as whatsapp for the period from 28.08.2019 to 01.09.2019 which was approved by the Senior Medical Officer, Incharge CHC Kharak Ramji, Jind on whatsapp. The petitioner thereafter got his wife admitted to Civil Hospital, Jind as she was going through labour, however, during the same time, the petitioner came to know that his casual/station leave had been canceled by the Civil Surgeon, by sending a whatsapp message on the same day at about 5.22 pm without, assigning any reason or giving reasonable cause.



4. On 29.08.2019 i.e. the same day, the petitioner had to shift his wife to PGIMS, Rohtak to prevent any complication during delivery and in this regard he also intimated respondent No.3 and requested him to grant casual/station leave. Instead of granting the same, respondent No.3 got published the news in the National News Papers regarding his absence from Jail Duty for a period of 04 days.

5. Despite being discharged from the hospital on 31.08.2019, the condition of wife of the petitioner as well as newly born baby was not well and it required personal care. A request was submitted to the Civil Surgeon for grant of paternity leave but the same was declined. He contends that thereafter, even on 10.09.2019, when the child fell ill, the petitioner personally met respondent No.3 and informed him about the condition of his child with a request to sanction paternity leave but the same was declined yet again. It is alleged that the above said refusal to grant casual/paternity/medical emergency leave was with a motive to harass and humiliate the petitioner at every movement for reason best-known to him.

6. An application dated 10.09.2019 was thereafter sent by the petitioner to respondent No.4-Senior Medical Officer, CHC Kharak Ramji, Jind through proper channel, alongwith the charge handover report requesting therein to be granted paternity leave from 11.09.2019 to 25.09.2019. After completion of the paternity leave, the petitioner moved an application on 26.09.2019 to respondent No.4 for allowing him to resume duty and he joined as such at CHC Kharak Ramji, Jind on the same day. The petitioner, vide letter dated 03.10.2019, wrote to respondent No.4 informing



that he had resumed duty on 26.09.2019. A letter dated 03.10.2019 was, however, later received by the petitioner via email from the office of respondent No.3 in which the said respondent submitted a complaint against him to respondent No.2-Director General, Health Services, Haryana, to the effect that he had not appeared for duty and has been absent without intimation. He claims that the aforesaid correspondence was incorrect since the petitioner had already joined on 26.09.2019 but had not been allowed to resume duty. Hence, a letter dated 03.10.2019 was sent by him to the Senior Medical Officer re-iterating his having resumed duty w.e.f. 26.09.2019 and discharging his official duties continuously upto 02.10.2019 at CHC Kharak Ramji, Jind.

7. Without acceding to the said request, the Civil Surgeon recommended the case for initiating disciplinary proceedings against the petitioner to the Director General, Health Service, Haryana. The petitioner submitted a detailed representation to the Director General, Health Service, Haryana on 30.10.2019 requesting that he be allowed to join the duty but the said representation was ignored thus compelling the petitioner to file CWP-33332-2019 before this Court.

8. The above writ petition was disposed of by this Court vide order dated 18.11.2019 with a direction to the respondent to decide the representation submitted by the petitioner for being permitted to resume duties, within a period of two weeks.

9. Despite the above said order, no decision was taken, whereupon the petitioner filed a Contempt Petition bearing No. COCP-4328 of 2019



wherein respondent No.2 filed its reply mentioning that the petitioner had already been permitted to join his duties on 14.02.2020 and the paternity leave from 11.09.2019 to 25.09.2019 had also been sanctioned vide order dated 13.02.2020 and that salary for paternity leave period had also been released to the petitioner. The claim about salary for the period of absence i.e. 26.09.2019 to 13.02.2020 and consequential benefits would be considered after completion of enquiry and decision pertaining to the period of absence of the petitioner. The contempt petition was accordingly disposed of as having been satisfied, vide order dated 28.02.2020.

10. Learned counsel contends that the respondents themselves had to take a decision with respect to the salary of the petitioner for the above said period i.e. from 26.09.2019 to 13.02.2020, however, neither any charge-sheet had been issued to the petitioner nor any disciplinary proceedings initiated against him, yet, the salary for the said period has also not been released, thus compelling the petitioner to approach this Court against the illegal and arbitrary action of the respondents.

11. Responding to the above, learned State counsel refers to the reply filed by respondents No.3 Civil Surgeon, Jind, on behalf of respondents No.1 to 4, wherein it is stated that in compliance to the order dated 18.11.2019 passed by this Court, the Additional Chief Secretary to Government of Haryana, Health Department being the competent authority passed an office order vide memo No.17/241/2019-4HB-I dated 03.01.2020 allowing the petitioner to join duty at Community Health Centre, Kharak Ramji, Jind. Directions were also issued to the Director General, Health



Services, Haryana to conduct an enquiry into the absence of the petitioner which was to be conducted by an Officer at the level of the Director and a copy of said enquiry report was to be submitted to the Government.

12. In compliance to the order dated 03.01.2020, office of the Director General, Health Services, Haryana appointed Dr. Vandana Gupta, Director Health Services (HMD) as an Enquiry Officer in the matter. At the same time, vide memo No.54/S(1556)-1E-4-2020/252 dated 03.02.2020, office of the Civil Surgeon, Jind sanctioned paternity leave to the petitioner for the period from 11.09.2019 to 25.09.2019 and disbursed the salary for the period from 28.08.2019 to 25.09.2019. Hence, in compliance to the order dated 18.11.2019 passed by the High Court in CWP-33332-2019. The office of Director General, Health Services, passed a speaking order vide memo No.54/S(1556)1E4/2020/445-446 dated 19.02.2020/26.02.2020 mentioning therein about the compliance made by the Civil Surgeon as well.

13. He argues that the petitioner thereafter remained absent again from his duty for the period from 26.09.2019 to 13.02.2020 and the Civil Surgeon, Jind vide letter No. E-2/2022/1327-29 dated 24.06.2022 constituted a Committee to conduct an enquiry into his absence. The Enquiry Committee vide report No.E-II-22/1414 dated 13.07.2022 submitted its report and found that leave balance in the account of the petitioner was -11 despite the leave of the petitioner being approved for the period from 01.03.2019 to 04.03.2019; 25.03.2019 to 27.03.2019; 29.06.2019 to 10.07.2019 and 03.08.2019 to 05.08.2019, hence, salary claimed for such period and for the period from 26.09.2019 to 13.02.2020 in the present case



cannot be granted for want of balance leave in his account for the said period. It is thus argued that the petitioner had misled this Court by concealing the true facts, which undisputedly established on going through the letter dated 02.04.2019.

14. He also submits that even though the petitioner had moved the application dated 03.08.2021, after a lapse of almost 02 years, for converting his period of absence into casual leave, however, the same was not possible for non-availability of balance leave in his account. In the said communication of 03.08.2021, the petitioner had himself admitted that he was absent from duty for the period for which the salary is now being claimed in the present writ petition.

15. Further an argument has also been made that even though the petitioner has claimed that he had submitted his joining report after availing paternity leave on 26.09.2019 through email at 10.45 AM, however, as per the applicable Rules, for joining of duty, an officer is required to remain physically present for duty at the institution and marking of attendance in the attendance register is mandatory. The petitioner, however, did not report physically at the institution and hence remained absent from duty for the said period as well. The report about the petitioner's continuous absence was sent by the office of the Civil Surgeon in compliance to Rule 7 of the Haryana Civil Service (Leave) Rules, 2016 which mandates that, "***In case of unauthorized absence of a Government employee for a period of more than one week, the Head of the office shall send detailed report to the Head of Department. In respect of employees of Group-A and B the report***



shall be forwarded to the Admin. Deptt. by the concerned Head of Deptt. alongwith his comments. The petitioner was thereafter required to obtain permission for joining from the higher authority. An intimation in this regard was also forwarded to the petitioner on 04.02.2020 conveying that as per the directions of the higher authority, the petitioner could join his duty but he still did not rejoin, which such aspect was also apprised to the higher authority vide memo No. Estt./2020/180 dated 26.02.2020. The absence of the petitioner was thus willful and there was foul play or malice on the part of the officials. It is also argued that the petitioner is a habitual absentee from duty and used to not following directions issued by the superior authorities. Warnings were also issued to the petitioner from time to time. Reliance is placed on the orders dated 19.05.2020; 16.06.2020 as well as 08.09.2021. The operative part of the reply reads thus:-

“6. ***That the petitioner again remained absent from his duty for the period from 26.09.2019 to 13.02.2020. That the salary with all consequential benefits for the period of absence of the petitioner is in question in the instant writ petition and petitioner claimed reliefs as mentioned in prayer of the instant writ petition as specified in para No.1. In this matter, Civil Surgeon, Jind vide letter No.E-2-2022/1327-29 dated 24.06.2022 (Annexure R-3) had constituted the Enquiry committee for conducting in the matter regarding absent period of the petitioner from 26.09.2019 to 13.02.2020. The Enquiry Committee submitted its report No.E-II-22/1414***



dated 13.07.2022 (Annexure R-4) and in report it was found that leave balance in the account of the petitioner was -11 (minus eleven) in spite of the fact that if leave of the petitioner would have been approved for the period (01.03.2019 to 04.03.2019, 25.03.2019 to 27.03.2019, 29.06.2019 to 10.07.2019 and 03.08.2019 to 05.08.2019) and therefore salary claimed for the such period and for the period from 26.09.2019 to 13.02.2020 in the present Civil Writ Petition cannot be granted due to the fact that no leave was balance during the such period in the account of the petitioner.

7. *That it is pertinent to mention here that the petitioner in the instant writ petition specifically claimed the salary for 21 days (i.e. 01.03.2019 to 04.03.2019, 25.03.2019 to 27.03.2019, 29.06.2019 to 10.07.2019 and 03.08.2019 to 05.08.2019) on the ground that he has done his duty during such period. But, it is worthwhile to mention here that petitioner has mislead the Hon'ble Court by concealing the true facts as same is proved by the after gone through the letter dated 02.04.2019 (Annexure R-5), in which information was given to the respondent No.3 that petitioner was absent from the duty for the period (01.03.2019 to 04.03.2019, 25.03.2019 to 27.03.2019) and petitioner after lapse of almost two years moved the application dated 03.08.2021 (Annexure R-6) before the respondent No.4 for conversion of absent*



period, as stated above, into casual leave. In such application, petitioner has expressly admitted that he was absent for the afore-said periods. It is pertinent to mention here that petitioner on 03.08.2021 moved the application for conversion of absent period in to casual leave but same was not possible as no leave balance was available in the account of petitioner. However, petitioner in his application dated 03.08.2021 himself specifically admitted that he was absent for the period for which petitioner has claimed the salary in the present writ petition.

8. *That it is pertinent to mention here that petitioner had submitted the joining report after paternity leave on 26.09.2019 through email at 10:45 A.M. whereas mere submission of joining report through email is not sufficient as physical presence on duty in the institution and marking attendance in Attendance Register are mandatory. But as he did not report physically in the Institution and remained absent from duty w.e.f. 26.09.2019 to 13.02.2020. It is pertinent to mention here that as per Rule 7 of Haryana Civil Service (Leave) Rules, 2016 "In case of unauthorised absence of a Government employee for a period more than one week, the Head of office shall send detailed report to the Head of Department. In respect of employees of Group A and B, the report shall be forwarded to the Administrative Department by*



the concerned Head of Department along with his comments". It is worthwhile to mention here that petitioner was absent for the period more than 7 days and therefore petitioner was directed to get permission from the higher authority for joining. Thereafter, petitioner was informed vide letter No.E-2-20/230 dated 04.02.2020 (Annexure R-7) that as per direction of the higher authority the petitioner could join his duty but petitioner did not join the duty and situation was apprised to the higher authorities vide memo No. Estt./2020/180 dated 26.02.2020 (Annexure R-8) and petitioner ultimately joined the duty on 14.02.2020 vide his joining report (Annexure R-9) after wilful absence from 26.09.2019 to 13.02.2020 in the office of Senior Medical Officer, Community Health Centre, Kharakhramji, district Jind.

9. *That it is pertinent to mention here that petitioner is habitual absentee from the duty and not following the directions issued by the superior officers. In this regard, warnings were also issued to the petitioner time to time. Such conduct of petitioner is also proved by the contents of letter dated 19.05.2020 (Annexure R-10) by the RMO, Civil Hospital, Jind to Civil Surgeon, Jind; in which intimation qua the absence of petitioner from his duty was received, thereafter, in this regard vide letter No.E-2-20/1116-17 dated*



16.06.2020 (Annexure R-11) Civil Surgeon, Jind issued warning to the petitioner. It is further submitted that the petitioner remained negligent during his duty in the District Jail, Jind and remained absent from his duty which was intimated by Jail Authorities to the Civil Surgeon, Jind vide letter No.6371 dated 08.09.2021 (Annexure R-12).”

16. No rejoinder/counter to the aforesaid reply has been filed by the petitioner, thus, the averment contained in the reply filed by the respondents about no casual leave being available in the account of the petitioner alongwith other factual claims goes uncontroverted.

17. Having heard the learned counsel appearing on behalf of the parties, I find that the stand of the respondents has remained undisputed and uncontroverted and no evidence or counter has been filed. There is nothing on record on the basis whereof this Court may come to a conclusion that the petitioner still had balance leave to his account which could have been adjusted and the salary for the period could be released. Respondent-State has also given specific details of the different period for which the leave had been availed by the petitioner including the paternity leave, medical leave etc. and also averred that leave to the account of the petitioner was -11, hence, the period of absence had to be treated as a period without salary. The contention of the petitioner that he was not being allowed to join duty despite having reported on 26.09.2019 also stands replied to by the respondents by making a specific reference to the provision of the Rule to the effect that an official/officer is required to remain physically present



while reporting for rejoining on duty and that the attendance is also required to be marked in the attendance register. It is the specific case of the respondents, in their reply, that only an email was sent by the petitioner on 26.09.2019 at 11.45 AM and that he was not physically present at the institution to mark his attendance. Such a mode of submitting a joining report is unacceptable as per Rules. There has been no rebuttal to the same by the petitioner. It is specifically submitted by the respondents that as per provisions of Rule 7 of the Haryana Civil Service (Leave) Rules, 2016, in the event of a continued absence for more than 07 days, the employee is required to obtain requisite permission from the head office and that despite an intimation having been sent to the petitioner about the same, he did not report to the head office and seek sanction for joining. None of the said factual aspects has been controverted by filing any rejoinder/replication. Reliance to counter is only on the communication dated 26.10.2019 (Annexure P-6) about submitting a joining report but the same is not an answer to the objection about procedure to be followed and requirements to be fulfilled.

18. In view of the above, it is evident that learned counsel appearing on behalf of the petitioner has failed to refer to any illegality in the order passed by the respondents in not releasing the salary to the petitioner for the period of his absence for want of balance leave in his leave account.

19. The respondents have also taken a note of and highlighted the continuous mis-endavors made by the petitioner and his continued habit of



remaining absent from the duty and showing disrespect as well as insubordination to the orders passed by the authorities. Additionally, the contention of the petitioner that opportunity of hearing has not been granted to the petitioner and that the order needs to be set aside lacks merits since the non-release of the salary is not as a measure of the penalty imposed upon the petitioner. Any such requirement to grant an opportunity of hearing would be required only in case disciplinary proceedings are initiated and a penalty is imposed. In the present case, the non-payment of the salary is not as a measure of penalty and is only on account of non-availability of leave in the account of the petitioner. Even during arguments, counsel failed to point out how the order passed was wrong, legally or factually.

20. **The present petition is hence dismissed for the reasons as aforesaid.**

**(VINOD S. BHARDWAJ)
JUDGE**

16.01.2025

Mangal Singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No