

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.871 OF 2019

DISTRICT : PALGHAR

Shri Sambhaji Huna Pawra.)
Age : 47 Yrs., Occu.: Service,)
R/o. Block No.107, Kalpataru Apartment,)
1st Floor, Near Aryan School,)
Taluka & District : Palghar.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through its Principal Secretary,)
Revenue Department, Madam Kama)
Road, Hutatma Rajguru Chowk,)
Mantralaya, Mumbai – 400 032.)
2. The Collector.)
District : Palghar.)
3. The Deputy Collector (Rohyo).)
District : Palghar.)...**Respondents**

Mr. G.T. Kanchanpurkar, Advocate for Applicant.

Ms. N.G. Gohad, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 06.04.2021

JUDGMENT

1. The Applicant has challenged the order dated 17.07.2019 passed by Respondent No.2 – Collector, Palghar whereby his leave period from 08.06.2019 to 23.06.2019 was treated ‘leave without pay’, invoking

jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. The Applicant is serving as Naib Tahasildar (Employment Guarantee Scheme) in Collector Office, Palghar. His son had passed the S.S.C. Examination in 2019 and was to apply for admission in Junior College. The Applicant's native place is in Nandurbar District. The Applicant was, therefore, required to go to his village to obtain various Certificates viz. Caste Certificate, Domicile Certificate, etc. for admission of his son. He had, therefore, applied for Earned Leave from 10.06.2019 to 21.06.2019 with prefixing and suffixing holidays and accordingly submitted an application in the Office on 04.06.2019. However, nothing was communicated to him about the grant or refusal of leave. He proceeded on leave assuming that his leave is granted. However, immediately on next day i.e. on 11.06.2019, the Respondent No.3 – Deputy Collector issued Show Cause Notice to the Applicant that he had left Head Quarter simply submitting application and he was called upon to submit explanation as to why disciplinary proceedings for misconduct should not be initiated against him. The Applicant after availing leave period got the said notice. He, therefore, submitted reply on 02.07.2019 requesting to sanction Earned Leave. He had 299 days E.L. at his credit. However, Respondent No.3 by order dated 17.07.2019 treated entire period including prefixing and suffixing holidays as 'leave without pay' which is under challenge in the present O.A.

3. Shri G.T. Kanchanpurkar, learned Advocate for the Applicant sought to assail the impugned order contending that the same is totally unjust and arbitrary. He has pointed out that the Applicant had 299 days E.L. at his credit and had applied for grant of leave well in advance i.e. on 04.06.2019, but nothing was communicated to him. His leave period was from 10.06.2019 to 21.06.2019. He has further pointed out that in past also, he did not avail much leave and there was no such tendency to avail leave frequently. His previous leave of 4 days was in

the year 2018. He, therefore, submits that the impugned order of treating leave as 'Extra-ordinary Leave" (leave without pay) is totally unjust and liable to be quashed.

4. Per contra, Ms. N.G. Gohad, learned Presenting Officer sought to support the impugned order contending that presence of the Applicant in Office was required for administrative work and visit of Minister to Palghar District, and therefore, the same was rejected.

5. In view of above, the small issued posed for consideration is whether the impugned order treating leave period as "Extra-ordinary Leave" (leave without pay) is just and legal and the answer is in emphatic negative.

6. True, leave cannot be claimed as of right. Leave is permission granted by Competent Authority at its discretion to remain absent from duty, as contemplated under Rule 10 of Maharashtra Civil Services (Leave) Rules, 1981, which is as follows :-

"10. Right to leave :

- (1) Leave is permission granted by a competent authority as its discretion to remain absent from duty.
- (2) Leave cannot be claimed as of right.
- (3) When the exigencies of public service so require, leave of any kind may be refused or revoked by the authority competent to grant it, but it shall not be open to that authority to alter the kind of leave due and applied for except at the written request of the Government servant."

7. Indisputably, the Applicant had 299 E.L. at his credit. This aspect itself strengthen Applicant's contention that he had no tendency to fritter away leave unnecessarily. Apart, there is nothing on record to suggest that Applicant was in habit to avail leave frequently or at any point of time he was given Memo or Notice for availing leave. Apart, the reason mentioned by the Applicant in his application that he was required to go to his native place in Nandurbar District for obtaining Caste Certificate,

Domicile Certificate, etc. for the admission of his son is also not disputed. It is nowhere the case of Respondents that the reason given for leave was false. The Applicant's son had cleared SSC Examination in the year 2019, and therefore, obviously for admission in Junior College, he was required to obtain necessary Certificates for which he was to avail leave. Suffice to say, the reason given for claiming leave being genuine and the fact that he had 299 days E.L. at his credit, it ought to have been considered by Respondent No.2 in proper perspective.

8. Apart, indisputably, the Applicant had applied for grant of leave by submitting an application in requisite form on 04.06.2019 and the leave period was from 10.06.2019. As such, there was enough time for the Office to take decision on his leave application and to inform the Applicant accordingly. However, the Applicant was not informed either way. If Applicant's leave was not to be granted for administrative reason, in that event, the decision to that effect should have been communicated to the Applicant before 10.06.2019. However, Respondent No.3 did not take any such decision and it is only after Applicant proceeded on leave under the *bonafide* belief that his leave will be granted in normal course, it is immediately on next day i.e. 11.06.2019, the Respondent No.3 issued Show Cause Notice. Indeed, he ought to have shown such promptness immediately on filing of application for leave by the Applicant and should have informed the decision, as the case may be to the Applicant before 10.06.2019. One can understand if leave was rejected by specific order and it was communicated to the Applicant and despite it, he went on leave. Here Applicant has explained the circumstances in which he was required to proceed on leave urgently for obtaining necessary Certificates for admission of his son in Junior College. His application for E.L. submitted in the Office shows that lastly he availed E.L. for 4 days from 31.03.2018 to 03.04.2018. As stated above, 299 days E.L. was at his credit. This aspect clearly shows that the Applicant had no such tendency to avail leave frequently. Indeed, record reveals that in 2018, he had asked for 9 days E.L. from 28.08.2018 to

21.09.2018, but the same was rejected on administrative ground. Thereafter, again in the month of December, he had applied for 17 days E.L, but it was also rejected. Thereafter, he applied for leave in question i.e. 10.06.2019 to 21.06.2019 for visit to his native place to obtain Domicile and Caste Certificates for his son, which ought to have been considered by Respondent No.3 having regard to genuine reason for leave mentioned in the application.

9. It needs to be noted that the Applicant had applied for 13 days E.L. from 10.06.2019 to 21.06.2019 with prefixing and suffixing holidays on account of Saturday and Sunday. However, Respondent No.2 – Collector, Palghar treated 14 days absence as ‘without pay’ including holidays of 4th Saturday and Sunday falling on 22.06.2019 and 23.06.2019, which is totally unjust and arbitrary. There was no question of treating holidays falling on 4th Saturday and Sunday as working days and to treat it as ‘leave without pay’.

10. The Respondent No.3 – Deputy Collector, Palghar as well as Respondent No.2 – Collector, Palghar ought to have considered that the Applicant had no such tendency to avail leave frequently and having regard to the genuine reason for leave, they ought to have granted E.L. to the Applicant since 299 days E.L. was at his credit. The Applicant had applied for leave well in advance, and therefore, if there was any such administrative exigency for not granting the leave, then the decision could have been taken immediately and the same should have been communicated to the Applicant. However, it is not so and the Applicant’s application was simply kept pending. I have, therefore, no hesitation to sum-up that the impugned order treating leave period asked for as ‘leave without pay’ is totally unjust, iniquitous and unsustainable in law. The impugned order, therefore, deserves to be quashed. Hence, I proceed to pass the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order dated 17.07.2019 is quashed and set aside and leave asked for be treated as 'Earned Leave'. Pay and allowances for the said period be paid within a month.
- (C) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 06.04.2021

Dictation taken by :

S.K. Wamanse.

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