

**HIGH COURT FOR THE STATE OF TELANGANA**

**WRIT PETITION No.16133 OF 2004**

**Between:**

Sayapuram Ramakrishna,  
S/o Late S.V.R.Acharyuly,  
Aged about 25 years,  
R/o Khammam,  
Khammam District.

.. Petitioner

Vs.

The General Manager,  
The District Co-operative Central Bank Ltd.,  
Khammam, Khammam District 3 others.

.. Respondents

DATE OF THE ORDER PRONOUNCED: **04.07.2023**

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| 1. Whether Reporters of Local newspapers may be allowed to see the judgment? | No  |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals    | Yes |
| 3. Whether his Lordship wishes to see the fair copy of the judgment?         | Yes |

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**J. SREENIVAS RAO, J**

**\* HON'BLE SRI JUSTICE J. SREENIVAS RAO**

**+ WRIT PETITION No.16133 OF 2004**

**% DATED 04<sup>th</sup> July, 2023**

# Sayapuram Ramakrishna,  
S/o Late S.V.R.Acharyulu,  
Aged about 25 years,  
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.. Respondents

<Gist:

>Head Note:

! Counsel for the Petitioner: Sri K.V.Rama Rao, Advocate  
Rep. to Sri V.R.Avula, Advocate

^Counsel for Respondents : Sri Srinivas Polavarapu, Advocate

? CASES REFERRED :

1. (2012) 3 SCC 178	Petitioner
2. (2013) 10 SCC 253	Respondent
3. 2006 11 SCC 634	Respondent
4. AIR 1990 AP 171	Respondent
5. 2001 (5) ALD 13 (DB)	Respondent

**HON'BLE SRI JUSTICE J. SREENIVAS RAO****WRIT PETITION No.16133 of 2004****ORDER:**

This writ petition is filed seeking Writ of Mandamus declaring the proceedings in RC.No.4152/Estt/2003-04 dated 28.12.2003 issued by respondent No.1 as illegal, arbitrary and consequentially direct the respondents to reinstate the petitioner into services with all the consequential benefits.

2. Heard Sri K.V.Rama Rao, learned counsel, representing Sri V.R.Avula, learned counsel for the petitioner, Sri Polavaram Srinivas, learned Standing Counsel appearing for respondent Nos.1 and 4 and learned Assistant Government Pleader for Cooperation for respondent Nos.2 and 3.

3. **Brief facts of the case:**

3.1 Petitioner submitted that he was appointed as messenger in respondent No.1 bank on compassionate grounds and while he was in service he was attacked with a back pain and frequent pain in the abdomen and in the

result the petitioner could not be able to move from bed and could not attend his duties regularly from 29.05.2000. The petitioner further submitted that respondent No.1 issued charge memo on 09.04.2001 directing the petitioner to submit an explanation. Pursuant to the same, the petitioner submitted explanation on 26.04.2001. Subsequently, respondent No.1 issued another notice on 13.03.2003 and the petitioner submitted explanation on 26.03.2003. He further stated that respondent No.1 issued impugned proceedings dated 28.12.2003 dismissing him from the services without conducting any enquiry and the same is contrary to the law.

4. Respondent No.1 filed counter contending that petitioner while working as messenger in the respondent Corporation he was absent from the duties without applying for any leave to the competent authority and after issuing several memos calling for his explanation the respondent No.1 issued charge memo dated 09.04.2001 stating that he was absent from duty w.e.f. 16.11.2000 without applying for

any kind of leave or intimation and thereby committed misconduct and directed the petitioner to submit his explanation to the respondent authorities within seven days from the date of receipt of the charge memo. The petitioner has submitted his explanation on 26.04.2001 where he has admitted his guilt but stated the he is suffering with many diseases and as such he could not attend the bank and requested the respondent No.1 to drop the charges and permit him to continue his services on humanitarian grounds. Basing on the said explanation respondent bank issued proceedings dated 09.10.2002 posting him as messenger at Garla branch and he joined the duties at Garla branch on 12.10.2002 and worked for a period of six days and again was absent from the duties w.e.f 18.10.2002 without applying for any leave or intimation. At that stage respondent No.1 bank has issued memo dated 22.11.2002 calling for explanation as to why disciplinary action should not be taken against him. Petitioner did not submit any explanation to the said memo. He further stated that the respondent No.1 bank issued final notice dated 13.03.2003

and directed him to submit explanation as to why he should not be terminated from the service. The petitioner submitted explanation on 26.03.2003 by admitting all the facts in the final notice and reiterated his health condition requesting respondent No.1 to reinstate him into services on humanitarian grounds. In view of the admission made by the petitioner to the charges leveled against him, respondent no.1 bank has not conducted any enquiry and the disciplinary authority after considering the explanation submitted by the petitioner, issued proceedings dated 28.12.2003 dismissing the petitioner from the services and the petitioner is not entitled to the relief sought in the present writ petition.

5. Learned counsel for the petitioner vehemently contended that respondent No.1 passed impugned order *vide* RC.No.4152/Estt/2003-04 dated 28.12.2003 dismissing the petitioner from the services imposing highest punishment without conducting any enquiry especially departmental enquiry. The impugned order passed by the respondent No.1 is clear violation of the principles of natural justice and also

contrary to law. He further contended that the petitioner submitted explanation on 26.04.2001 to the charge memo dated 09.04.2001. Subsequently he also submitted further explanation on 26.03.2003 to the final notice dated 13.03.2003 issued by respondent No.1 explaining the reasons for his absence and requested the respondent No.1 bank to permit him to continue in the services. He further submitted the respondent No.1 bank without properly considering the explanation submitted by the petitioner and also without initiating the departmental enquiry, passed the impugned order dated 28.12.2003 dismissing the petitioner from services. The punishment imposed by respondent No.1 bank is major punishment and before imposing major punishment a regular departmental enquiry is mandatory. Hence, the impugned order passed by respondent No.1 is liable to be set aside. In support of his contentions, the learned counsel for the petitioner relied upon the judgment of ***Krushnakant B. Parmar vs Union Of India & Anr***<sup>1</sup>

6. *Per contra*, learned counsel appearing for the

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<sup>1</sup> 2012 (3) SCC 178

respondent bank submits that the petitioner is a chronic absentee/habitual absentee. He was absent from the duties without submitting any leave application and also without informing respondent bank. Respondent bank initiated the proceedings against the petitioner on the ground of unauthorized absence by issuing charge memo dated 09.04.2001 and basing on the explanation submitted by the petitioner on 26.04.2001, respondent No.1 bank has dropped the proceedings on humanitarian grounds considering the request and posted him as messenger at Garla branch where he attended for six days and again was absent from the duties w.e.f. 18.10.2002 without applying for any kind of leave or intimation, at that stage, respondent No.1 bank issued memo dated 22.11.2002 calling for explanation from the petitioner but the petitioner has not submitted any explanation, subsequently respondent No.1 issued final notice dated 13.03.2003. Petitioner submitted explanation on 26.03.2003 by admitting his unauthorized absence.



7. In view of the admissions made by the petitioner about his unauthorized absence no regular enquiry is required. Respondent No.1 bank has rightly passed the impugned order dismissing the petitioner from the services. He further contended that the writ petition filed by the petitioner is not maintainable under law. Learned counsel in support of his contentions relied upon the following judgments:

- i) Full bench judgment in ***Sri Konaseema Co-Operative Central Bank Ltd and another... Vs N. Seetharama Raju***<sup>2</sup>
- ii) ***S.S. Rana vs Registrar, Co-Operative Societies and another***<sup>3</sup>
- iii) ***Ch. Ankamma vs Registrar Of Co-Operative Societies***<sup>4</sup>.
- iv) ***Vijay S. Sathaye vs Indian Airlines Ltd. & Ors***<sup>5</sup>

8. Having considered the rival submissions made by respective parties and upon perusal of the material available on record, the following points arise for consideration:

- i. Whether the impugned dismissal order passed by

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<sup>2</sup> AIR 1990 AP 171(FB)

<sup>3</sup> 2006 11 SCC 634

<sup>4</sup> 2001 (5) ALD 13 (DB)

<sup>5</sup> 2013 (10) SCC 253

respondent No.1 imposing highest punishment i.e, dismissing the petitioner from the services without conducting regular departmental enquiry is permissible under law?

ii. Whether the writ petition filed by the petitioner is maintainable under law?

**Point Nos.1 and 2:**

9. It is admitted fact that the petitioner was appointed as a messenger in the respondent No.1 bank on compassionate ground due to the death of his father on 19.07.1999 while working as accountant. As per the pleadings of the petitioner, due to his ill health he was unauthorizedly absent from the duties. Respondent bank issued charge memo on 09.04.2001 directing the petitioner to submit explanation. On 26.04.2001 the petitioner submitted explanation. Respondent No.1 bank filed counter admitting that after considering the explanation submitted by the petitioner on humanitarian grounds the charges leveled against him were dropped and issued proceedings dated 09.10.2002 posting him as a messenger at Garla branch. He worked for six days and was again absent from the duties w.e.f. 18.10.2002 subsequently respondent bank issued memo dated 22.11.2002 directing the petitioner to submit explanation but

the petitioner has not submitted any explanation. Subsequently, the respondent No.1 issued a final notice on 13.03.2003 directing the petitioner to submit explanation as to why he should not be terminated from the services. It also reveals from the records that in response to the same the petitioner submitted explanation on 26.03.2003 requesting the respondent bank to drop the proceedings against him and permit him to continue in the services and he could not attend the duties due to his health conditions. Respondent bank straightaway passed impugned order without initiating the departmental proceedings and dismissed the petitioner from the services.

10. It is very much relevant to mention here that in the explanation dated 26.03.2003 the petitioner specifically stated that due to his ill health and his poor financial condition he could not attend the duties and requested the respondent No.1 not to impose any punishment and give final opportunity to attend his duties. In such circumstances, respondent bank ought to have conducted the regular

enquiry, instead of straightaway passing the impugned order, imposing highest punishment i.e., dismissing the petitioner from the services.

11. It is very much relevant to mention here that the Hon'ble Supreme Court in Civil Appeal No.6890 of 2022 i.e., ***Jeetubha Khansangji Jadeja vs. Kutchh District Panchayat***<sup>6</sup>, in paragraph No.11, relying on the full bench judgment i.e., ***Hindustan Tin Works Pvt. Ltd vs Employees of Hindustan Tin Works***, held that without initiating departmental/Regular enquiry respondent bank is not entitled to impose punishments of dismissal from service which reads as follows:

11. This court, in a three-judge Bench decision, in *Hindustan Tin Works (P) Ltd.v. Employees of M/s Hindustan Tin Works Pvt. Ltd. And Others* when retrenchment of services of 56 employees due to non-availability of the raw material necessary for utilisation of full installed capacity by the employer, was held to be illegal, held that:

"9. It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be

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<sup>6</sup> 2022 SCC Online SC 1284

granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a

protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case viz. to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages,"

12. In ***Krushnakant B. Parmar v. Union of India***<sup>7</sup> the

Hon'ble Apex Court held that :

17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including

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<sup>7</sup> 2012 (3) SCC 178

compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant.

18. In a departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in the absence of such finding, the absence will not amount to misconduct.

20. The question relating to jurisdiction of the court in judicial review in a departmental proceeding fell for consideration before this Court in *M.V. Bijlani v. Union of India* [(2006) 5 SCC 88 : 2006 SCC (L&S) 919] wherein this Court held: (SCC p. 95, para 25)

“25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.”

13. Hence, the impugned order passed by respondent No.1 dismissing the petitioner from service without conducting regular enquiry is contrary to the settled principles of law. Point No.1 is answered accordingly.

14. In ***G. Gangaram Vs. APSEB, Hyderabad*** <sup>8</sup> this Court

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<sup>8</sup> 2005 (5) ALD 32

relying upon the judgment of division bench of this Court in 2003 (5) ALD 599 (DB) specifically held in paragraph No.6 that the writ petition which has been admitted and pending in this Court for more than eleven years, it is neither just nor proper for this Court to now refuse to exercise the discretion and dismiss the writ petition on the ground of availability of alternative remedy which reads as follows:

6. Existence of alternative remedy is not a bar for exercise of jurisdiction under Article 226 of the Constitution of India. It is well settled that while existence of an effective alternative remedy would be a factor to be taken into consideration by this Court for invoking its jurisdiction under Article 226 of the Constitution, it does not bar the jurisdiction of this Court to entertain a writ petition solely on the ground that the alternative remedy has not been exhausted. This Court under Article 226 of the Constitution of India, normally refuses to exercise its discretion to interfere at the threshold on the ground of availability of an effective alternative remedy. Having admitted the writ petition, which has been pending in this Court for more than eleven years, it is neither just nor proper for this Court to now refuse to exercise its discretion and dismiss the writ petition on the ground of availability of alternative remedy.

15. In so far as point No.2 is concerned, the petitioner filed present writ petition before this Court on 08.09.2004 and the same was admitted on 10.09.2004 and notice was ordered to the respondents. After lapse of 21 years the respondent bank is not entitled to raise such objection of maintainability of the

writ petition. Hence, point No.2 is answered.

16. In view of the foregoing reasons, the impugned order dated 28.12.2003 is liable to be set aside. Accordingly set aside and the respondent No.1 bank is directed to pass appropriate orders, in accordance with law, after following the due procedure including conducting *denovo* enquiry and by giving opportunity to the petitioner within a period of three (3) months from the date of receipt of a copy of this order.

17. Accordingly, the writ petition is disposed of. No costs.

Miscellaneous petitions, pending, if any, in this writ petition, shall stand closed

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**JUSTICE J. SREENIVAS RAO**

04.07.2023

**Note:** L.R. Copy to be marked

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**HON'BLE SRI JUSTICE J. SREENIVAS RAO**

**WRIT PETITION No.16133 of 2004**

04.07.2023

PSW/MAR