

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 29404 of 2015

ORDER:

Heard Sri D.Linga Rao, learned counsel for the petitioner and Sri N.Bhupal Reddy, learned Standing Counsel for the respondents.

2. The petitioner filed this writ petition to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus, by declaring the action of the 2nd respondent in terminating the services of the petitioner by holding that the petitioner is deemed to have resigned from the service without conducting regular enquiry vide orders issued by the 2nd respondent in impugned Rc.No.4684/A2.1/2011-12, dated 09.08.2012 and Rc.No.4684/A2.1/2011-13, dated 14.06.2013 respectively as being erroneous, arbitrary, illegal contrary to Rules, opposed to principles of natural justice and in violation of Article 14 of the Constitution of India and consequently to hold that the petitioner is entitled to be reinstated into service with all consequential benefits and further direct the respondents to

treat the period from 14.07.2011 to 08.08.2012 as compulsory wait for all purposes.

3. The case of the petitioner, in brief, is as follows:

a) The petitioner was appointed as Post Graduate Teacher (English) and started discharging duties as such w.e.f. 12.07.1996 at A.P. Residential School, Balanagar. Due to suffering from chronic anaemia, irritable bowel syndrome, depression and pulmonary tuberculosis from 29.07.2004, the petitioner was forced to stay away from duties for a considerable period, for which the doctor issued medical certificates.

b) After recovery from ill-health, the petitioner submitted representation on 14.07.2011 to the 2nd respondent explaining the facts and requested for permission to rejoin duly. Instead of permitting the petitioner into duty, the 2nd respondent initiated disciplinary proceedings under Rule 20 of the APCS (CC&A) Rules, 1991 by issuing a charge memo stating that the petitioner was un-authorizedly absent from duties since 29.01.2011 onwards, in Rc.No.4684/A2-a/2011, dated 02.11.2011 and proposing to hold an enquiry in accordance with the procedure laid down in Rule 20 of the

aforementioned Rules. Instead of appointing enquiry officer to conduct enquiry, the 2nd respondent straight away issued show cause notice for imposing penalty vide Rc.No.4684/A.2.1/2011, dated 14.05.2012 stating why it should not be treated as deemed to have resigned from service in terms of orders issued in G.O.Ms.No.128, Finance (PR.I) Department, dated 01.06.2007. A reminder was also issued on 04.07.2012. The petitioner submitted explanation.

c) Without assigning any reasons, the 2nd respondent has issued termination orders vide Rc.No.4684/A2.1/2011-12, dated 09.08.2012 stating that the petitioner is deemed to have resigned from service w.e.f. 28.01.2004, by placing reliance on the provisions of Rule 18-A of Fundamental Rules and 5-B of Leave Rules, 1933. The 2nd respondent rejected the request of the petitioner for review of the termination order. Non adherence to the procedure prescribed in Rule 20 of APCS (CC&A) Rules is not only contrary to the statutory prescription, but opposed to principles of natural justice. The 2nd respondent cannot deny the correctness of the medical certificates produced by the petitioner in the absence of a

regular enquiry in terms of Rule 20 of the APCS (CC&A) Rules, 1991.

d) Every unauthorised absence from duty cannot be termed as misconduct. If the absence is due to compelling and unavoidable circumstances, the same cannot be treated as unauthorised one. Passing of order of termination straightaway is not legal. The Supreme Court in a decision reported in 2014(9) SCJ 91 and also a decision reported in 2011(3) ALD 641 of this Court held that absence of workmen from duty due to sickness cannot constitute misconduct. In the present case, the petitioner was forced to stay away from duties, due to prolonged illness and the same cannot be termed as misconduct. The period of one year would be from 29.01.2005 and not 29.01.2004 as mentioned in the impugned proceedings.

e) A per FR 18, a Government Servant shall be permitted to join duty upon submission of joining report and disciplinary proceedings can be initiated subsequently. The petitioner submitted the joining report on 14.07.2011, the 2nd respondent issued impugned order on 09.08.2012. The period from 14.07.2011 to 08.08.2012 has to be treated as

compulsory wait for all purposes as the petitioner was prevented from joining duty by the 2nd respondent. Therefore, the petitioner is entitled for the reinstatement into service with all consequential benefits duly setting aside the impugned proceedings dated 09.08.2012 and 14.06.2013 issued by the 2nd respondent. As such, the writ petition is liable to be dismissed.

4. The counter affidavit filed on behalf of the respondents is as follows:

a) The 2nd respondent filed counter denying the allegations made in the affidavit filed by the petitioner except those that are specifically admitted herein. APREI Society is registered under the A.P. Public Societies Registration Act, 1350 F and it has own By Laws and Service (Recruitment) Rules relating to its employees. In respect of any service matters, not specifically provided in the Rules, the relevant provisions of the A.P.State and Sub-ordinate Service Rules, A.P. Education Sub-ordinate Service Rules, A.P. Education Rules, A.P. Fundamental Rules and Subsidiary Rules etc as amended from time to time along with the executive orders and clarificatory instructions shall apply 'Mutatis Mutandis to the officers and

staff of the APREI Society. The said society was constituted in the year 1972. The said society is managing Residential Schools, Residential Junior Colleges and Residential Degree College indifferent parts of Andhra Pradesh State.

b) Consequent on bifurcation of the state of Andhra Pradesh the APREI Society is bifurcated into two Societies one for residuary Andhra Pradesh and the other for Telangana State vide G.O.No.23 Edn, dated 31.05.2014 and G.O.No.305 GA (SR), dated 10.10.2014. the TREI Society is registered under A.P. Public Societies Registration Act, 2001 vide registration No.328/2014.

c) The Principal, APRS (G) Balanagar, Mahabubnagar District informed the APREI Society through the letter dated 17.02.2004 that the petitioner was absent from duties from 28.01.2004 without any intimation and requested to take further action in the matter. The society instructed the Principal, APRS (G), Balanagar, Mahabubagar District to take action against the incumbent as per CCA Rules through proceedings Rc.No.2948/A3-2/2004, dated 02.07.2004. Accordingly, the Principal issued notice on 10.07.2004 to the petitioner by registered post with acknowledgment due to

attend for duty on or before 17.07.2004 failing which the services of the petitioner will be terminated as per rules. The said notice was returned to the school as un-served. Later, the Principal deputed one Smt M.Manjula Jaya Shree, TGT in science of that school to serve the letter at her residence on 19.07.2004, but the petitioner refused to receive the same.

d) The petitioner submitted representation after lapse of seven and half years requesting for permission to join duty enclosing copy of medical certificate, dated 06.07.2011 issued by the Image Hospitals, Ameerpet, Hyderabad.

e) The explanation furnished by the incumbent was found not satisfactory and unconvincing, the 2nd respondent issued orders after giving reasonable opportunity. Therefore, the writ petition is liable to be dismissed.

5. The petitioner filed reply affidavit reiterating the contentions mentioned in the writ affidavit.

6. The main contentions put forth by the Counsel for the Petitioner are :

a) The order impugned is opposed to principles of natural justice.

- b) Petitioner's explanation dated 14.07.2011 had not been considered.
- c) The Petitioner's representations dt. 23.08.2013 and 19.03.2015 to reconsider the impugned decision has not been considered by the 2nd Respondent till as on date.
- d) Without conducting any departmental enquiry the order impugned ought not have been passed.
- e) Though the Petitioner had been appointed on 12.07.1996 as Post Graduate Teacher (English) and discharging her duties sincerely and through out her service no misbehavior of any kind had been attributed to the Petitioner in discharge of her duties, without taking into consideration the fact that due to genuine health problem from 29.07.2004 onwards the Petitioner could not report to duty, the order impugned had been passed.
- f) Petitioner's representation dt. 14.07.2011 addressed to the 2nd Respondent was not considered sympathetically and the order impugned was passed hastily against the Petitioner.

g) The counsel for the Petitioner prays for allowing the Writ Petition as prayed for.

h) The counsel for the Petitioner places reliance on the judgment of the Apex Court dated. 03.09.2014 passed in **Raghubir Singh V. General Manager, Harayana Roadways, Hissar**¹ (Civil Appeal No.8434/2014) at paras 20 to 32.

i) and also the Judgement dated 27.09.2010 passed in **Prameela & Others v. APSRTC, Hyderabad**².

7. The main contentions put forth by the Counsel for the Respondent are as follows :

a) The Petitioner absented from duty from 28.01.2004 without any intimation.

b) The Petitioner submitted a representation after a lapse of 7½ years requesting for permission to join duty enclosing a copy of Medical Certificate dated 06.07.2011.

¹ (2014) 9 SCJ 1991

² (2011) 3 ALD 641

c) As per G.O.Ms.No.128 & 129, dated 01.06.2007, the Petitioner was given reasonable opportunity to explain reason for her absence.

d) The order impugned warrants no interference since reasonable opportunity is given to the Petitioner and therefore the Writ Petition has to be dismissed.

8. Perused the Record :

9. The order impugned in the present Writ Petition RC.No.4684/A2-1/ 2011-12, dt. 09.08.2012 reads as under:

PROCEEDINGS OF THE SECRETARY, APREI SOCIETY
(REGD.) HYDERABAD

Present: Sri G.Gopal Reddy, M.A., M.Ed.,
Rc.No.4684/A2-1/2011-12, dated: 9.8.2012

Sub: Estt. – APREI Society (R), Hyderabad – Smt B.Rani Easter, PGT in English, APR School, Balanagar, Mahabubnagar District – Unauthorised absence from duty – Absence deemed to have resigned from Service – Orders – Issued.

Ref: 1. Lr.Rc.No.15/A/96, dated 15.07.2011 of the Principal, APP School (G), Balanagar, Mahabubnagar District.
2. Secretary Procs.Rc.even No., dated 01.01.2011.
3. Explanation of the incumbent dated 9.11.2011.
4. Secretary Procs.Rc.even No. dt.14.5.2012.
5. Secretary Procs.Rc.even No.dt 04.7.2012.
6. Representation dt 12.7.2012 of the incumbent.

7.G.O.Ms.Nos. 128 and 129 Fin (FR.1) Dept. dt 1.6.2007.

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In the reference 1st cited, the Principal, APR School (G), Balanagar Mahabubnagar District submitted a report on the unauthorized absence of Smt B.Rani Easter, PGT in English from 28.01.2004.

Smt B.Rani Easter, PGT in English was issued Article of charges under Rule 20 of A.P Services (Classification, control and Appeal) Rules, 1991 vide reference 2nd cited.

The incumbent has submitted her explanation vide reference 3rd cited. The defence statement submitted by the incumbent is carefully examined and found no satisfactory.

In accordance with the orders of the Government vide reference 7th cited, show-cause notice issued as to why she should not be considered as she has deemed to have resigned for the post of PGT in English vide reference 4th and 5th cited.

The explanation submitted by the incumbent vide reference 6th cited to the show cause notice is once again carefully examined and found not satisfactory.

In view of the above and in accordance with the orders of the Government in the reference 7th cited, and under Rule 18A and 5B of F.R and APLR,1933 and also Rule 6 of the Disciplinary and Appeal Rules of APREI Society. Smt B.Rani Easter, PGT in English, APR School, Balanagar is deemed to have resigned from the post of PGT in English in APEI Society Service with effect from 28.01.2004 and hence, she is hereby informed accordingly.

The Principal, APR School, Balanagar, Mahabubnagar District is instructed to make necessary entry in the School Record and also service register of the incumbent to this effect.

Receipt of these proceedings should be acknowledged.

Sd/- G.Gopal Reddy
Secretary

To

Smt B.Rani Easter, PGT in English

Sairam Homes, III Floor, Street No.15,
Gowthamnagar, Malkajgiri, Hyderabad
500 047.

Copy to the Principal, APR School, Balanagar,
Mahabubnagar District.

Copy to the Accounts Officer of this office.

Copy to the Dy. Secretary, Zone-VI.

Sd/- Superintendent

**10. The representation of the Petitioner dt.
14.07.2011 had been considered and rejected
observing as follows :**

“ PROCEEDINGS OF THE SECRETARY, APREI SOCIETY
(REGD.) HYDERABAD

Present: Sri G.Gopal Reddy, M.A., M.Ed.,
Rc.No.4684/A2-1/2011-13, dated: 14.06.2013

Sub: Estt. – APREI Society (R), Hyderabad – Smt
B.Rani Esther, PGT in English, APR School,
Balanagar, Mahabubnagar District – Deemed to
have been resigned from the service –reg.

Ref: 1. Representation dated 14.07.2011 of the
incumbent forwarded vide Note
No.171/M/(SE&IE)2013, DATED 15.04.2013 OF
THE Minister (SE&IE).A.P.

2. Secretary Procs.Rc.Even No. dt.09.08.2012.

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*With reference to the representation 1st cited, Smt
B.Rani Esther, Ex-PGT in English, APR School(G), Balanagar,
Mahabubnagar District is hereby informed that her request is
not feasible of consideration since orders have already been
issued vide reference 2nd cited treating her deemed to have
been resigned from the post of PGT in English in APREI
Society Services w.e.f. 28.01.2004.*

Receipt of these proceedings should be acknowledged.

*Sd/- P.Jagan Mohan Reddy
For Secretary*

To
Smt B.Rani Esther

*D/o B.S.George, Sai Ram Homes,
3rd Floor, Street No.15, Gowtham Nagar
Malkajgiri, Hyderabad – 47.*

11. Rule 18(a) reads as under :

"Rule 18-A:- A Government servant shall be deemed to have resigned from the service if he --

- a) is absent without authorization for a period of exceeding 'one year,' or
- b) remains absent from duty for a continuous period exceeding five years with or without leave; or
- c) continues on foreign service beyond the period approved by the State Government.

Provided that a reasonable opportunity to explain the reason for such absence or continuation on foreign service shall be given to the Government Servant before the provisions of this sub-rule are invoked:

12. Rule 5-B reads as under :

"Rule 15-A:- A Government servant shall be deemed to have resigned from the service if he --

- a) is absent without authorization for a period of exceeding 'one year,' or
- b) remains absent from duty for a continuous period exceeding five years with or without leave; or
- c) continues on foreign service beyond the period approved by the State Government.

Provided that a reasonable opportunity to explain the reason for such absence or continuation on foreign service shall be given to the Government Servant before the provisions of this sub-rule are invoked:

13. A bare perusal of the Show Cause Notice dt.

02.11.2011 issued to the Petitioner by the 2nd

Respondent vide RC No.4684/A2-1/2011, dt.

02.11.2011 clearly indicates that the 2nd Respondent

herein proposed to hold an enquiry against the

Petitioner on her unauthorized absence in accordance with the procedure laid down in Rule 20 of the Andhra Pradesh Civil Services (Classification, Control & Appeal) Rules 1991, but the Respondents however did not follow the procedure prescribed in Rule 20 of the APCS (CC&A) Rules 1990. The Respondents did not appoint enquiry officer, under the aforesaid circumstances a regular enquiry ought to have been conducted since the charge levelled against the Petitioner needs to be proved by setting in evidence in order to deny the correctness of the medical certificates submitted by the Petitioner. This Court opines that a bare perusal of the contents of the counter affidavit clearly indicates that though proceedings had been initiated by the Respondents against the Petitioner under Rule 20 of the APCS (CC&A) Rules 1991 no enquiry as per the statute and mandate had ever been conducted. A bare perusal of Rule 18(a) and Rule 5(b) clearly indicate providing a reasonable opportunity to the Petitioner to explain the reasons for Petitioner's absence, the very fact as borne on record is that the articles of charge

against the Petitioner is issued on 02.11.2011 and the said charge referred to Petitioner's unauthorized absence from her duties from 29.01.2004 onwards. The Respondents herein instead of appointing an enquiry officer to conduct enquiry into the allegations contained in the charge memo dt. 02.11.2011 curiously issued Show Cause Notice for imposing penalty vide RC No.4684/A2.1/2011, dt. 14.05.2012. The order impugned dt. 09.08.2012 in RC No.4684/A2-1/2011-12 concluded holding that the Petitioner is deemed to have resigned from the post of PGT in English in APREI Society Services w.e.f. 28.01.2004, this Court opines that there cannot be any resignation proceedings having retrospective effect the same in fact is rather unheard of in service jurisprudence.

14. This Court opines that it is a principle of justice that no person should be condemned unheard. The punishment imposed has to meet the standards of fairness and should be in strict compliance of principles of natural justice. This Court in a judgement reported in Raghubir Singh V. General Manager, Harayana

Roadways, Hissar³ at paras 20, 25 and 30 in Civil

Appeal No.8434/2014, observed as follows :

20. From the reason mentioned in the termination order, it is clear that the appellant continuously remained absent from his duties for more than five months. Despite the publication of the notice, the appellant neither joined his duty nor did he submit his reply. Therefore, the respondent straight away passed an order of termination without conducting an enquiry as required in law against the appellant to prove the alleged misconduct of unauthorised absence by placing reliance upon Article 311(2)(b) of the Constitution of India.

25. We are of the view that the Labour Court and the High Court have erred in not deciding the industrial dispute between the parties on the basis of admitted facts, firstly, the enquiry not being conducted for the alleged misconduct of unauthorised absence by the appellant from 02.04.1993 and secondly, the enquiry being dispensed with by invoking Article 311(b)(2) of the Constitution of India without any valid reason. Moreover, an order stating the impossibility of conducting the enquiry and dispensing with the same was not issued to the appellant. The reasoning assigned in the order of termination is bad in law. Therefore, the impugned judgment, order and award of the High Court and the Labour Court are required to be set aside as the same are contrary to the provisions of the Act, principles of natural justice and the law laid down by this Court in catena of cases referred to supra.

In the present case, before passing the order of dismissal for the act of alleged misconduct by the workman-appellant, the respondent should have issued a show cause notice to the appellant, calling upon him to show cause as to why the order of dismissal should not be passed against him. The appellant being an employee of the respondent was dismissed without conducting an enquiry against him and not ensuring compliance with the principles of natural justice. The second show cause notice giving an opportunity to show cause to the proposed punishment before passing the order of termination was also not given to the appellant-workman

³ (2014) 9 SCJ 1991

by the respondent which is mandatory in law as per the decisions of this Court in the case of Union of India and others v. Mohd. Ramzan Khan(1991) 1 SCC 588 and Managing Director, ECIL, Hyderabad, v. Karunakar(1993) 4 SCC 727.

30. The appellant workman is a conductor in the respondent-statutory body which is an undertaking under the State Government of Haryana thus it is a potential employment. Therefore, his services could not have been dispensed with by passing an order of termination on the alleged ground of unauthorised absence without considering the leave at his credit and further examining whether he is entitled for either leave without wages or extraordinary leave. Therefore, the order of termination passed is against the fundamental rights guaranteed to the workman under Articles 14, 16, 19 and 21 of the Constitution of India and against the statutory rights conferred upon him under the Act as well as against the law laid down by this Court in the cases referred to supra. This important aspect of the case has not been considered by the courts below. Therefore, the impugned award of the Labour Court and the judgment & order of the High Court are liable to be set aside.

15. The Apex Court in its judgement reported in Olga Tellis & Others v. Bombay Municipal Corporation⁴ at para 32 observed as under :

“32.....The sweep of the right to life conferred by [Article 21](#) is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a

⁴ (1985) 3 SCC 545

person his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be In accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life liveable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life....."

16. A bare perusal of the proceedings in Rc.No.4684/A2-1/2011-13, dated 14.06.2013 clearly indicate that the same is an unreasoned order passed mechanically, hastily, without application of mind, simply confirming the proceedings of the 2nd respondent in Rc.No.4684/A2-1/2011-12, dated 09.08.2012, without even considering the contents of the petitioner's representation dated 14.07.2011.

17. Under these circumstances taking into consideration the observations of the Apex Court referred to and extracted above in the judgments in Raghbir Singh V. General Manager, Harayana Roadways, Hissar and in Olga Tellis & Others v. Bombay Municipal Corporation, the Writ Petition is allowed setting aside the impugned proceedings of the 2nd

Respondent in RC No.4684/A2.1/2011-12, dt. 09.08.2012 and RC No.4684/A2.1/2011-13, dt. 14.06.2013 and the Respondents are directed to reconsider the petitioner's representation dated 14.07.2011 and pass detailed speaking order within four weeks from the date of receipt of the copy of the order duly communicating the same to the petitioner, in accordance to law duly taking into consideration the principle laid down by the Apex Court in the judgments Raghbir Singh V. General Manager, Harayana Roadways, Hissar and in Olga Tellis & Others v. Bombay Municipal Corporation and also the observations of the Apex Court in the said judgments referred to and extracted above. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand dismissed.

SUREPALLI NANDA, J

Date: 28.09.2022

Note: L.R.copy to be marked

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