**HIGH COURT FOR THE STATE OF TELANGANA**

**WRIT PETITION (TR) No.1083 of 2017**

Shaik Ubaidullah, S/o.late shaik Abdullah,
Aged 42 years, Record Asst.(under order of suspension)
O/o.The District Publication Officer, Khammam,
Khammam District, R/o.H.No.6-2-6,
Tummalagadda, Khammam, Khammam District.

....Petitioner

VERSUS

The Regional Joint Director
Zone-V, Information and Public Relations Dept.
Govt. of A.P., Hanamkonda, Warangal District and 3 others.

... Respondents

DATE OF JUDGMENT PRONOUNCED: 10.08.2023

**THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals? Yes/No

3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

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**J. SREENIVAS RAO, J**

**THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO**

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! Counsel for Petitioner : Mr.Akkam Eshwar

^ Counsel for Respondent : Government Pleader for Services-III

< GIST:

> HEAD NOTE:

? CITATIONS:

1. 2023(1) ALD 711(TS)
2. (2014) 9 SCJ 1991
3. 1993 4 SCC 727
4. 1990 Scale(2) 597
5. 1990 AIR 1984

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

**WRIT PETITION(TR) No.1083 of 2017**

**ORDER**:

This writ petition (TR) is filed seeking the following relief:

> "*to grant appropriate relief declaring the Proceedings No.3709/C1/2003, dt.21.09.2012 issued by the 1st respondent as arbitrary, illegal, unconstitutional apart from violating the principles of natural justice and also violating Article 14, 16 and 21 of the Constitution of India and ultra vires to Rule 20 of A.P.C.C.A. Rules, as well as Article 311 of Constitution of India and issue consequential directions directing the respondents to forthwith reinstate the applicant into service with all consequential benefits including arrears of salary and pass such other order or orders…*"

2. Heard Sri Akkam Eshwar, learned counsel for the petitioner and learned Government Pleader for Services-III, appearing for respondents.

3. Learned counsel for the petitioner submits that the petitioner was appointed as attender on 01.06.1990. Later, he was promoted as Record Assistant, in the year 2001. On 13.12.2003, respondent No.4 placed the petitioner under suspension, on the ground that he involved in a

criminal case vide C.C.No.675 of 2005. Thereafter, the petitioner filed criminal appeal No.92 of 2008 before the Family Court-cum-Additional Sessions Judge, Khammam and the said appeal was allowed on 15.05.2009 and the petitioner was acquitted. Later, the petitioner was reinstated into services through proceedings vide Memo No.3709/c1/2003, dated 29.09.2009 and the petitioner submitted representation on 06.11.2009, requesting the respondent authorities to release his salary after deducting the subsistence allowance by treating the suspension period as on duty. The respondent authorities without considering the said representation, rejected the claim of the petitioner through proceedings dated 18.05.2010. Questioning the said order, the petitioner filed O.A.No.3530 of 2010 before the A.P.A.T. and the same was allowed by setting aside Memo No.600/A/2002, dated 18.05.2010 directing the respondents therein to treat the period spent on suspension from 13.12.2003 to 12.10.2009 as on duty.

4. Learned counsel for the petitioner further submits that during the period from 02.06.2010 to 08.11.2010, due to his ill health, he could not attend the duties and informed the same to the 4th respondent by duly furnishing the Xerox copy of ENT doctor prescription. Further, the 4th respondent by proceedings dated 27.10.2010 had instructed the petitioner to furnish the same with prescribed leave application along with Doctor certificate. When the petitioner reported duty on 09.11.2010 before the 4th respondent by producing the medical certificates, the 4th respondent not allowed the petitioner to join duty and he directed the petitioner to obtain permission from the 1st respondent for joining duty by proceedings dated 18.11.2010. On 29.11.2010, the petitioner submitted a representation to the 1st respondent, requesting him to join duty. Thereafter the District Co-ordinator of Hospital Services and Chairman District Medical Board, Khammam had directed the petitioner to appear before the Medical Board dated 27.01.2011 for medical examination. The Medical Board after conducting

examination, issued report on 13.04.2011 stating that the leave applied by the petitioner from 02.06.2010 to 08.11.2010 is genuine. In spite of producing the said Medical Board report, the respondents not allowed the petitioner to join duty. At that stage, the petitioner approached the A.P.A.T. by filing another O.A.No.3962 of 2011 and wherein the A.P.A.T. granted interim order directing the respondent authorities therein to sanction medical leave to the petitioner from 02.06.2010 to 08.11.2010.

5. He further submits that the petitioner has fallen ill from 20.10.2011 and he further submitted that he made a representation to the 4th respondent to permit him to take treatment at Hyderabad. Once again he submitted a representation on 29.11.2011 informing about the ill health; after recovery from ill-health the petitioner approached the 4th respondent for reporting to his duties along with medical certificate requesting for grant of medical leave from 25.10.2011 to 05.03.2012 and the 4th respondent not permitted him to

join duty. On the other hand, the 1st respondent issued impugned order on 21.09.2012 dismissing the petitioner from service without conducting any enquiry.

6. Learned counsel for the petitioner vehemently contended that before passing the impugned order the respondent authorities have neither issued any charge memo nor appointed any enquiry officer to conduct enquiry, not given any opportunity to the petitioner and straight away imposed major punishment, dismissing the petitioner from services. The impugned order passed by the 1st respondent is in clear violation of the principles of natural justice and contrary to law.

7. In support of his contention he relied upon the judgment of this Court in **B.Rani Esther Vs. Telangana State Residential Educational Institutions Society, Hyderabad and another**[1] at para 14 held as follows:

> "This Court opines that it is a principle of justice that no person should be condemned unheard. The punishment imposed has to meet

[1] 2023(1) ALD 711 (TS)

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, Hissar[2] (supra) 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 tosupra.*

*In the present case, before passing the order of dismissal for the act of alleged misconduct by the workman-appellant, the respondent should*

[2] (2014) 9 SCJ 1991

*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 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."*

8. Per contra, learned Government Pleader appearing for respondents submits that the petitioner was absented to his duties unauthorizedly for more than 375 days. The

respondents have sent notice to the petitioner and the same was returned with an endorsement "no such person". Further respondent authorities issued notice in five leading newspapers directing the petitioner to report for duties. When the petitioner did not come forward to report duties and no regular enquiry is required as per rule 18-A of the Fundamental Rules, respondent No.1 rightly passed the impugned order.

9. Having considered the rival submissions made by the respective parties and after perusal of the material available on record, it clearly reveals that the 1st respondent dismissed the petitioner from services on 21.09.2012 on the ground of unauthorized absence. The said order reveals that the respondent authorities have not initiated any disciplinary proceedings, against the petitioner or issued charge memo, and not conducted any departmental enquiry by appointing enquiry officer. Hence, the impugned order passed by respondent No.1 imposing major punishment of dismissal from service is clear violation of principles of natural justice.

10. It is very much relevant to extract the judgment of the Hon'ble Apex Court in ***Managing Director, ECIL, Hyderabad and Others Vs. B. Karunakar and others***[3]**,** wherein it is held at paragraph No.31:

> **31.** Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made

[3] 1993 4 SCC 727

> a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.

11. In ***Kulwant Singh Gill vs. State of Punjab***[4]**,** the Hon'ble Apex Court held as follows:

> *Withholding of increments of pay simpliciter without any hedge over it certainly*

[4] 1990 Scale (2) 597

> *comes within the meaning of Rule 5(iv) of the Punjab Civil Services (Punishment and Appeal) Rules. But when penalty was imposed withholding two increments i.e. for two years with cumulative effect, it would indisputably mean that the two increments earned by the employee was cut off as a measure of penalty for ever in his upward march of earning higher scale of pay. In other words the clock is put back to a lower stage in the time- scale of pay and on expiry of two years the clock starts working from that stage afresh. The insidious effect of the impugned order by necessary implication, is that the appellant-employee is reduced in his time-scale by two places and it is in perpetuity during the rest of the tenure of his service with a direction that two years' increments would not be counted in his time-scale of pay as a measure of penalty."*

In the above said judgment the Hon'ble Apex Court specifically held that imposing major punishment/penalty without conducting regular enquiry is *per se* illegal.

12. The Hon'ble Supreme Court in ***S.N.Mukherjee vs. Union of India***[5] held that administrative action must be supported by reasons. In the case on hand, respondent No.1 passed impugned order imposing major

[5] 1990 AIR 1984

punishment of dismissal from service without issuing any notice, affording any opportunity to the petitioner, without conducting regular enquiry, and also without assigning any reasons much less valid reasons and the same is contrary to law.

13. Insofar as the other contention made by the learned Government Pleader that as per the provisions of rule 18-A of Fundamental Rules, no enquiry is required and the impugned order passed by respondent No.1 is in accordance with law, is concerned. Fundamental Rule 18-A clearly envisages that if the Government Servant absented to duties unauthorizedly for a period exceeding five years, the said Government Servant shall be removed from service. It is very much relevant to extract the Fundamental rule 18-A which reads as follows;

> "*F.R.18. Unless the Governor in view of the special circumstances of the case, shall otherwise determine, after five years' continuous absence from duty, elsewhere than on foreign service in India, whether with or without leave, a Government servant shall be removed from service after following the procedure laid down in the Assam Services (Discipline and Appeal) Rules, 1964.*"

14. In the present case, respondent No.1 has not passed the impugned order invoking the above said

rule, especially the said rule is not applicable, on the sole ground that respondent No.1 dismissed the petitioner from service due to unauthorized absence for less than five years. Hence, the contention of the learned Government Pleader that the regular enquiry is not required, is not tenable under law.

15. In view of the foregoing reasons, the impugned order passed by respondent No.1 dated 21.09.2012 is liable to be set aside. Accordingly the same is set aside. However, the respondents are granted liberty to take appropriate steps in accordance with law, if so advised.

16. Accordingly, the writ petition (TR) is allowed. No costs.

Pending miscellaneous applications, if any, shall stand closed.

**J. SREENIVAS RAO, J**

Dated:10-08-2023

**Note**: LR copy to be marked: YES
b/o
Smk/ktm