

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI

AND

HON'BLE SRI JUSTICE RAKESH THAPLIYAL

SPECIAL APPEAL NO. 1016 OF 2017

10TH JULY, 2023

BETWEEN:

State of Uttarakhand & others Appellants.

And

Tivrakanta Sati Respondent.

Counsel for the Appellants : Mr. Vikas Pande, learned
Standing Counsel.

Counsel for the Respondent : Mr. D.K. Joshi and Mr. B.S. Negi,
learned counsels.

The Court made the following:

JUDGMENT:(per Hon'ble The Chief Justice Sri Vipin Sanghi)

Delay Condonation Application (CLMA No.15642 of 2017)

Learned counsel for the respondent does not fairly oppose the application seeking condonation of 193 days delay in preferring the present special appeal. The application is, accordingly, allowed and the delay is condoned.

SPA No. 1016 of 2017

2. The present appeal is directed against the order dated 20.04.2017, passed by the learned Single Judge in Writ Petition (S/S) No.828 of 2014. The impugned order is short, and we, accordingly, reproduce the same hereunder:-

"Petitioner was appointed as Assistant Teacher in District Chamoli on 10.09.1997. Petitioner applied for maternity leave. Petitioner served the charge sheet alleging therein that she was willfully absent for five years. However,

no regular enquiry was initiated against the petitioner. The services of the petitioner were terminated vide order dated 27.06.2012. She approached this Court by way of filing WPSS No.1130 of 2012. The writ petition was disposed of by this Court on 14.05.2013 directing the respondents to consider the case of the petitioner with regard to the quantum of punishment. Thereafter, disciplinary authority has again reiterated earlier dismissal order dated 27.06.2012.

In the present case, only a show notice was issued to the petitioner. She submitted the reply to the show cause notice. Her services were terminated on 29.06.2013. Petitioner has not been dealt with by the respondents in just and fair manner. Petitioner was a permanent employee, therefore, a regular enquiry should have been instituted. The services of the petitioner could be terminated only by holding the regular enquiry as stipulated under Article 311 of the Constitution of India.

Every absence is not a willful absence. There can be valid circumstances for absence.

Accordingly, the writ petition is allowed. Impugned order dated 29.06.2013 is quashed and set aside. However, liberty is reserved to the respondents to proceed with the matter in accordance with law."

3. The submission of Mr. Pande, learned counsel for the appellants is that the learned Single Judge failed to appreciate that the respondent had, in fact, admitted her guilt in remaining absent for an unduly long period . In this regard, he has referred to the representation submitted by the respondent herself dated 28.06.2013, which has been filed along with the special appeal.

4. We have perused the said representation made by the respondent. She begins by stating that she admits that she has misconducted herself, and that she is liable to be

punished. She only pleads for compassionate consideration of her situation. She stated that her son is a slow child. He did not speak till the age of four. The school, he was admitted to, also removed him on the ground that he was a slow child. She also stated that her father-in-law passed away on 17.11.2010, and her mother-in-law was also seriously ill. She stated that she had informed about her circumstances to the Department *vide* her representation dated 19.02.2011.

5. The aforesaid representation of the respondent leave no manner of doubt that that the respondent admitted the fact that she unauthorizedly remained absent for an unduly long period of time of about five year.

6. Everyone- in whatever avocation, experiences personal problems in life- some big, some small. The respondent's problems may have been serious, inasmuch, as, her son is a slow child, but that does not mean that she can ignore her responsibilities towards her official duties. Moreover, under the service Rules, there are procedures prescribed to apply for, and obtain leaves of different kinds. The employee is required to make his or her application for leave on substantiated grounds, with documentary evidence. In the present case, the respondent remained unauthorizedly absent, without obtaining leave.

7. In these circumstances, in our view, it was not necessary for the appellants to hold an inquiry against the respondent, merely because she was serving as a regular Assistant Teacher. She admitted her misconduct. We, accordingly, set-aside the impugned order. At the same time, looking to the circumstances explained by the respondent, in our view, ends of justice would be met if the respondent is reinstated and the period from the date of her unauthorized absence, till today, is treated as "*dies non*", i.e. the said period shall not be counted for any purpose, whatsoever, including for the purpose of fixation of pay, seniority or pensionary benefits.

8. We, therefore, direct the appellants to forthwith reinstate the respondent and permit her to resume her services. The order in this regard should be issued within the next one week. The posting order shall be issued keeping in view the availability of vacancy. The period beginning with her unauthorized absence, till date, shall be treated as *dies non*, i.e. it shall not count towards period spent on duty for any purpose, including towards length of service; for fixation of pay; for fixation of seniority, and; for fixation of pension etc.

9. The appeal stands disposed of in the aforesaid terms.

10. Pending application, if any, also stands disposed of.

(VIPIN SANGHI, C.J.)

(RAKESH THAPLIYAL, J.)

Dated: 10th July, 2023

NISHANT