

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION No. 25186 of 2014

Date: 10.02.2015

-
Between:

B.V.J. Prakasa Rao

... Petitioner

And

The Principal District Judge,
District Court, Ongole, Prakasam District,
& others.

... Respondents

This Court made the following:

**THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR**

WRIT PETITION No. 25186 of 2014

ORDER: (Per the Hon'ble the Chief Justice Sri Kalyan Jyoti Sengupta)

This writ petition has been filed challenging the impugned order dated 11.08.2014 by which the learned I Additional District and Sessions Judge, Ongole, has refused to reinstate the petitioner.

The facts of the case are as follows:

The petitioner being an Ex-Serviceman was appointed as Field Assistant at the 1st respondent – Principal District Court, Ongole, on 09.04.2009 preceeded his undergoing of probationary period. In the month of February, 2013 the petitioner suffered with severe pain in the backbone, and he applied for medical leave for two months from 01.02.2013 to the end of March, 2013 and the same was sanctioned by the respondent authority. However, when the petitioner could not recover from his illness during the aforesaid period, he made another application for extension of medical leave for two more months i.e., April and May, 2013. The respondent authority in spite of repeated requests made by the petitioner did not extend such leave and rather he was asked to resume duty. In view of the aforesaid situation, the petitioner was compelled to tender his resignation by representation dated 06.06.2013 to the 1st respondent. On receipt of the said letter of resignation, the 1st respondent returned the same by issuing proceedings dated 17.06.2013 stating that no document was submitted in support of

the ground of medical incapacity. Thereafter, the petitioner did not resubmit the resignation application. On 17.07.2013, the 1st respondent issued an order of transfer transferring the petitioner to the Senior Civil Judge Court, Addanki, on the ground that he was absenting himself from duties since long time. On receipt of the order of transfer on 18.07.2013 the petitioner could not report to the duty because of spinal card problem and treatment therefor. Thereafter, in the month of February, 2014 when the petitioner expressed his willingness to join duty and contacted the Superintendent of Senior Civil Judge Court, Addanki, he was not allowed to join duty on the ground that the 1st respondent removed him from services. The petitioner thereafter approached the 1st respondent with written representation for allowing him resume duty. However, the same was not accepted and finally the petitioner received the impugned order dated 11.08.2014, as his resignation was accepted.

In the counter affidavit the 1st respondent has not denied the aforesaid factual aspect. In view of the aforesaid admitted factual aspect, the points that arise for consideration before us is whether petitioner's resignation has been accepted factually, if not, impugned order is sustainable under law.

We have heard the learned counsel on these issues.

Learned counsel for the petitioner has rightly argued that there has been no material to establish that the petitioner's resignation is accepted at any point of time, as admittedly the 1st respondent returned the letter of resignation may be on a good or bad ground, therefore there has been no letter of resignation with 1st respondent to act upon. Besides that, the act of the 1st respondent clearly shows that there is no acceptance of resignation as he has issued an order of transfer presumably as penal measure for absenting from duty. It is no bodies case that the petitioner has submitted his fresh resignation letter after

return of his resignation letter. We fail to understand how the 1st respondent could act when there is no reason to do intending relieve the petitioner. We are of the view that decision of the 1st respondent by the impugned order is unfounded factually and legally. We therefore hold that impugned order is invalid and void.

The request of the petitioner for reinstatement should have been considered. It would have been ideal in a situation like this to reinstate the petitioner first with a medical fitness certificate and then initiate disciplinary action for absenting from duty without authority. The petitioner has asked for monetary benefit also in this matter. However, the learned counsel for the petitioner submits that the petitioner will forego all monetary benefits and he is interested in reinstatement only. We therefore set aside the impugned order of the 1st respondent. We pass the order of reinstatement of the petitioner at the transferred place subject to medical fitness. It is made clear that if the petitioner is not medically fit for reinstatement in that case he has to take legal course. In the event reinstatement takes place subject to the above condition then the period of absence shall not be counted as breakage of service and his seniority position, if any, shall not be disturbed. This period should be treated as special leave without pay or benefit.

The writ petition is accordingly allowed.

Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

K.J. SENGUPTA, CJ

SANJAY KUMAR, J

Date: 10.02.2015
ES