

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 3493 of 2009

ORDER:

The termination order dated 09.02.2009 passed by the 2nd respondent terminating the petitioner from service on the ground of repeated absenteeism is questioned before this Court.

2. The case of the petitioner is that during January 2006 to December 2006, alleging that the petitioner absented from duty for 56 days, a charge sheet was issued on 27.02.2007. The petitioner submitted his explanation. After considering his explanation, a punishment of stoppage of one increment for one year, without cumulative effect, was imposed by orders dated 27.04.2007. The petitioner underwent the punishment. Once again, a fresh charge sheet was issued on 26.06.2007 alleging that the petitioner absented during June 2006 to May 2007 for a total period of 57 days. The petitioner submitted his explanation stating that he has availed leave for 24 days and sick leave of 7 days and absenteeism is only with regard to 26 days. The petitioner also specifically contended that for the period January 2006 to December 2006, during which period he is alleged to have absented, 30 days was taken into consideration and punishment of withholding of increment was already imposed. Inasmuch as the period June 2006 to December 2006 was the subject matter of earlier order dated 27.04.2007, the issuance of charge sheet covering the said period is bad and the respondent had not taken into consideration of the explanation submitted by the petitioner in proper perspective. It is his specific contention that there was total non-application of mind on the part of the respondents in

considering the explanation, particularly in not taking into consideration of the fact that the period June 2006 to December 2006 was subject matter of earlier order.

3. Heard learned counsel for the petitioner and the learned Standing Counsel for the respondent and perused the counter.

4. The specific contention of the learned Standing Counsel for the respondent is with regard to the maintainability of the writ petition as it is his case that there is a provision of appeal against the impugned order and further there is also revision/review power with the authorities under the Regulations. Inasmuch as the petitioner has failed to avail the remedy of appeal, the petitioner does not deserve any consideration and the writ petition is liable to be dismissed. Even on merits, the learned Standing Counsel would submit that the authorities had taken into consideration of the facts on record and considering the admitted fact that the petitioner had absented himself for 26 days, the punishment of removal is totally justified and does not call for interference in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India.

5. Having considered the rival submissions and considering the fact that the writ petition came to be taken on file on 20.02.2009 and considering the fact that the same is kept pending till date, I am not inclined to drive the petitioner to avail the alternative remedy of appeal.

6. Though the learned Standing Counsel disputed the fact, the fact remains that the period June 2006 to Dec 2006 was the subject matter of earlier charge sheet dated 27.02.2007 and the petitioner suffered the punishment of stoppage of increment. In

other words, in the present case, the charge sheet itself is defective and consequently the order passed pursuant to the same, without considering the explanation submitted by the petitioner, deserves to be interfered with. However, the petitioner is still required to explain the period covering January 2007 to May 2007. The charge on the petitioner is that, in all, he absented for 57 days. Explanation on behalf of the petitioner is that the period during which he is alleged to have absented consists of 24 days leave, 7 days sick leave and 26 days unauthorized absence. Whether this 26 days of unauthorized absence falls within January 2007 to May 2007, is required to be considered and determined. Assuming, for the sake of argument, that the petitioner availed leave of 24 days and sick leave of 7 days, inasmuch as there is vagueness and non-consideration of this crucial aspect by the respondent authorities, in the facts of the present case, the termination order dated 09.02.2009 is set aside by giving liberty to the respondent authorities to make a fresh order after giving opportunity to the petitioner. Considering the fact that pursuant to the order of this Court, dated 20.02.2009, the petitioner came to be reinstated on 28.02.2009, the respondent authorities may also consider taking a lenient view after taking the facts of this case into consideration. The respondents shall complete the entire exercise within three months from the date of receipt of a copy of this order.

7. The writ petition stands disposed of, accordingly. No costs. Miscellaneous petitions, if any pending, shall stand closed.

CHALLA KODANDA RAM, J

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28th December, 2015

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