

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Writ Petition No.14540 of 2002

Date: 20-08-2015

Between:

U. Sundara Ratnam

.. Petitioner

AND

The Stores Officer, Bus Body Building Unit,
Miyapur Hyderabad and two others

.. Respondents

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Writ Petition No.14540 of 2002

ORDER:

—
Heard Sri Vedula Srinivas, learned counsel appearing for the petitioner and Sri N. Vasudeva Reddy, learned standing counsel appearing for the respondents-APSRTC.

2. This writ petition is filed for a mandamus declaring the action of the 1st respondent in issuing proceedings No.K4/237/(3)/02-BBW, dated 17-06-1994 removing the petitioner from his services with effect from 17-01-1992 and subsequent orders passed by the 2nd respondent rejecting the appeal as well as the review application by the 3rd respondent as illegal, arbitrary and contrary to the Regulations of APSRTC and for a consequential direction to the respondents to reinstate the petitioner in his regular post as Senior Assistant (Cash) in Bus Body Building Unit, Miyapur with continuity of service along with all service benefits including arrears.

3. The case of the petitioner is that while he was working as

Senior Assistant (Cash) in Stores Department in Body Building Unit, Miyapur, Hyderabad, he applied for leave on medical grounds and the same was sanctioned from 30-11-1991 to 16-01-1992 and from time to time, leave was extended up to 16-01-1992. Thereafter, he made a representation to the 1st respondent to grant leave for a further period from 17-01-1992 by representations dated 13-01-1992 and 30-01-1992 and requested to grant leave up to 29-02-1992. There was no response from the 1st respondent to his requests made for extension of leave and the 1st respondent, however, directed the petitioner to report duty. When the petitioner failed to report duty, charges were framed against him and a charge sheet was served on him. In pursuance of the said charge sheet, the petitioner submitted his explanation stating that his children were affected by typhoid fever and his wife also became sick and therefore, he was made unable to attend the office and that he submitted medical certificates duly issued by the doctors. The respondents did not accept the said explanation and initiated departmental enquiry against the petitioner. No notice initiating enquiry was served on him at any point of time and the enquiry was conducted *ex parte* and ultimately, termination proceedings were issued on 17-06-1994 by the 1st respondent removing the petitioner from services with effect from 17-01-1992. Against the said orders, the petitioner preferred an appeal from the 2nd respondent, who rejected the same vide proceedings dated 14-01-1997. The contention of the petitioner is that without affording him any opportunity of hearing and without following the rules and regulations, the 2nd respondent rejected the appeal. Against the said order of appeal, he filed a review petition before the Chief Controller of Stores, APSRTC, Hyderabad and the review petition

was also rejected. Against the said orders on the review petition, he submitted a representation to the 3rd respondent to reconsider his case and requested him to set aside the removal order passed by the 1st respondent and the subsequent orders and to reinstate him into service, but the 3rd respondent did not consider his representation dated 07-10-1998. Thereafter, he preferred an appeal to the Government against the orders of the respondents 1 to 3 and the said appeal was pending till filing of the writ petition.

4. The respondents filed their counter denying the allegations of the petitioner and contending that the petitioner applied for leave from

02-12-1991 to 20-12-1991 on the ground that his son fell ill and the same was sanctioned by the Department and the fact that the petitioner requested for extension of leave up to 29-02-1992 vide leave applications dated 13-01-1992 and 30-01-1992 is admitted by the respondents, but the contention of the respondents is that on compassionate grounds, leave was sanctioned without any pay up to 16-01-1992 duly advising him to attend to duties immediately through Store Officer letter dated 04-03-1992 and the same was acknowledged by the petitioner, but failed to attend to day-to-day work. The absence of the petitioner from 17-01-1992 onwards was treated as unauthorised absence and a charge sheet dated 19-03-1992 was issued to him calling for his explanation and the charge sheet was sent to his residential address at Nizamabad through registered post and the same was acknowledged by him on 31-03-1992. The explanation dated 06-04-1992 submitted by the petitioner was received on 13-04-1992 and that on perusing the said explanation, three more letters dated 30-04-1992, 11-06-1992 and 18-07-1992 were sent to his residential address through registered post with acknowledgment due advising him to report to

duty immediately were returned by the postal authorities with an endorsement "Addressee Left" and that the final letter was kept on the notice board of Stores Department, BBU, Miyapur and the same was attested by two of the employees of the Corporation as witnesses. It is further stated that as there was no response from the petitioner even to the said final notice, the Enquiry Officer conducted the enquiry *ex parte* and submitted his report on 08-11-1993 holding the petitioner was guilty of the charges. Thereafter, a show cause notice was issued enclosing report of the Enquiry Officer and calling for his explanation and the said show cause notice was sent to his house address on 06-04-1994 through RPAD, but the same was returned undelivered by the postal authorities with endorsement "Addressee House Shifted" and returned to the sender. Again a show cause notice for removal was exhibited on notice board on 16-05-1994 duly obtaining the signatures of two security personnel as evidence, but the petitioner has not submitted his explanation to the show cause notice and on fresh consideration of the matter, the Deputy Manager (Material), Miyapur, having come to a final conclusion that the charges were proved, had issued proceedings dated 17-06-1994 removing the petitioner from service and that the Stores Officer Deputy Manager (Material) has rightly imposed the penalty of removal following the procedure and passed the impugned order. It is further stated that a letter dated 04-03-1992 issued by the 1st respondent informing about sanction of leave up to 16-01-1992 and advising him to report to duty was acknowledged by the petitioner on 11-03-1992 at his residence at Nizamabad. The proceedings in K4/237(3)/92-BBW, dated 17-06-1994 issued by the Stores Officer (BBW) Miyapur were sent to the residential address to Nizamabad and all the three covers were returned undelivered

with the remarks by the postal authorities that "HOUSE SHIFTED WITHOUT INTIMATION" and a copy of the proceedings was exhibited on notice board and obtained the signature of two employees as witnesses on 22-01-1994. It is further stated that as per CCA Regulations, 1967, the period of limitation for submission of appeal is two months, whereas ex-employee has submitted the appeal after a lapse of three years and five months and the appeal was rejected as time-barred and the letter of COS/BBW, Miyapur was received by the petitioner on 17-11-1997 at the address furnished by him in the appeal. On receipt of rejection letter, the petitioner submitted a representation dated 19-11-1997 to the Minister for Transport requesting to reinstate him into service. It is further stated that on perusal of other connected records, the Vice Chairman and Managing Director has issued orders to dispose of the same on merits treating the representation as review petition and accordingly, the same was rejected vide proceedings dated 17-09-1998. The Stores Officer/BBW, Miyapur through letters dated 30-04-1992, 11-06-1992, 18-07-1992, 03-08-1993, 09-09-1993, 05-10-1993 and 08-11-1993 informed the petitioner to report for duty immediately and all the RPAD covers were returned undelivered by postal authorities with the remarks "addressee left". The letter dated 08-11-1993 was returned by the postal authorities with an endorsement "refused returned to the sender". The petitioner never sought for sanction of extraordinary leave for a period of five years except requesting for extension of leave for every month on one or other reasons like children ill-health or personal work. The three letters sent by the Enquiry Officer were also returned as "Addressee Left". There is no violation of principles of natural justice and the respondent Corporation has followed the procedure and passed the impugned

orders and the same was confirmed in the appeal and returned.

4. The petitioner filed his reply affidavit reiterating the contents in the writ petition and disputing the contents of the counter affidavit. He stated that all the letters sent to him were not received by him as he left for his native place Machilipatnam as the doctors advised his family, who were under medical attention, that they need change of place. He further stated that he was not aware of the final letter that was exhibited at the notice board of the Stores Department, BBBW, Miyapur and the signatures of the witnesses obtained from the employees as evidence and he was not aware of the enquiry conducted by the Enquiry Officer and that an *ex-parte* order was passed against him.

5. Sri Vedula Srinivas, learned counsel for the petitioner submits that unless the authority comes to the conclusion that there is wilful unauthorised absence from duty, no punishment can be imposed. In support of his contentions, he relied on judgment reported in **Krushnakant B. Parmar v. Union of India and another**^[1].

6. In this case, admittedly, though the petitioner applied for leave from 02-12-1991 to 20-12-1991 on the ground that his son fell ill, the same was sanctioned by the Department, but the petitioner requested for extension of leave up to 29-02-1992 vide his leave applications dated 13-01-1992 and 30-01-1992, his leave was sanctioned on compassionate grounds as leave without pay up to 16-01-1992 duly advising him to attend for duties immediately vide Letter No.DY(M)/1/91-92, dated 04-03-1992, which was acknowledged by the petitioner on 11-03-1992. But, the petitioner never joined duty and thereafter a charge sheet bearing No.K4/237(3)/92, dated 19-03-1992 was issued, which was also acknowledged by him on 31-03-1992 and the explanation dated 06-

04-19962 submitted by the petitioner was received by the Deputy Manager (M)/BBBW, Miyapur on 13-04-1992 and on perusal of his explanation, in order to give him fair opportunity, three more letters dated 30-04-1992, 11-06-1992 and 18-07-1992 were sent to his residential address through RPAD advising him to report for duty immediately, but all the said letters were returned by the postal authorities with an endorsement "Addressee Left" and thereafter, the Enquiry Officer, for affording one more opportunity to defend the case, has sent three letters through RPAD advising him to attend enquiry on 10-11-1992, 27-11-1992 and 15-04-1993, but all the letters were returned undelivered by the postal authorities with an endorsement "Addressee Left". Having no other go, the Enquiry Officer submitted his report on 08-11-1993 holding him guilty of the charges. After submission of the enquiry report, another show cause notice was issued, which was also returned with an endorsement "Addressee House Shifted" and the said notice of removal was exhibited on the notice board on 16-05-1994, as per rule 35-(A) (4) of the Andhra Pradesh State Road Transport Corporation Employees (Classification, Control and Appeal Regulations) 1967 and as the petitioner has not submitted his explanation to the said notice, the proceedings were issued removing the petitioner from service basing on the material available on record and having received the letter dated 04-03-1992, the petitioner has not joined duty and has not responded to several notices issued though the same were served as per Rule 35-A (4) of the Regulations. Even the petitioner has not received the impugned proceedings and the appeal was filed after three years and five months and the same was also dismissed. The petitioner filed review petition and the same was also dismissed vide order dated 17-09-1998. The filing of the writ petition in the

year 2002 would go to show that the petitioner has not shown due diligence towards his employment and this attitude of the petitioner apparently goes to show that though he was issued several opportunities, he did not respond to such opportunities. Even after issuing charge memo also, the petitioner has never joined duty. This itself shows that the petitioner wilfully and negligently absented from duty without obtaining any leave. The judgment relied on by the learned counsel for the petitioner in **Krushnakant B. Parmar v. Union of India and another** (stated supra) stands on a different footing where the appellant therein was prevented from attending duty and to sign attendance register. But, in the present case, even though the petitioner was given several opportunities asking to join duty, he was absent from duty himself. The absence of the petitioner from duty itself indicates that the petitioner wilfully and diligently absented duties without sanctioning any leave and the disciplinary authority has rightly come to the conclusion that the petitioner had wilfully absent.

In view of above finding of fact arrived at by the authorities basing on which the punishment was imposed and this Court cannot re-appreciate the evidence and come to a different conclusion by exercising the power of judicial review under Article 226 of the Constitution of India. The power of judicial review is only against the decision making process and not against the decision. The conduct of the petitioner throughout also does not inspire any confidence for grant of any equitable relief in exercise of jurisdiction under Article 226 of the Constitution of India and the proceedings under challenge do not suffer from any legal infirmity calling for interference of this Court under Article 226 of the Constitution of India, and hence, the writ petition is liable to be dismissed.

Accordingly, the writ petition is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

A. RAJASHEKER REDDY, J

Date: 20-08-2015

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[\[1\]](#) 2012 AIR SCW 1633