

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

W.P.No.4755 of 2002

Between:

J. Siva Kumari

... Petitioner/Appellant (s)

And

Union of India rep., by its Principal Secretary
and 2 others

... Respondent (s)

DATE OF JUDGMENT PRONOUNCED: 06.08.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

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|---|---|--------|
| 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 Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see
the fair copy of the Judgment? | Yes/No |

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HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.4755 OF 2002

ORDER

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The case of the petitioner is that she was appointed as Lower Divisional Clerk in the Tobacco Board, Guntur. While so, the 3rd respondent issued charge Memo vide order Ref.No.TB.Vig/JSK/97/3744 dated 22.01.1998 to the petitioner under Rule 14 of the C.C.S (CCA) Rules 1965 (for short 'the Rules) stating that she has been absent from duty from 01.03.1996 to 22.01.1998 without prior permission/sanction from the competent authority and thus violated Rule 31(ii) of the CCS (Conduct) Rules 1964. With regard to the same, the 3rd respondent appointed Assistant Manager as Presenting Officer and the Regional Manager as Enquiry Officer in the enquiry and after enquiry, the Presenting Officer vide proceedings dated 05.01.2001 presented the Memorandum of imputations to the Enquiry Officer holding that the charges framed against the petitioner are proved beyond reasonable doubt. Thereafter, the petitioner submitted her explanation to the Enquiry Officer on 15.01.2001 denying the charges levelled against her. Subsequently, vide proceedings dated 01.02.2001, the report of the Enquiry Officer was served on the petitioner and petitioner submitted her explanation to the 3rd respondent on 10.02.2001. But the 3rd respondent without considering the same in proper perspective vide proceedings Ref-TB/Vig/JSK/97 dated 16.03.2001 removed the petitioner from service imposing major penalty. Against the said orders, the petitioner preferred an appeal before the 2nd respondent on 30.04.2001 and the 2nd respondent vide proceedings dated 04.01.2002 rejected the appeal. Aggrieved by the orders of the 2nd respondent, the present writ petition is filed.

Learned counsel for the petitioner submits that as per DGP and P & T Letter No.6/19/72 dated 29.11.1972, the punishments of major penalty of removal cannot be imposed on the petitioner for unauthorised absence. He also submits that even according to the Enquiry Officer,

leave applications of the petitioner are pending and not rejected, therefore, the absence of the petitioner cannot be treated as unauthorised absence. He also submits that neither the Enquiry office nor the Disciplinary authority gave any finding stating that the petitioner was wilfully absented herself unauthorisedly. In support of his contentions he relied on judgment reported in ***Krushnakant B. Parmar v. Union of India and another***^[1]. He also contends that the appellate authority is obligated to give reasons while rejecting the appeal filed by the petitioner against the order of removal as per Rule 27(2)(a) of the CCS (CCA) Rules, 1965 and the elaborate grounds raised by the petitioner in the appeal are not at all considered in proper perspective. He also submits that the appellate authority referred to certain aspects which are not part of the charges, as such the appellate authority travelled beyond the scope of the appeal and the same is liable to be set aside even on that ground. He also contends that the punishment imposed is shockingly disproportionate; as such the same has to be set aside. In support of his contentions he relied on judgment reported in ***Raghubir Singh v. General Manager, Haryana Roadways, Hissar***^[2]. He also submits that the appellate authority did not give reasons in the impugned order, but reasons are supplemented in the counter, which cannot be accepted as per the principle laid down by the Hon'ble Apex Court in ***Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others***^[3].

Learned counsel for the respondents submit that the so called letter on which reliance is placed by the petitioner cannot be taken into account as it does not form part of Rule 14 of the C.C.S (CCA) Rules because it is only commentary in one of the books and no such circular is placed before this Court. She also submits that as per Rule 11 of the Rules, the major penalties have prescribed and the authority who imposed the punishment has power to do it and the procedure for

imposing major penalty is envisaged under Rule 14 of the Rules. When once the procedure is followed and penalty is imposed, it cannot be said that the power of the authority to impose penalty is curtailed by any of the letters. She also submits that power conferred on the statutory authority for exercising discretion cannot be curtailed by any letter and the so called letter on which the reliance is placed by the petitioner cannot be taken into account in view of Rule 11 and 14 of the Rules. She also submits that the petitioner failed to appear before District Medical and Health Officer to substantiate her claim that she is ill, when the authorities have expressed their doubt about her illness. She also contends that though the suspension order of the petitioner was revoked on 09.01.2001 and was asked to join the duty, she never joined duty and no valid reasons were given for the same. She also contends that the Enquiry Officer and Disciplinary authority have considered the aspects raised by the petitioner in proper perspective and came to the conclusion that the petitioner was unauthorisedly absent without sanction of leave. As such, this Court while exercising power under Article 226 of Constitution of India, cannot reappreciate the evidence and interfere with the punishment imposed. She also submits that petitioner was given ample opportunity to join duty but she never utilised the same, as such, no interference is called for.

Learned counsel for petitioner stated that matter may be heard on merits instead of remitting back to the appellate authority at this point of time. Hence, taken up for consideration on merits.

In this case, admittedly there is no dispute regarding the absence of the petitioner from 01.03.1996 to till the issuance of charge sheet i.e, 22.01.1998. But petitioner states that she has joined duty for some periods in between. But as the reasons stated in the leave applications appeared to be untenable, her case was referred to D.M. & H.O., Guntur vide letter dated 20.12.1996 for seeking second opinion. Thereafter, she appeared duty on 06.01.1997 and worked upto

26.01.1997. Again she preferred leave application for 12 days from 27.01.97 to 07.02.97 and reported on 10.02.97 and worked upto 12.03.97. Further, when she was specifically asked to appear before DM & HO on 21.07.97 and 08.08.97, she failed to appear before them. All these goes to show that her claim is not genuine. As such, it cannot be said that her applications for leave are genuine. Though she joined duty for short spells, she never appeared before DM & HO. The Enquiry Officer has clearly considered the evidence on record and came to the conclusion that charges framed against her are proved. As far as letter dated 29.11.1972 is concerned, it is only stated in the commentary of the book. More so, these are given as guidelines and that cannot curtail the powers of the authorities conferred under Rule 11 and 14 of the CCS (CCA) Rules. For short spells of unauthorised absence, removal from service may be shockingly disproportionate as held in ***Raghubir Singh's Case (supra 2)***, but in this case, petitioner was unauthorisedly absent from 1996 to 1998, though she attended for short spells, but even she failed to attend duty after her suspension was revoked on 09.01.2001. With regard to the penalties imposed on other officers as contended in the writ affidavit, minor punishments were imposed and the same is explained in the counter affidavit. In the present case, the petitioner was given opportunity to join duty without imposing penalty, but petitioner failed to avail the same. No doubt counter cannot supplement the reasons in the impugned order. In the present case, on her own making she failed to join duty till 16.03.2001 even after suspension was revoked on 09.01.2001 and no valid reasons were also given for her absence except stating that she want posting at a place near, where her husband is working. In Departmental enquiry strict proof beyond reasonable doubt is not required.

In view of the above facts and circumstances, I do not see any merit in the writ petition. Accordingly, the writ petition is dismissed. No costs.

As a sequel, miscellaneous petitions pending if any, shall stand closed.

A.RAJASHEKER REDDY,J

Date: 06.08.2015
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[\[1\]](#) (2012) 3 SCC 178

[\[2\]](#) (2014) 10 SCC 301

[\[3\]](#) AIR 1978 SC 851