

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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WRIT PETITION No.5008 OF 2001

AND

W.P.M.P. No.51172 of 2015

COMMON ORDER:

This Writ Petition, under Article 226 of the Constitution of India, 1949, is filed by the petitioner to issue a writ of Mandamus declaring the order passed by the 2nd respondent dated 07.08.2000 (to the extent of directing fixation of basic salary at the lowest stage of sub-staff scale and treating the period from the date of removal till the date of reinstatement as period not spent on duty or leave) as illegal, arbitrary and violative of principles of natural justice.

The case of the petitioner, in brief, is that while he was working as sub-staff in the branch office of National Insurance Company Limited, Kurnool, disciplinary proceedings were initiated against him for violation of Rules 3(1)(ii)(iii), 18(1) and (2) and Rule 4(7) and (8) of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975 (for short, 'the Rules'). On receipt of a charge memo on 19.12.1996, the petitioner submitted his explanation explaining the reasons for his absence in clear terms *i.e.*, due to infective hepatitis and, thus, his absence was *bona fide* but without considering the explanation in proper perspective, regular departmental proceedings were initiated and, on the strength of the alleged admission in his explanation about the charges levelled against him, the petitioner was found guilty by the Enquiry Officer in his report dated 11.06.1998, on the basis of which, the 1st respondent in his order dated 09.07.1998 ordered removal of the petitioner from service under Rule 23(f) read with Rule 26(3) of the Rules.

Aggrieved by the order of removal from service passed by the 1st respondent, the petitioner preferred an Appeal before the 2nd

respondent-appellate authority on 28.09.1998 raising several contentions, wherein the 2nd respondent after perusing the material available on record passed the following order on 07.08.2000:

“However, his leave application dt.03.10.96 (received by the Br. Office on 08.10.96) for the period 16.08.96 to 01.10.96 for ‘Jaundice’ is available in the file. This is supported by a medical certificate dt.01.10.96 (received at the Br. Office on 10.10.96) issued by Dr. Richardson Solomon, MBBS, Chirala stating that Shri Rao was under his treatment for infective hepatitis during the period 16.08.96 to 01.10.96 and that he was fit to join his normal duties from 02.10.96. To be fair to the employee these documents have to be considered even though they are not produced in the enquiry.

There is no material on record to show that this leave application was rejected or the genuineness of the medical certificate is disputed. Despite this, the said period is included in the charge sheet as unauthorised absence. Though he might have been put on loss of pay during this period for want of leave credit, I feel it would not be proper to charge him with unauthorised absence when he submitted his leave application duly supported by a medical certificate which was not acted upon though.

As regards the other periods of unauthorised absence stated in the charge sheet, which the charged employee claims were due to his illness, there is no material produced by him in support of his stand. However, as already stated, he admitted that he remained on LOP on these dates and the charge that he was on LOP during these days should be taken as proved.

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Therefore, in exercise of powers conferred by Rule 37 of Rules, I order that:

- ”a. the order of removal from service dated 09.07.98 passed by Shri A. Guha, Manager and Competent Authority be set-aside.
- b. that Shri M P Ranga Rao, ex-sub staff, Ponnur Branch be reinstated in service with immediate effect i.e., from the date of his joining in the Company at the office of posting.
- c. that on reinstatement, the basic salary of Shri Rao will be fixed at the lowest stage of sub-staff scale.

d. that the period starting from the date following his removal from service and ending on the date preceding the date of his resuming duties shall be treated as “period not spent on duty” or “leave” and shall not count as service for any purpose but will not constitute a break in service.”

In pursuance of the order passed by the appellate authority, aggrieved to the extent of fixing the basic salary of the petitioner at the lowest stage of sub-staff scale and treating the period starting from the date following his removal from service and ending on the date preceding the date of his resuming duties shall be treated as “period not spent on duty” or “leave” and shall not count as service for any purpose but will not constitute a break in service, the petitioner preferred this Writ Petition praying to set-aside the impugned order.

The respondents did not file any counter, denying the allegations made in the Writ Petition.

During course of hearing, Sri K. Pavan Kumar, learned counsel appearing for the petitioner, mainly contended that the petitioner suffered loss of pay of 198 days, on different spells, starting for the period from 05.10.1992 to 01.10.1996. On the ground that he was absent from duty without applying any kind of leave and sanction thereof and for the period from 17.08.96 to 01.10.96, he was suffering from jaundice, submitted an application for sanction of leave on medical grounds which is admittedly available on record, as observed by the appellate authority but the same was not considered by the Enquiry Officer and the appellate authority in proper perspective and imposed penalty against the petitioner initially for removal from service and, later, in the Appeal modified the punishment to that of fixing the basic salary of the petitioner at the lowest stage of sub-staff scale and treating the period starting from the date following his removal from service and ending on the date preceding the date of his resuming duties shall be treated as “period not spent on duty” or “leave” and

shall not count as service for any purpose but will not constitute a break in service, which is capricious and against the principles of natural justice since the penalty imposed against the petitioner does not commensurate with the gravity of misconduct and that it is shockingly disproportionate to the misconduct attributed to the petitioner and the same is liable to be set-aside. In support of his contention, placed reliance on a decision of the Apex Court in ***Shri Bhagwan Lal Arya Vs. Commissioner of Police, Delhi and others***^[1], and prayed to allow the Writ Petition setting-aside the order under challenge.

Whereas, Sri Vedula Srinivas, learned standing counsel appearing for the respondents, would contend that unauthorized absence of the petitioner, on different spells, without applying for sanction of any kind of leave amounts to misconduct as it amounts to failure to devotion to duty by a Government servant and that apart unless the Court finds that the punishment imposed by the appellate authority is shockingly disproportionate to the gravity or seriousness of the misconduct, the same cannot be set-aside since this Court cannot sit in an Appeal against the order of penalty imposed against the Government servants as the scope of judicial review under Article 226 is limited. Therefore, the penalty imposed against the petitioner is not shockingly disproportionate warranting interference of this Court and prayed to dismiss the Writ Petition confirming the order passed by the appellate authority.

Considering rival contentions and perusing the material available on record, the point that arises for consideration is:

Whether the petitioner is guilty of misconduct for violation of Rules 3(1)(ii)(iii), 18(1) and (2) and Rule 4(7) and (8) of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975? If so, whether the

penalty imposed by the appellate authority is shockingly disproportionate to the seriousness or gravity of the misconduct and liable to be set-aside?

POINT: Undisputedly, the petitioner was absent on different spells from 05.10.1992 till the end of 1996 for more than 198 days. For different spells of unauthorized absence, his salary was deducted as loss of pay except for the period from 17.08.96 to 01.10.96 but as per the order in Appeal, the petitioner had applied for leave on medical grounds, for the period from 17.08.96 to 01.10.96 as he was suffering from infective hepatitis, and submitted a medical certificate issued by Dr. Richardson Solomon, Chirala, who certified that the petitioner was fit to join his normal duties from 02.10.96. These documents were admittedly found in the file of Branch office as per the observations of appellate authority in the Appeal. When the petitioner applied leave for the period from 17.08.96 to 01.10.96, the 1st respondent either could have sanctioned the leave on medical grounds or rejected the same disbelieving the grounds for availment of leave but no order has been passed by the 1st respondent, either sanctioning or rejecting the leave for the said period. Therefore, keeping the leave application pending, initiating disciplinary proceedings and ordering departmental enquiry is a grave irregularity; however, the leave application for the said period was received in the Branch office on 08.10.96 *i.e.*, after availment of leave but he did not report to duty even after 01.10.96, immediately after recovery from his illness. As seen from the report of Enquiry Officer, the petitioner was cautioned *vide* their letters dated 19.10.92, 23.09.94 and 29.10.96 requesting to be regular in attending the office but he has continued to go on loss of pay. Therefore, his absence at least after 01.10.96 till submitting a medical certificate received by the office on 08.10.96 is totally unauthorized. In such circumstances, it is difficult to accept the contention that his absence from 01.10.96 is not intentional. Absence from duty without any

reasonable cause, even after regaining fitness amounts to misconduct. The petitioner herein, even though regained fitness from 02.10.96 did not join duty and the same amounts to misconduct. The Enquiry Officer found the petitioner guilty of misconduct as he failed to devote to duty treating the total period of 198 days as unauthorized absence but undisputedly the petitioner's salary was deducted for different spells prior to 17.08.96 and he was on loss of pay as observed by the appellate authority in the Appeal. In such case, the said period prior to 17.08.96 cannot be said to be misconduct. So far as the period from 17.08.96 to 01.10.96 is concerned, the petitioner applied for leave as observed by the appellate authority but the 1st respondent had neither sanctioned his leave nor rejected the same and kept the same pending till date. Hence, the said period cannot be treated as unauthorized absence. Moreover, it is evident from the record that the petitioner did not report to duty on 02.10.96, though Dr. Richardson Solomon, certified that he was fit to report to duty from 02.10.96, as per the medical certificate. Such unauthorized absence directly amounts to misconduct as the petitioner absented himself without any reasonable or sufficient cause and lacks devotion to duty.

A Government employee is expected to display devotion to duty. The Apex Court in ***Union of India Vs. J. Ahmed***^[2], had an occasion to consider the scope of the expression 'devotion to duty' and observed as follows:

"The expression 'devotion to duty' appears to have been used as something opposed to indifference to duty or easy-going or light-hearted approach to duty. If Rule 3 were the only rule in the Conduct Rules it would have been rather difficult to ascertain what constitutes misconduct in a given situation. But Rules 4 to 18 of the Conduct Rules prescribe code of conduct for members of service and it can be safely stated that an act or omission contrary to or in breach of prescribed rules of conduct would constitute misconduct for disciplinary proceedings. This code of conduct being not exhaustive it would not be prudent to say that only that act or omission

would constitute misconduct for the purpose of Discipline and Appeal Rules which is contrary to the various provisions in the Conduct Rules.”

In view of the law declared by the Apex Court, failure of the petitioner to report to duty, though he was fit to discharge his normal duties, amounts to misconduct.

The Enquiry Officer rightly concluded that the petitioner is guilty of misconduct as he failed to devout to duty but the finding of Enquiry Officer for the absent period prior to 01.10.96 is erroneous since the petitioner was on loss of pay for different spells prior to 17.08.96 and for the period from 17.08.96 till 01.10.96 he applied for leave on medical grounds, as he was suffering from infective hepatitis, which finding of the Enquiry Officer was set-aside by the appellate authority.

Even the appellate authority did not assign any reason for imposing penalty of fixing the basic salary of the petitioner at the lowest stage of sub-staff scale and treating the period starting from the date following his removal from service and ending on the date preceding the date of his resuming duties shall be treated as “period not spent on duty” or “leave” and shall not count as service for any purpose but will not constitute a break in service, and the same is without any basis. When the petitioner was found guilty of misconduct, as he failed to devout to duty after regaining his health from 02.10.96, that amounts to misconduct, as per Rules 3(1)(3), 18(1)(2), 4(7) and (8) of Rules, the petitioner deserves penalty for his wilful absence to duty from 02.10.96 onwards.

During course of hearing, the petitioner brought to the notice of this Court about the subsequent incidents that happened after filing this writ Petition and filed W.P.M.P. No.51172 of 2015 seeking permission to file additional affidavit along with additional material papers and the same is ordered, as not opposed. In the additional

affidavit filed by the petitioner, it is stated that the petitioner, in a separate departmental proceedings, was removed from service on 13.07.09 due to his misconduct, after filing of this Writ Petition, and requested to pass appropriate orders giving financial benefit which would help him at his old age.

In view of the subsequent events, if the punishment imposed by the petitioner is set-aside, he would get financial benefits; however, the conduct of the petitioner throughout the service is blameworthy and not adhering to the Conduct Rules of the Corporation as he absented himself without applying for and sanctioning of any kind of leave, not on one or two occasions. However, his absence from 17.08.96 till 01.10.96 is without sanction of any kind of leave but conveniently sent a leave application along with a medical certificate after expiry of leave, which was received by the office on 08.10.1996. Even after regaining his health and fitness to discharge his duties, he did not report to duty and the absence of such employee would dislocate the normal work in the office and in such circumstances, it is difficult for the office and the other staff to discharge their duties effectively. The negligent and intentional absence or absenting to duty without any reasonable or sufficient cause certainly amounts to misconduct. Therefore, the petitioner deserves appropriate punishment proportionate to the gravity of misconduct.

The main endeavour of learned counsel for the petitioner is that the penalty imposed against the petitioner is disproportionate to the seriousness or gravity of the misconduct, placed reliance on the decision of the Apex Court in ***Shri Bhagwan Lal Arya*¹**, wherein the Apex Court held that absenting from duty on medical grounds cannot be the basis for awarding punishment and when the penalty imposed by the authorities is shockingly disproportionate, the same can be set-aside by the Court exercising power of judicial review.

In the facts of the above decision, a police serving in Delhi Police applied for leave on different spells, on medical grounds, annexing medical certificates issued by the competent medical authority of Government department certifying his ill-health but still the Delhi Police found him guilty of misconduct and imposed the penalty of removal. In those circumstances, the Apex Court intervened and set-aside the penalty opining that the absence on medical grounds does not amount to misconduct as the same is shockingly disproportionate.

In ***Shri Bhagwan Lal Arya***¹, the Apex Court, modified the punishment, relying on its earlier decision in ***B.C. Chaturvedi Vs. Union of India***^[3], where the question fell for consideration was whether the High Court/Tribunal can direct the authorities to reconsider punishment with cogent reasons in support thereof or reconsider themselves to shorten the litigation and observed as follows:

“18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

If the principle laid down by the Apex Court in ***B.C. Chaturvedi***³, is applied to the present facts of the case, it is not proper for this Court to set-aside or reduce the penalty unless the punishment imposed by the appellate authority shocks the conscience of this

Court.

In the present case, the petitioner was in the habit of absenting himself without applying for any kind of leave and even after regaining to his normal health, he did not report to duty though he was fit to discharge his duties, as certified by the competent medical authority. However, the penalty imposed by the appellate authority does not commensurate with the gravity of misconduct for failure of reporting to duty after 01.10.96 and that the penalty imposed against the petitioner is shocking the conscience of this Court since it is disproportionate to the seriousness or gravity of the misconduct. Therefore, I find that it is a fit case to direct the appellate authority to impose suitable punishment considering the gravity of misconduct for his unauthorized absence only from 02.10.96 on wards and pass appropriate order, while setting-aside the punishment imposed by the appellate authority since it is harsh and disproportionate to the gravity of misconduct.

Accordingly, with the above direction, the Writ Petition is disposed of.

In consequence, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed. No order as to costs.

**M. SATYANARAYANA MURTHY,
J**

Date: 22-01-2016.
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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Date.22-01-2016

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[\[1\]](#) 2004 (4) SCC 560

[\[2\]](#) AIR 1979 SC 1022

[\[3\]](#) 1995 (6) SCC 749