

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Writ Petition No.4066 of 2001

ORDER:

This writ petition is filed by the petitioner for issuance of writ of Mandamus to declare the action of the respondents in awarding punishment of compulsory retirement from service vide proceedings No.666/20/NV/131 dt:27.04.2000 as illegal, arbitrary and unjust and consequently direct the respondents to reinstate the petitioner into service with all consequential benefits.

2) The brief facts of the case are thus:

a) The petitioner was appointed as Clerk-cum-Cashier in Andhra Bank in 1979 and posted at Bazar Branch, Vijayawada. Thereafter, in the year 1981, he was promoted as Officer, JMG-I. In the year 1991, he was posted to Andhra Bank, Kodad Branch and since then he was suffering from Bronchial problem. While so, since 22.11.1996 the petitioner could not attend to his duty as he was suffering from Eosinophilia Bronchitis with Acute Bronchus Pulmonary Infection and so he underwent treatment and applied for medical leave. He was asked to appear before the Superintendent, Government Hospital, Vijayawada on 06.03.1997 and there he was treated till 09.03.1997 as inpatient and the said Hospital also addressed a letter vide Dis.No.466/G1/97 dt:14.03.1997 to the 2nd respondent sending his opinion. Without knowing the above fact, the

Senior Manager, Andhra Bank, Vijayawada asked the petitioner through letters dt: 12.03.1997, 13.03.1997 and 13.05.1997 to appear before the Superintendent, Government Hospital, Guntur for medical examination and also addressed a letter to 1st respondent vide Lr.No.689/3/Z.F-7/738 dt:13.06.1997 informing that the petitioner had not attended the medical examination, which is not correct. The petitioner submits that he has addressed letters dt:09.03.1997 to the 1st respondent as well as Zonal Office, Vijayawada stating that he had already underwent Medical Examination as per the direction of R.1.

b) The petitioner's further case is that he joined duty again on 20.11.1997 and he was served with a charge sheet dt:29.10.1997 alleging that he was continuously absent from duty since 20.11.1996 on false medical grounds. An *ex-parte* enquiry was conducted and basing on the enquiry report dt:08.10.1998, the 1st respondent imposed the punishment of compulsory retirement from service through his proceedings dt:05.12.1998 vide Letter No.216/20/0.100/1047. Challenging the same, he preferred an appeal before the 2nd respondent, wherein R.2 confirmed the punishment imposed against petitioner by Disciplinary Authority through his proceedings No.666/20/NV/2265 dt:03.03.1999. Aggrieved, the petitioner preferred review before the 3rd respondent, wherein R.3 also confirmed the punishment.

Hence the writ petition by petitioner.

3) The respondents filed counter and opposed the writ petition *inter alia* contending that the petitioner was a habitual unauthorised absentee inspite of holding a responsible job. The charge sheet dt:29.10.1997 was in fact the fourth one issued on the ground of his unauthorised absence from duty from 22.11.1996 till date on false medical grounds, without sanction or leave from the competent authority. As the petitioner applied for leave on medical grounds he was referred to Government General Hospital, Guntur and even after continuous persuasion from Zonal Office, Vijayawada advising him to report for medical examination, he failed to attend which implies that he availed leave on false medical grounds. The charge sheet also referred the earlier 3 charge sheets issued against him for similar misconduct and the punishments imposed thereof.

a) It is further contended that the Disciplinary Authority appointed Mr.P.R.Mohan as Enquiry Officer. The Enquiry Officer submitted his enquiry report which was communicated to the petitioner.

b) It is further contended that the Disciplinary Authority considering the findings of the Enquiry Officer and the entire material and having taken the gravity of the charges imposed the major penalty of Compulsory Retirement from service with immediate effect as per his order dt:05.12.1998. Aggrieved,

the petitioner preferred appeal dt:30.12.1998 before the Assistant General Manager (AGM) but the A.G.M confirmed the penalty imposed by the Disciplinary Authority. Later the petitioner preferred review before Deputy General Manager-cum-Review Authority which was dismissed. All the terminal benefits for which the petitioner was eligible have been paid and accepted by the petitioner.

c) It is further contended that the past track record of the petitioner was blame worthy and the bank being a financial institution, the misconduct on the part of the employee is required to be dealt with deterrently. Hence the petitioner was rightly imposed penalty of compulsory retirement for his misconduct. The petitioner remained absence unauthorisedly for a period of 326 days on different dates and he was regularly escaping from duties causing disruption of the work. The respondents thus prayed to dismiss the writ petition.

4) Heard arguments of Sri Nandigam Krishna Rao, learned counsel for petitioner and Dr. K.Lakshmi Narasimha, learned Standing Counsel for Andhra Bank.

5) The admitted facts are that the petitioner was appointed as Clerk in 1979 and promoted to the post of Officer, Junior Management Grade-I (JMG-I) with effect from 1981. He was posted as Officer, JMG-I, Andhra Bank, Kodad in 1981. While so, the petitioner was absent from duty from 22.11.1996 to 20.11.1997.

a) Be that as it may, after he joined duty a charge sheet dated 29.10.1997 was issued wherein it is alleged that the petitioner was unauthorisedly absent from duty since 20.11.1996 till date on false medical grounds without prior permission/sanction of leave from competent authority causing inconvenience and dislocation of work at Kodad branch. It was further mentioned in the charge sheet that as he applied leave on medical grounds, he was referred to Government General Hospital, Guntur and even after continuous persuasion from Zonal Office, Vijayawada advising him to report for medical examination, he failed to attend the medical examination and as such it was evident that he applied for leave on false medical grounds. In the charge sheet it was further mentioned that on earlier occasions also charge sheets were issued for his similar misconduct. Sri P.R.Mohan, an officer of the bank was appointed as Enquiry Officer who conducted domestic enquiry and submitted his report dated 08.10.1998. The report would show that the Enquiry Officer agreed with the contention of management that petitioner has not appeared for medical examination before Superintendent, Government General Hospital, Guntur in spite of repeated letters from the management. The Enquiry Officer held that it was evident that officer was engaged in construction activity. He ultimately held that the charge levelled against the petitioner was proved. Basing on his report, the 1st respondent who is the Regional Manager and Disciplinary Authority imposed major penalty of compulsory retirement on the petitioner. Petitioner preferred

appeal and review before the concerned authorities but unsuccessfully. Hence the instant writ petition.

6) The main plank of argument of learned counsel for writ petitioner is that since after he was posted as Officer JMG-I, Andhra Bank Kodad Branch in the year 1991, he was suffering from Bronchitis problem for which he underwent treatment on several occasions. As he was suffering from Eesnopelic Bronchitis with Acute Bronchus Pulmonary Infection from 22.11.1996 onwards, he could not attend duty from that date till 20.11.1997. Therefore, he applied for leave on medical grounds. Since his absence was on medical grounds, it would not be possible to apply for leave in advance and get sanction unlike the leaves applied on other grounds. Learned counsel argued that as the petitioner applied for leave on medical grounds, the authorities directed him to attend before Superintendent, University General Hospital, Vijayawada for medical check up and accordingly he attended for medical examination in the said hospital on 03.03.1997 and again on 06.03.1997 and as he was found to be suffering with Eosinophilia Bronchitis with Acute Bronchus Pulmonary Infection, the doctors advised him to undergo rest for five days and he was admitted in hospital and treated till 09.03.1997. In the meanwhile, the Zonal Office, Vijayawada directed him to appear for medical examination in Government General Hospital, Guntur and therefore, he addressed a letter dated 19.05.1997 stating that he has already attended medical

examination at University General Hospital, Vijayawada and the bank authorities can obtain report directly from the said hospital. The petitioner was under the *bona fide* impression that the bank authorities on receiving the report from the Superintendent, University General Hospital, Vijayawada would take note of the gravity of his Bronchitis and sanction the leave on medical grounds in normal course. However, to his utter dismay, after he joined duty on 20.11.1997, he was served with charge sheet dated 29.10.1997 alleging as if he was unauthorisedly absent to duty on false medical grounds. Learned counsel vehemently argued that the Enquiry Officer did not consider the medical report of Vijayawada hospital in a proper perspective and on the other hand, he found fault with petitioner's not appearing for medical examination before Government General Hospital, Guntur and erroneously held that the charge was proved. Learned counsel argued that after he apprised the authorities that he already underwent medical examination in the hospital at Vijayawada, they should have either considered his examination in Government General Hospital, Guntur as unnecessary, or, if they felt such necessity, they should have informed him through a letter to undergo medical examination at Guntur. Without following either course, the respondent authorities contended before the Enquiry Officer as if the petitioner did not oblige their order to undergo medical examination at Guntur and the Enquiry Officer too, without appreciation of the facts in proper manner, found fault with him. He further argued that the disciplinary

authority ought not to have taken into consideration the previous punishments for imposing the present punishment as it would amount to double jeopardy. The petitioner was not given proper opportunity to explain all the above facts and no proper show cause notice was issued to him before imposing major penalty and therefore, principles of natural justice were denied to him. He thus prayed to allow the writ petition.

7) In reiteration of counter averments, learned counsel for respondents argued that petitioner is a habitual and unauthorised absentee from his duties and earlier he was punished for the said misconduct and in the present instance he remained absent for a long period of one year on false medical grounds and therefore, he was at first referred to University General Hospital, Vijayawada for medical examination and for long he did not attend the said hospital but later he underwent check up. No doubt, the said hospital authorities certified as if the petitioner was suffering with Bronchitis problem. However, the said certificate covered only a short period from 06.03.1997 to 13.03.1997 but in the said certificate it was not specifically mentioned that he was suffering with the said problem since the date of his absence i.e. 22.11.1996. Therefore, to ascertain the truth or falsity of his disease, the Regional Office directed him to appear for medical examination before Government General Hospital, Guntur but the petitioner in utter disregard failed to attend the medical check up. Thereafter, a regular domestic enquiry was

conducted wherein the charge of his misconduct due to unauthorised absence was squarely established and having regard to the gravity of the charge and his past conduct, he was compulsorily retired from service. He vehemently argued that the domestic enquiry was conducted as per Andhra Bank Officer Employees' (Disciplinary & Appeal) Regulations, 1981 and no principles of natural justice are denied to him. He thus prayed to dismiss the writ petition.

8) In the light of above rival arguments, the point for determination is:

"Whether there are merits in this petition to allow?"

9) **POINT:** The admitted facts and contentions of both parties were already adumbrated supra. Admittedly, the petitioner was absent from duty from 22.11.1996 to 20.11.1997. His claim is that during this period he was suffering from Eosinophilia Bronchitis with Acute Bronchus Pulmonary Infection whereas the contention of the respondent authorities is that he unauthorisedly remained absent on false medical grounds. So, the crux of the case is that whether the petitioner had in fact suffered with the above disease during the relevant period of his absence or he remained absent on false medical grounds to deserve punishment.

a) Sofaras the ill-health of the petitioner is concerned, the letter correspondence between petitioner, respondent and Superintendent of Government Hospital, Vijayawada, copies

of which are filed with material papers, sheds some light. Hence, the same needs to be scrutinised.

b) Under Lr.No.216/3/1640 dated 18.02.1997 the Assistant General Manager requested the Superintendent, Government Hospital, Vijayawada to conduct medical examination on the petitioner on or before 25.02.1997 and send a report. Then, under telegram dated 28.02.1997 the petitioner was instructed to report for medical examination in the said hospital on 03.03.1997. Again, under another letter dated 11.03.1997 the petitioner was directed to appear for medical examination on or before 17.03.1997. While so, the letter under L.Dis.No.466/G1/97 dated 14.03.1997 addressed by Superintendent, University General Hospital, Vijayawada to Assistant General Manager, Regional Office would reveal that the petitioner appeared before the Superintendent on 06.03.1997 and he was examined and referred to medical department for further examination and evaluation and he was admitted in hospital on 06.03.1997 and discharged on 09.03.1997 and it was found that petitioner was suffering with "*Eosinophilia Bronchitis with Acute Bronchus Pulmonary Infection*". It was further mentioned that he was advised rest for five days with effect from 09.03.1997. A copy of the said letter was marked to Zonal Office, Vijayawada.

c) As per letter dated 13.03.1997, the Senior Manager (P&D) requested Superintendent, Government General Hospital, Guntur to examine the petitioner at an early date and

send the report regarding his fitness. Copy of the letter was marked to petitioner. Then, as per letter dated 13.05.1997, the Senior Manager (P&D) informed the petitioner that he has not attended for medical examination and advised him to appear for medical examination immediately. The petitioner sent a reply letter dated 19.05.1997 to the Senior Manager (P&D) stating that he has already attended for medical examination at University General Hospital, Vijayawada on 03.03.1997 and 06.03.1997 to 09.03.1997 and requested to obtain the report directly from the Superintendent, University General Hospital, Vijayawada.

10) So, a close scrutiny of letter correspondence reveals that since the petitioner applied for leave on medical grounds he was at first referred to University General Hospital, Vijayawada for medical check up and though with some delay, the petitioner underwent medical examination and the doctors found he was suffering from Eosinophilia Bronchitis with Acute Bronchus Pulmonary Infection and advised him rest for five days from 09.03.1997. The letter correspondence is silent as to why the authorities again referred him for medical check up to Government Hospital, Guntur when the medical examination was still pending with the Government Hospital at Vijayawada. When the authorities insisted him to attend before Government General Hospital, Guntur, the petitioner made it clear that he already underwent examination in the Government Hospital at Vijayawada and requested them to obtain medical report from the said hospital. As rightly

argued by the petitioner, if the authorities found that the medical report obtained from hospital at Vijayawada was not satisfactory one, they should have informed this fact to the petitioner and directed him to undergo examination in Government General Hospital, Guntur. It appears they did not issue any letter to him to that effect. On the other hand, they contended before the Enquiry Officer as if petitioner has not complied with the instructions of the competent authority to appear before the medical board, Guntur. The Enquiry Officer too, it appears, found fault with the petitioner without considering his explanation in his letter dated 19.05.1997 to the Senior Manager (P&D) that he already attended medical examination at University General Hospital, Vijayawada. The enquiry report reveals that the Enquiry Officer has hastily jumped into the conclusion that the petitioner unauthorizedly remained absent on false medical grounds. When entire facts and record are perused, what one can observe is that no doubt the petitioner remained absent to his duty from 22.11.1996 to 20.11.1997. However, his entire period of absence cannot be stamped as *unauthorised absence on false medical grounds*. The letter of Superintendent, University General Hospital, Vijayawada would reveal that the petitioner was examined on 06.03.1997 and found that he was suffering with Eosinophilia Bronchitis with Acute Bronchus Pulmonary Infection and in fact he was advised rest for five days with effect from 09.03.1997. Therefore, it is evident that the petitioner was suffering with acute Bronchitis problem. It

may be true that the letter of Superintendent does not reveal that the petitioner was in fact suffering with such disease even from the date of his absence i.e. 22.11.1996. It may also be true that there is no medical report showing that the petitioner was suffering with Bronchitis problem from 14.03.1997 till his date of joining i.e. 20.11.1997. However, having regard to the gravity of his Bronchitis problem, it can be said that for a considerable period out of his total absence, he was suffering with lung disease. So, from the facts and evidence what can be reasonably concluded is that his entire period of absence of one year cannot be branded as *unauthorised absence on false medical grounds*. On the other hand, for some period of his absence he was reeling under the lung disease. In that view, his unauthorised absence on false medical grounds, if we may say so, can be logically restricted to a part of his total absence only. Therefore, the respondent authorities are not justified in imposing the punishment of compulsory retirement, which having regard to his disease, shockingly harsh and disproportionate to his misconduct. This Court is of the firm view that the petitioner deserves a lesser punishment than imposed.

11) In the result, this writ petition is allowed and punishment of compulsory retirement imposed on the petitioner by the 1st respondent in his order dated 05.12.1998 vide letter No.216/20/0.100/1047 is set aside and the respondent authorities are directed to impose a proper punishment on the petitioner within two months from the date of receipt of copy of

this order. No costs.

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

U. DURGA PRASAD RAO, J

Date: 10.06.2016
scs/Murthy