

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Writ Petition No.23789 of 2000

ORDER:

_____ This writ petition is filed for issuance of writ of Mandamus to declare the action of the respondent in terminating the services of the petitioner vide proceedings No.VSP/FIN/PAY/95/1282 dated 31.08.1995 as illegal, arbitrary and unjust and consequently direct the respondent to reinstate the petitioner into service with all consequential benefits.

2a) _____ The case of the petitioner is that her husband— G.Kanna Rao who was working in OCG in Visakhapatnam Steel Plant died in a fire accident occurred in the plant on 27.09.1992. Thereafter the petitioner was given compassionate appointment and posted as Attender on 14.10.1992 in Finance Department. The further case of the petitioner is that due to sudden demise of her husband, she was mentally shocked and lost mental strength and unable to attend duties properly but continued till 09.09.1994. While so, in the month of August, 1994 as her health deteriorated due to mental sickness, she applied for leave from 10.08.1994 to 09.09.1994 vide letter dated 09.08.1994 and as she did not recover from illness, she applied for extension of leave for one month commencing from 10.09.1994 to 09.10.1994 vide letter dated 10.09.1994. As she was unable to come out of the mental agony, she consulted the psychiatric doctor—

Dr.B.Dalnaidu who advised her to take prolonged treatment. As per his advice, she underwent treatment for “acute psychosis” from 01.10.1994 to 10.09.1995. The further case of the petitioner is that due to her sickness and mental disorder and as there was no elder family member to look after her children, she used to live in her parents home at Malkapuram. After recovery from illness, she reported to duty on 11.09.1995. She was informed that her services were terminated with effect from 31.08.1995 due to prolonged absence. The said action of the respondent in terminating her service without issuing any charge sheet and without conducting enquiry is illegal, arbitrary and unjust.

Hence the writ petition.

b) The respondent filed counter admitting that petitioner was appointed as Attender on the death of her husband on compassionate grounds on 14.10.1992 and working as such till 1994. While so, she remained absent without applying or obtaining leave from 04.09.1994 to 03.10.1994 and from 08.10.1994 to 31.08.1995 i.e. 328 days. In view of the prolonged unauthorised absence, a charge memo was issued to her on 21.02.1995 but she failed to submit any explanation to the same. Then, the management constituted an enquiry committee to enquire into the charge and submit its report. The petitioner failed to appear before enquiry officer inspite of providing reasonable opportunity. Therefore, an *exparte* enquiry was conducted and enquiry officer submitted his

report. After examining her case the disciplinary authority communicated a copy of the report to the petitioner on 08.08.1995. The petitioner failed to respond to the report and the disciplinary authority after considering the matter on merits passed an order dated 31.08.1995 removing her from service. It is stated that adequate opportunity was afforded to the petitioner at every stage of the proceedings before the impugned order was passed but the petitioner failed to avail the opportunity and offer any explanation for her unauthorised absence for about a year. It is also submitted that petitioner has not availed the medical services provided by the management at its hospital nor applied for any medical advance for treatment. It is also submitted that notices communicating charge memo, enquiry report and removal order were sent to the address of the petitioner available in her service record. Therefore, petitioner cannot complain non-receipt of notice of disciplinary enquiry and subsequent proceedings or violation of principles of natural justice. They thus prayed to dismiss the writ petition.

c) The petitioner filed reply affidavit reiterating the averments made in the writ petition. The grievance of the petitioner is that the respondent did not issue any charge sheet or notice of enquiry before passing termination order. She claims that due to ill-health she shifted her residence to her parents' home at Malkapuram, Visakhapatnam. Thus, the action of the respondent in terminating her service without

conducting proper enquiry is illegal and unjust. She submits that similarly situated persons in the respondent company who were charge sheeted for unauthorised absence are being continued but her case was not considered by the respondent authorities. She thus prayed to allow the writ petition.

3) Heard both sides.

4a) Severely impugning the removal order dated 31.08.1995, learned counsel for petitioner argued that the petitioner was employed as Attender on 14.10.1992 in respondent—Company on compassionate grounds on the death of her husband and due to sudden demise of her husband the petitioner was mentally shocked and lost her mental strength and suffered psychiatric problems and due to that mental sickness and ill-health she applied for leave from 10.08.1994 to 09.09.1994 vide letter dated 09.08.1994 and as she did not recover from illness, she applied for extension of leave for one month commencing from 10.09.1994 to 09.10.1994 and as she could not come out of mental agony she consulted psychiatrist—Dr. B.Dalnaidu and under went check up on 01.10.1994 and having regard to her mental condition the doctor advised her to take prolonged treatment and due to her decease she underwent treatment for “acute psychosis” from 01.10.1994 to 10.09.1995 and during that period she was out of normal consciousness and after recovery from illness, she reported to duty on 11.09.1995 but to her utter surprise and dismay, she was informed that she

was terminated from service with effect from 31.08.1995 due to her alleged unauthorised absence to duty.

b) He argued that the removal order is illegal, arbitrary and unjust since the authorities have on one hand not considered her leave applications submitted due to her mental illness and on the other hand, they have not conducted any domestic enquiry by giving prior notice to her. She submitted that due to mental disorder the petitioner stayed in her parents' home at D.No.65-1208, Krupa Nilayam, Malkapuram, Visakhapatnam since there was no elder family member to look after her and her children. The authorities have not served with charge sheet or enquiry notice to the address of her parents, but instead conducted *exparte* enquiry and basing on the said *exparte* proceedings removal order dated 31.08.19915 was passed. Learned counsel forcibly argued that the action of the respondent authorities is illegal, arbitrary and violative of principles of natural justice. Learned counsel further argued that the representation made by the petitioner to General Manager (Finance) in 1996 and General Manager (Personnel) in the year 1997 yielded no fruitful result and therefore, she filed appeal to the respondent on 11.12.1999 and the appeal was also unjustly dismissed. Hence the writ petition.

c) Learned counsel reiterated that the act of the respondent in conducting *exparte* enquiry proceedings besides being unjust, also violative of principles of natural justice. To buttress the above argument, learned counsel

relied upon the following decisions.

1. **D.K.Yadav v. J.M.A. Industries Ltd.**^[1]
2. **Ch.Prabhakar Rao vs. Deputy Inspector General of Police, New Delhi Range, CRPF, R.K. Puram, New Delhi and Others**^[2]
3. **T.Chiranjeevi vs. TSRTC and others**^[3]
4. **Dulu Devi v. State of Assam**^[4]

d) Learned counsel alternatively argued that in case the Court comes to the conclusion that she absented to service under justifiable circumstances but she filed the writ petition belatedly the Court can pass order directing the respondent to reinstate the petitioner, of course, without granting back wages. On this proposition learned counsel relied upon the decision of the Supreme Court in **Mahavir singh v. U.P.State Electricity Board**^[5]. Learned counsel thus prayed to allow the writ petition.

5 a) In oppugnation, learned standing counsel for respondent—Company argued that there are absolutely no merits in the writ petition inasmuch as the petitioner after obtaining appointment on compassionate grounds remained unauthorizedly absent for a considerable period for more than 13 months without intimation and leave but the authorities waited for long and initiated disciplinary proceedings and served notice to her address given at the time of joining the service for three times to attend the enquiry but there was no

response from her and in those circumstances the authorities were constrained to conduct disciplinary enquiry wherein it was found she was guilty of misconduct due to her unauthorized absence over a period of 13 months and considering the same she was removed from service. Learned counsel vehemently argued that the authorities are fully justified in removing petitioner from service and the Court may not treat such removal as harsh punishment. To buttress such proposition, learned counsel relied upon the decision of the Apex Court in ***L&T Komatsu Ltd. v N. Udayakumar***^[6].

b) Next, learned counsel argued that the alleged mental ill-health of the petitioner was invented for first time for the purpose of filing the writ petition. He pointed out that if really the petitioner was suffering from such acute mental disorder, nothing prevented her from applying for leave on that ground or taking treatment from company hospital. That she did not do infers that she was not suffering from any such disease. Learned counsel further argued that if really she shifted her residence to her parents home nothing prevented her or her relations to intimate the same to the respondent so as to avoid any communication gap. He argued that as per Standing Order 41 issued by Visakhapatnam Steel Plant, every workman shall notify to the management in writing his address in full and all subsequent changes from time to time, in the absence of which the last address given by the employee shall be deemed to be his correct address for all purposes. In

the instant case, as the petitioner not only remained unauthorizedly absent from duty but also failed to communicate to the respondent authorities her alleged changed address, the authorities were not in a position to know her new address and therefore, they promptly sent the charge memo and enquiry notice to her old address. So, she cannot plead any violation of principles of natural justice.

c) Finally, learned counsel argued that the writ petition is not maintainable as there is inordinate and unexplained delay of 5 years in filing the writ petition. When such is the case, he argued, the Court will be declined to interfere. On this aspect, he relied upon the decision of this Court in ***P.V.Narayana and others v. APSRTC, Hyderabad and others***^[7]. He thus prayed to dismiss the writ petition.

6) In the light of above divergent arguments, the point for determination is:

“Whether there are merits in this petition to allow?”

7) **POINT:** The admitted facts are that the husband of the petitioner—G.Kanna Rao worked in respondent—company and died in a fire mishap and on the application made by the petitioner for compassionate appointment, the authorities considered it favourably and appointed the petitioner as Attender as per the proceedings dated 14.10.1992 and posted

in Finance Department.

a) Be that it may, the case of the petitioner is that since August, 1994 she suffered mental ill-health and therefore, she sought for leave from 10.08.1994 to 09.09.1994 by letter dated 09.08.1994. As she did not recover from illness, she consulted Dr.B.Dalnaidu on 01.09.1994 and as per his advice to undergo treatment for 'acute psychosis" she underwent treatment from 01.10.1994 to 10.09.1995 and after recovery from the illness she reported to duty on 11.09.1995 and then came to know for first time that she was removed from service on 31.08.1995. Her submission is that in view of her mental ill-health and as there are no elders to look after her, she shifted to her parents' home at Malkapuram, Visakhapatnam. Her contention is that the authorities without considering her application and ill-health conducted *exparte* enquiry without affording an opportunity to submit her case and thus the enquiry proceedings are illegal, unjust and devoid of principles of natural justice.

b) Per contra, the contention of respondent is that petitioner was unauthorisedly absent to duty for more than 13 months from August, 1994 and she did not apply for leave and obtain any sanction and she also did not inform the authorities about the alleged change in address and hence, the authorities were constrained to conduct disciplinary enquiry and pass the removal order which is fully justified in those circumstances.

8) On a careful scrutiny of entire material, I am of the

considered view that the petitioner's case cannot be believed due to various infirmities. Admittedly, the authorities showed good gesture and within few days after the death of her husband they provided compassionate appointment to her on 14.10.1992 and posted her as attender in Finance Department. For nearly two years she worked in the department. As such it can be expected that during this tenure, she must have acquainted himself with the basic rules and regulations relating to the responsibilities of an employee as to how to apply for leave before hand and obtain sanction and how to intimate the authorities when there is a change in the address etc. For two years after the death of her husband, she worked normally and did not suffer any mental ill-health. Surprisingly she claims to have suffered mental ill-health due to the death of her husband only after two years when practically the future of herself and her children was settled by securing a job. Therefore, the alleged mental ill-health is quite unbelievable. It is a different thing if she suffered mental ill-health for a different reason, but she claims that she suffered mental ill-health due to sudden death of her husband only two years after his death. So, at the threshold, the alleged mental ill-health itself is doubtful one. Further, she did not produce any medical record except the photostat copy of certificate purported to be issued by Dr. Dalnaidu in proof of her mental ill-health. Even assuming that she suffered such mental ill-health, nothing prevented her to intimate the said fact to authorities and apply for leave in advance and secure

sanction of leave. There is no material to show that she applied for leave as claimed by her. Herself or atleast her parents or other relations, who very well know that she is a responsible employee in Visakhapatnam Steel Plant, should have applied for leave. Her absence was for a long period of more than 13 months and as such the duty is cast on her to apply for leave or atleast make an intimation to the authorities. She neither applied for leave nor made any intimation about her alleged change in address to her parental home. In this regard, Standing Order 41 of Visakhapatnam Steel Plant reads thus:

“41. Every workman shall notify to the management in writing his address in full and all changes thereof from time to time immediately after such change takes place. The last address shall be deemed to be his correct address for all purposes.”

In the absence of leave and intimation and also the change in address, the authorities were justified in treating her as unauthorized absentee from service and initiating disciplinary proceedings *exparte*. The proceedings were communicated to her old address which was declared by her at the time of entering into service. Since the unauthorized absence was more than one year, the authorities were equally justified in terminating her from service as her unauthorized absence caused any amount of disruption of work.

9) In **N.Udaykumar**'s case (6 supra) cited by the respondent the Apex Court having considered the

unauthorized absence of the respondent for a period of 105 days and also his past conduct, approved the punishment of dismissal from service imposed by the authorities holding that termination is not harsh. The present case is also a similar one. The petitioner cannot clamour that the enquiry was conducted without affording her notice. Thus the enquiry was not devoid of principles of natural justice. As already stated supra, when the petitioner failed to provide her new address she has no legitimate right to blame the authorities for not giving any notice. On the other hand, removal order shows that communication was made by Registered Post about the enquiry sittings to petitioner's home address on 29.05.1995, 14.06.1995 and 13.07.1995. Hence, the question of failure of observing principles of natural justice does not arise.

10) In ***D.K.Yadav***'s case (1 supra) cited by the petitioner, Clause 13(2)(iv) of Standing Order, was to the effect that if a workman was absent to duty without sanctioned leave or beyond the period of leave for more than 8 calendar days, he shall be deemed to have automatically abandoned the services and lost his lien on his appointment and his name shall be struck off from the Muster Rolls in such an eventuality. The contention of the respondent/industry was that expiry of 8 days absence from duty brings about automatic loss of lien on the post and nothing more was needed to be done by the management to pass an order terminating the service and purported termination was automatic. This was found by the

Honourable Apex Court as violative of principles of natural justice. The Apex Court observed that person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It was observed that fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and giving him/her an opportunity of putting forward his/her case. Facts in the present case are quite different. It is not a case where an automatic termination was ensued without hearing the concerned employee after his absence for more than 8 days of completion of leave. In our case the petitioner was unauthorisedly absent for more than 13 months and she failed to give any intimation to the respondent and she also did not provide her alleged new address as per Standing Order 41. In those circumstances, the authorities conducted disciplinary proceedings and also made communications from time to time about the sittings of the enquiry to her old address. So, this decision is of no help to the petitioner.

11) In ***Ch. Prabhakar Rao***'s case (2 supra) the petitioner overstayed after leave due to unforeseen calamities and medical ground. His leave extension application was not rejected by the authorities and in spite of the petitioner producing the medical record, the enquiry officer did not consider the same and enquiry was not conducted in accordance with the procedure prescribed by law. In those

circumstances, it was held that the action of the respondent authorities dismissing the petitioner from service as illegal. The above decision can be distinguished on facts and can be held as not applicable.

12) In ***T.Chiranjeevi***'s case (3 supra) the two writ petitioners were removed from service for their absence for 5 days and 8 days. Our High Court having regard to the facts in that case observed that punishment was shocking to the judicial conscience. It must be held that the said decision has no application to the facts of the instant case.

13) In ***Dulu Devi***'s case (4 supra) the Apex Court observed that mere passing of an order of dismissal or termination would not be effective unless it is published and communicated to the officer concerned. In the instant case, the facts are such that petitioner did not submit her alleged changed address and therefore, the authorities communicated the enquiry proceedings to her old address. Therefore, she cannot complain non-communication of the proceedings.

14) So, at the outset, the action of the respondent in removing the petitioner from service cannot be challenged as illegal or violative of principles of natural justice. Hence the writ petition is not maintainable. For another reason also the writ petition is not maintainable. As rightly argued by learned standing counsel for respondent, the writ petition is filed belatedly 5 years after termination order was passed by the respondent authorities. The petitioner has not submitted any

cogent reason for such a huge and inordinate delay.

15) In ***P.V.Narayana***'s case (7 supra) a Full Bench of our High Court considered the question whether the appeal or revisional authority of APSRTC was justified in declining to entertain the appeal or revision on the ground of inordinate delay. In that context, the Full Bench referred various decisions on the subject and held that issuance of a writ of a mandamus or certiorari is largely a matter of sound discretion and will not be granted if there is negligence or omission on the part of the person who asserts his right. It was observed the burden lies on the workman who has to establish that in spite of his best efforts and diligence, he was prevented from approaching the authority within the period of limitation provided for or the writ Court within a reasonable period of time. If the workman is not able to satisfactorily explain the cogent reasons for the delay he is not entitled to seek for condonation of the delay. In the instant case, as observed by the Full Bench, the petitioner could not show any possible or reasonable cause for inordinate delay in approaching the writ court. For this reason also the writ petition has to fail.

16) In the result, this writ petition is dismissed. No costs.

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

U.DURGA PRASAD RAO, J

Date: 09.06.2016

Murthy

[\[1\]](#) 1993 (3) SCC 259
[\[2\]](#) 2011 (6) ALT 267
[\[3\]](#) MANU/0534/2015
[\[4\]](#) (2016) 1 SCC 622
[\[5\]](#) (1999) 9 SCC 178
[\[6\]](#) (2008) 1 SCC 224

[\[7\]](#) 2013 (4) ALD 386 (FB)