

HON'BLE SRI JUSTICE CHALLA KODANDA RAM
WRIT PETITION No.17905 OF 2009

ORDER:-

The order of removal of the petitioner from the service, vide proceedings No.776/Admn.IV/DC-3/95, dated 29.07.1997, is challenged before this Court.

The grievance of the petitioner is that the very enquiry to remove him from the service was initiated against him on the resolution passed by the Board of Directors. The charge against the petitioner is that he is habitually late and unauthorisedly absent from duty, which is falling within Rule 5 of the Andhra Pradesh Dairy Development Co-operative Federation Limited Conduct, Discipline and Appeal Rules, 1983 (in short "the Rules"). Petitioner was charged under Rule 5 of the Rules in particular sub-rules 7 and 8 of the Rules. In the domestic enquiry the charges were held to be proved. Thereafter, the disciplinary authority based on the enquiry report dismissed the petitioner from the service by issuing the impugned order. Hence, the writ petition.

Learned counsel appearing for the petitioner fervently pleads that the petitioner was taken into service treating his absence as leave, as is evident from the proceedings dated 26.09.1988. Further, learned counsel for the petitioner makes an attempt to challenge the finding of the enquiry report stating that the management witnesses were tutored and there was no opportunity was provided to the petitioner. Learned counsel for the petitioner also submits that for the absence from the duty petitioner had submitted a medical certificate, but the same was not taken into consideration by the management. In the

circumstances, learned counsel for the petitioner prays this Court to direct that the punishment imposed to the petitioner is totally illegal and seeks interference of this Court.

The writ petition is resisted by the learned Standing Counsel appearing for the respondent-A.P. Dairy Development Cooperative Federation Ltd. He raised a preliminary objection that the writ petition ought not to have been entertained at all, as the writ petition came to be filed after 13 years questioning the impugned order. He also further submits that the Rules, in particular Rule 35 (2) provides for an appeal and the petitioner had failed to avail the appellate remedy, apart from that the petitioner was habitual absentee and rightly he was dismissed from service accepting the enquiry report.

Perused the record and after taking into consideration of the respective arguments the Writ Petition does not deserve any consideration and is liable to be dismissed on the simple ground that the petitioner did not avail the appellate remedy though the same is provided under the relevant rules. Even assuming that without the appellate remedy the writ petition can be entertained the fact that the petitioner chose to approach this Court after 13 years does not entitle him for any consideration. As a matter of fact, the writ petition ought to have been dismissed at the admission stage itself but the same came to be admitted in the year 2009. With regard to the proportionality of the punishment, which is sought to be urged by the learned counsel for the petitioner, I am not inclined to enter into that arena as the petitioner did not avail the appellate remedy available to him, wherein the appellate authority could have taken into consideration of the facts on record and reasons why he could not attend the

duty. As this Court is not sitting in appeal over the order of the disciplinary authority there is no possibility of taking a contrary view, especially after a period of 19 years. It is not out of place to mention that the absence of the petitioner from duty is from the year 1998, and the reasons stated in the affidavit for the delay in approaching the Court belatedly is that the petitioner was depressed, which reason is hardly convincing. In other words the petitioner holds an important position i.e., Assistant Dairy Manager, and his absence of duty without intimation and without making alternative arrangements disrupting the entire of the functioning of the Dairy. In the facts and circumstances of the case, this Court does not incline to exercise its discretionary jurisdictional power.

Accordingly, the Writ Petition is dismissed. There shall be no order as to costs. Miscellaneous petitions pending, if any, shall stand closed.

CHALLA KODANDA RAM, J

Date:08.02.2016

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