

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No. 9652 of 2010

Order:

The petitioner joined the service of the first respondent as Record Assistant on 09.09.1985. Thereafter, she was promoted as Junior Assistant in January 1990 and as Senior Assistant in June 1994. She was transferred to AP Residential Junior College, Nagarjuna Sagar, Guntur District, on 15.11.2006. While she was working in the said college, she proceeded on leave from 23.05.2008 to 27.05.2008. Though she states that she extended the leave and reported for duty on 28.08.2009 requesting the respondents to permit her to join duty, she was issued proceedings on 29.08.2009 directing her to explain as to why she should not be deemed to have resigned from service. She submitted an explanation on 02.09.2009 stating that due to medical condition of her husband and family circumstances she could not attend the duties without proper intimation. After submission of explanation, the first respondent addressed a letter to the Secretary to Government, School Education Department, Hyderabad, on 01.10.2009 seeking necessary orders for admission of the petitioner to duty. On her own she also addressed a letter on 04.02.2010. In spite of the same, when no orders were passed permitting her to join duty, the present writ petition was filed on 18.04.2010.

2. A counter affidavit was filed on behalf of the respondents stating that as per G.O.Ms.No.129, Finance Department, dated 01.06.2007, which amended AP Leave Rules 1933, a Government servant shall be deemed to have resigned from service if (a) absent without authorization for a period of exceeding 'one year' or (b) remains absent from duty for a continuous period of exceeding five years, with or without leave; or (c) continues on Foreign Service beyond the period approved by the State Government. Further, it was stated that a

reasonable opportunity to explain the reason for such absence or continuation on foreign service shall be given to the Government servant before invoking the said sub-rule. The said rule is applicable to the respondent society also. It was admitted that the petitioner submitted a representation on 28.08.2009 requesting permission to join duty and based on the report of the second respondent a notice was issued on 29.08.2009. The petitioner submitted her explanation on 02.09.2009. The Government in their letter dated 27.10.2009 rejected the request of the petitioner for admitting to duty and instructed to issue speaking orders to the petitioner quoting Rule 18 of FR and Rule 5-A of AP Leave Rules, 1933. She submitted another representation on 11.02.2010 stating that as per the letter dated 08.02.2010 of the Principal of AP Residential Junior College, Nagarjuna Sagar, Guntur District, the period of her absence was less than one year and requested for permission to join duty. The second respondent, vide letter dated 26.02.2010, was requested to state the reasons for submitting two different reports on the absence of the petitioner. The second respondent furnished the original file of the petitioner maintained in his office. The original file does not contain any valid document to the effect that the petitioner submitted joining report on 09.09.2008 except one representation of the petitioner in which she stated that she could not send any message of her absence and requested for issue of Transfer Certificate to her son. On the basis of the material available on record a further report was sent to the Government and the Government orders were awaited.

3. This Court, by an interim order dated 14.06.2010, permitted the petitioner to join duty, pursuant to which, she was permitted to join duty and has been continuing in service. Today, when the matter is taken up for consideration, none appeared for the respondents and this Court is constrained to dispose of the writ petition on the basis of material available on record.

4. In view of the facts narrated above, the only point that arises for consideration is with regard to regularization of the period of absence of the petitioner and it should be based on the record maintained by the respondents. Now the petitioner cannot be treated to have resigned from service on the ground of her absence, as she was allowed to join duty and continuing in service by virtue of the interim orders of this Court.

5. In the circumstances, the respondents are directed to consider the period of absence of the petitioner, with leave application or without leave application, and regulate the said period in accordance with the Rules applicable to the employees of the first respondent society and allow the petitioner to have the benefits of regular service, subject to the orders to be passed as aforesaid. The orders with regard to her absence shall be passed within a period of six (6) months from the date of receipt of a copy of this order.

6. The Writ Petition is, accordingly, disposed of. However, in the circumstances, no costs.

7. As a sequel thereto, the miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

A.
Date: 24.02.2016
Nsr

RAMALINGESWARA RAO, J.