

THE HON'BLE THE ACTING CHIEF JUSTICE
RAMESH RANGANATHAN
&
THE HON'BLE SMT JUSTICE T. RAJANI

WRIT APPEAL No.412 of 2017

JUDGMENT: (Per Hon'ble the Acting Chief Justice Ramesh Ranganathan)

This appeal, under clause 15 of Letters Patent, is preferred against the order of the learned single Judge in WP. No.35511 of 2016 dated 21.10.2016. The appellant herein is the petitioner in the writ petition wherein he questioned the Memo dated 19.11.2011 issued by the first respondent as illegal, arbitrary and violative of Article 21 of the Constitution of India.

The memo dated 19.11.2011 was passed by the Government informing the appellant that since he was removed from service vide G.O.Ms.No.464 dated 20.11.1996 and G.O.Ms.No.364 dated 10.09.1997, and necessary procedure had been followed while issuing the above orders, the question of issuing posting orders did not arise at this juncture. His representations dated 21.07.1999, 13.08.1987 and 25.01.2011 were disposed of rejecting his claim.

The appellant herein was unauthorisedly absent from duty in two spells, the first from 01.07.1986 to 29.10.1991, and the second from 01.02.1993 to 20.11.1996. On the ground that he had obtained a passport unauthorisedly on 02.05.1986 stating that he was not serving in the Central or State Government and, by doing so, he had obviated the official formalities, (such as obtaining no objection certificate), disciplinary proceedings were initiated against the appellant for giving a false declaration that he was not a Central Government/State

Government employee, as it amounted to cheating the passport authorities, was unbecoming of a Government servant, and was a serious misconduct. A show cause notice was issued to the appellant, and he was offered opportunity of being heard. He submitted his explanation admitting that he had taken a passport stating that he was not a Government employee; and that he had used the passport only for his old age mother, and not for any other purpose, due to ignorance of the rules.

The Government, after careful examination of the matter, issued G.O.Ms.No.464 dated 20.11.1996; and, in exercise of its powers conferred by Rule 9 read with sub-rule 1 of Rule 20 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991, removed the appellant from service with immediate effect subject to the final orders of the Administrative Tribunal. The period of absence of the appellant in two spells was considered by the Government and G.O.Ms.No.364 dated 10.09.1997 was issued treating the unauthorized absence period of the appellant as '*dies-non*' thereby denying him salary for the period.

The petitioner invoked the jurisdiction of this Court seeking a direction that he be issued posting orders. In the order under appeal, the learned single Judge observed that no order was passed either by the State of Telangana or the Andhra Pradesh Administrative Tribunal setting aside the order of removal of the appellant from service; in G.O.Ms.No.364 dated 10.09.1997 also, the first respondent had not set aside the order of removal passed against the appellant vide G.O.Ms.No.464 dated 20.11.1996; and, therefore, there was no

question of issuing any posting orders to the appellant, who had been removed from service way back on 20.11.1996.

Sri G. Allabakash, learned counsel for the appellant, would submit that, since G.O.Ms.No.464 dated 20.11.1996 is referred to in G.O.Ms.No.364 dated 10.09.1997 and Government had merely treated the period of absence as *dies-non*, it must be presumed that earlier orders in G.O.Ms.No.464 dated 20.11.1996 has also been given a go-bye by the Government itself, and that the Government has chosen only to deny the appellant wages for the period of his absence and nothing more. Learned counsel would further submit that no order of removal has also been passed.

We must express our inability to agree. G.O.Ms.No.364 dated 10.09.1997 dealt merely with the appellant's unauthorized absence in two different spells, the first from 01.07.1986 to 29.10.1991 and the second from 01.02.1993 to 20.11.1996 both of which were prior to his removal from service pursuant to G.O.Ms.No.464 dated 20.11.1996. As the punishment of removal from service would come into force only from the date on which G.O.Ms.No.464 dated 20.11.1996 was communicated to the appellant, the Government had necessarily to consider the manner in which the appellant's unauthorized absence from duty, in two different spells earlier, was required to be dealt with. The Government, therefore, issued G.O.Ms.No.364 dated 10.09.1997 treating both the spells as *dies-non* i.e. no work no pay. Thereby the appellant was denied his remuneration for the said period of unauthorized absence. G.O.Ms.No.464 dated 20.11.1996 is the order of removal and, in terms of the notification issued thereunder, the Government of A.P., in exercise of the powers conferred by Rule 9

read with sub-rule 1 of Rule 20 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991, removed the appellant from service with immediate effect. The punishment of removal from service was imposed on the appellant for his having misrepresented facts, and for having obtained a passport stating that he was not a Government servant. Further, he had also not obtained a no objection certificate from the State Government before applying for a passport. The order of removal from service was not passed for his unauthorized absence from duty, but for his having obtained a passport by misrepresenting facts. G.O.Ms.No.464 dated 20.11.1996 is the order of removal from service, and the submission that no order of removal was passed is without any basis.

As has been rightly observed in the order under appeal, by the learned single Judge, in the absence of order of removal and G.O.Ms.No.464 dated 20.11.1996 being set aside either by the State Government itself or by the Andhra Pradesh Administrative Tribunal, the question of the appellant being given posting orders does not arise. The order under appeal does not suffer from any patent illegality necessitating interference in proceedings under clause 15 of Letters Patent.

The appeal fails and is accordingly dismissed. Consequently, pending miscellaneous applications shall stand closed. There shall be no order as to costs.

RAMESH RANGANATHAN, HACJ

T. RAJANI, J

June 1, 2017/DSK