

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.20728 of 2006

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, by the petitioner against Nizam's Institute of Medical Sciences, Hyderabad, ('NIMS', for brevity) and its Director assailing the order, dated 30.06.2001, whereby his services were terminated with effect from 07.01.2000; and, the consequential order, dated 24.05.2006, of the appellate authority confirming the aforesaid orders of removal passed by the Executive Registrar as illegal, arbitrary and violative of Articles 14, 16 and 21 of the Constitution of India and to set aside the said orders and declare that he is entitled to continue in service as usual, i.e., from the date of the termination with entitlement to all consequential benefits.

2. I have heard the submissions of *Sri G.V.Pamana Reddy*, learned counsel appearing for the petitioner and of *Sri G.Anandam*, learned Standing Counsel appearing for the respondents.

3. The case of the petitioner and the submissions made on his behalf, in brief, are as follows:

The petitioner was appointed in NIMS, on regular basis in the year 1989, as Dialysis Technician Grade-III and was posted to Nephrology Department of NIMS, Hyderabad. During the year 1995, he married Smt. C.R.D.Sarada, who is also Dialysis Technician in the same Department. They both were blessed with a son in the year 1996 and a daughter in the year 2003. Nephrology Department of the Institute had four Technicians and as such, two Technicians at a time were never allowed to remain absent. As such, it has become difficult for both of them to proceed on leave for attending their domestic work. Hence, he made an application for his transfer to another department. His father used to reside at Narasaraopet. He was about 70 years old and was

suffering from serious psychic disorders since a long time. In the month of January, 2000, he suffered from several bouts of hysteria. In the circumstances, he and his wife were forced to travel to Narasaraopet to attend on him. On 05.01.2000, he has initially applied for Earned Leave for a period of ten days to go to Narasaraopet for attending on his father. At that time, when he applied for leave, his wife was pregnant. As the health condition of his father started deteriorating, he was forced to extend his leave while staying at Narasaraopet. Further, the wife of the petitioner suffered abortion, on 25.02.2000, and she was advised by the doctors to take complete bed rest for a period of six weeks. Thereafter, NIMS issued telegrams on 11.02.2000, 15.02.2000 and 18.02.2000 calling upon him to attend to duty immediately. On 08.9.2000, NIMS had issued Articles of Charges stating that the absence of the petitioner is unauthorized one. The petitioner submitted his reply denying the charge and gave reasons for his absence. Thereafter, NIMS had appointed Dr.K.T.Reddy as Enquiry Officer, by orders dated 21.10.2000. The Enquiry Officer intimated that the Enquiry would be held on 14.11.2000 and accordingly, he attended the enquiry on 14.11.2000 and explained the circumstances under which he was prevented from attending to duties. He had also stated that since 1998, he has been requesting for his transfer to other Department since the Head of the Department is not granting leave. The Enquiry Officer submitted report on 17.11.2000 and a show cause notice dated 23.11.2000 enclosing the report of the Enquiry Officer was issued to the petitioner. Thereafter, one more show-cause notice dated 06.06.2001 was issued directing him to submit explanation within 15 days. Though he had submitted his explanation, the respondent had passed orders terminating his services, vide orders dated 30.6.2001. He filed an appeal on 01.03.2003 before the Minister for Health, who is the president of the NIMS Executive Board. The said appeal challenging the order of termination of service was not disposed of. Hence, he filed W.P.No.16846 of 2003 before this Court. Since an appeal lies

against the termination orders to the Board, this Court permitted him to file an appeal before the 2nd respondent herein within a period of two weeks from the date of receipt of a copy of the said order and the 2nd respondent was directed to consider the appeal without reference to the delay and pass appropriate orders in accordance with law expeditiously and preferably within two months from the date of filing of the appeal by the petitioner. His appeal was rejected by order, dated 24.5.2006, and the orders, dated 30.06.2001, passed by the Executive Registrar terminating his services, were confirmed. As per the NIMS Employees (Control & Appeal) Rules, which came into force with effect from 28.06.1986, there is a prescribed procedure for conducting enquiry and imposing penalties like removal or termination from service. As per the said procedure, definite charges have to be framed, list of documents have to be furnished to the charged officer, explanation for the charges must be sought for and, if only the explanation is unsatisfactory, contemplation of enquiry will arise by appointing an Enquiry Officer. The enquiry must be duly conducted. Even before the enquiry was conducted for the alleged charge of unauthorized absence, the Disciplinary Authority came to a conclusion to impose punishment of termination from service and indicated that proposed punishment by stating that in case of failure to attend to duties and before the Enquiry Officer, his services will be terminated. The Control and Appeal Rules are thus violated. Except recording the statement of the petitioner, no enquiry was conducted, no material was produced and no witnesses were examined. The report, dated 17.11.2000, cannot be treated as a report of the Enquiry Officer. In the show-cause notice, dated 23.11.2000, enclosing the Enquiry Officer's report, it is once again stated that the services will be terminated and thus the proposed punishment was indicated even before his representation with objections is received by the Disciplinary Authority. The punishment was imposed with retrospective effect from 07.01.2000. None of the grounds and objections were considered by the appellate authority. The services were terminated on

the alleged ground of unauthorized absence. A number of similarly situated persons were reinstated but the petitioner was not reinstated into service. No opportunity of personal hearing was given by the appellate authority. Hence, the writ petition is filed.

4. The case of the respondents, as stated in the counter affidavit of the Executive Registrar of NIMS, is as follows:

The petitioner was appointed as Dialysis Technician on honorary basis in the Department of Nephrology, NIMS, Hyderabad, with effect from 1988. Later, he was appointed as Dialysis Technician on regular basis. While in service, the petitioner applied for Earned Leave for ten days from 05.01.2000 and after expiry of said leave, he did not turn up to duty. On 11.02.2000, NIMS had issued a Telegram to the petitioner asking him to report to duty while informing that leave cannot be extended. But, the petitioner did not report to duty. He was unauthorisedly absent to duties from 05.01.2000 and thereby, he was issued a memo on 05.05.2000 informing that due to the absence, the work in the Department is causing inconvenience and directed to report duty by 15.05.2000, but he did not turn up to report to duty. The post of Dialysis Technician is a key post and the said Technician has a key role in the treatment of Dialysis patients. In NIMS, 50 to 60 number of dialysis will be performed every day round the clock. Therefore, the services of the petitioner are very much required in the NIMS. The absence, particularly, the unauthorized absence of the petitioner, caused great hardship to the Faculty and their colleagues. The Professor and Head of the Department addressed letter, dated 22.01.2000, to the Director, NIMS, stating that the petitioner absented from duties and requesting to take necessary action. Therefore, the management of the NIMS issued a memo calling upon the petitioner to report to duty by 18.02.2000 *inter alia* stating that on his failure to attend to duty his absence would be declared as unauthorized and necessary disciplinary action will be initiated. Before issuing the said memo, two Telegrams, dated 14.02.2000 and

17.02.2000, were issued calling upon him to report to duty. The petitioner submitted a letter, dated 15.02.2000, for extension of Earned Leave for further 30 days. NIMS had again sent a Telegram, dated 26.02.2000, directing the petitioner to report to duty by 22.03.2000 and that sanction of leave will be considered only on his reporting to duty. By telegram, dated 26.02.2000, he was asked to produce a Medical Certificate from a Government Hospital in proof of abortion undergone by his wife to consider his request for sanction of leave. The petitioner neither submitted a medical certificate from a Government Hospital in proof of undergoing abortion by his wife nor reported to duty. Even after expiry of the requested leave, the petitioner did not report to duty. Therefore, NIMS issued to the petitioner, a memo, dated 08.09.2000 and the same was served on 13.09.2000. In the said memo, it is stated that on his failure to report to duty, action will be taken as per the rules. Finally, NIMS had issued a Telegram directing him to report to duties immediately. Even after receipt of the said Telegram, the petitioner did not turn up to attend to duties. The 1st respondent has appointed one Dr.K.T.Reddy, Assistant Professor and Assistant Medical Superintendent, NIMS, as an Enquiry Officer to enquire into the single charge of unauthorized absence of the petitioner. The Enquiry Officer informed the petitioner to attend the enquiry on 14.11.2000. On 14.11.2000, he attended before the Enquiry Officer. He stated before the Enquiry Officer that he and his wife were harassed by the doctors of the Department of Nephrology in the form of demanding work for more time, non appreciation of work, not granting leave and not recommending for promotion. He further stated that his father was sick and bed ridden and therefore, he could not attend to duty at NIMS and that his wife suffered with gynec problems and therefore, also he could not attend to his duties. He stated two conditions before the Enquiry Officer as a condition precedent for joining duties. He stated that he would join duty, but, from January, 2001, and if he is transferred and posted to any other Department

other than Nephrology. After such enquiry, the Enquiry Officer submitted his report, on 07.11.2000. Therefore, a show cause notice was given to the petitioner providing an opportunity of personal hearing and submitting an explanation; and, he was asked to show-cause why a penalty should not be imposed against him for the charges proved. Along with the show cause notice, the copy of the enquiry report was also furnished to him. He having acknowledged the receipt of the report and the notice did not respond to the show cause notice. Therefore, orders terminating his services were passed, on 30.06.2001, by terminating his services with effect from 07.01.2000. He having received the termination orders gave a representation, dated 19.04.2002, with a request to appoint him as Computer Assistant in NIMS. His request was examined and was rejected by orders, dated 23.10.2002. He filed W.P.No.16846 of 2003 questioning his termination. This Court directed by its order, dated 03.03.2006, to file an appeal. Accordingly, he filed an appeal on 03.04.2006. The Board rejected his appeal and he was accordingly informed, on 24.05.2006. The rejection order, dated 24.05.2006, was passed narrating the circumstances leading to termination of services and reasons for rejection of the appeal filed by the petitioner. All the grounds urged in the writ petition are false. The procedure was duly followed while issuing the charge memo and conducting the domestic enquiry by appointing an Enquiry Officer and also in conducting the enquiry. Considering the key post held by the petitioner, he was given an option to report to duty and avoid termination of services. There is no irregularity as alleged in the writ petition. NIMS is a super specialty hospital catering to the needs of the patients from the State and from the neighbouring states. Every day about 2000 patients visit NIMS. If an employee like the petitioner abstains from attending to duty, it causes inconvenience and hardship to the co-employees. The patients who come for treatment to NIMS need high care from doctors and Dialysis Technicians. The absence of the petitioner caused inconvenience to the patients and colleagues

of the petitioner. During the same period, his wife, who is also a Dialysis Technician absented from duty. They both were requested to join duties. But, they did not turn up. Opportunities were given to join duty but he did not turn up. He imposed conditions to join duty. Hence, the writ petition is liable for dismissal.

5. Learned counsel for both the sides advanced arguments in line with the pleadings of the parties, which are stated supra. I have noted the pleadings and the submissions. I have perused the material record.

6. Learned counsel for the petitioner relied upon the decision in Raghbir Singh v. General Manager, Haryana¹, wherein the proportionality of the punishment in service law has been adverted to. This decision was relied upon in support of the alternative contention that punishment of termination of service is disproportionate to the gravity of the charge proved.

7. Before proceeding further, it is necessary to refer to infra the letter, dated 08.9.2000, which contains the charge and the grounds for the charge.

Sub: N.I.M.S, HRD – Paramedical – Sri S M
Basha – Dialysis Tech – Unauthorised
Absence – Charge memo – issued – Reg.

Ref: This office Memo Rc.No.4/ 57/ 89/ H2,
Dt.05.05.2000.

Sri S.M. Basha Dialysis Technician is unauthorized absence from 7-1-2000 and continuously extending leave without any valid reasons. He was informed through reference cited that leave cannot be considered until his joining for duty. He was supposed to join for duty on 18-2-2000 but failed to report for duty from 18-2-2000 onwards in spite of issuing a memo. Due to his unauthorized absence from duty, the work in the department is disturbed. He has violated the Nizam's Institute of Medical Sciences, Conduct rules by keeping himself away from duties unauthorisedly which is causing lot of inconvenience to the routine functions of the dept. His above action constitutes an act of 'MISCONDUCT'.

¹ SLP © No.22487 of 2012 decided on 03rd September 2014 (Supreme Court)

The following charge is framed

Sri S.M.Basha, Dialysis Tech. is unauthorized absent from duty and extending leave without any valid reasons. Whereabouts of him is not known and official communications have been returned undelivered by postal authorities, he has refused to receive an official communication addressed to him.

Grounds of charge

Sri S.M.Basha, Dialysis Tech. is unauthorized absence from 7-1-2000 and extending leaves without any valid reasons. He was informed through reference cited that leave can be considered only on his joining for duty. He was supposed to join for duty on 18-2-2000.

Therefore, he is directed to report for duty immediately and he should submit his explanation in person within [7] days from the date of receipt of this charge memo. In case no explanation is received within the time limit, it will be construed that he has no explanation to offer and his services will be terminated as per rules.

Sd/-
EXECUTIVE REGISTRAR

7.1 To begin with, it is to be noted that even as per the version of the petitioner, he initially applied for Earned Leave on 05.01.2000 for a period of ten days to attend on his father at Narasaraopet, who was said to be suffering from serious psychic disorders and suffered several bouts of hysteria during that period. According to his further contention, his wife was also pregnant and suffered abortion, on 25.02.2000. Having originally applied for leave, on 05.01.2000, for a period of ten days, he kept quiet without reporting to duty either on the expiry of the said leave applied for or thereafter and further failed to seek extension of leave applied for by sending a Telegram or a leave letter by post in advance. NIMS issued three Telegrams, dated 11.02.2000, 15.02.2000, and 18.02.2000 asking him to report to duty immediately. However, he pleads that he issued a Telegram, on 07.02.2000, seeking extension of leave for a period of 15 days. Be that as it may, the management of the NIMS directed him to report to duty immediately by virtue of the above stated telegrams. In the circumstances aforesaid, charge memo, dated

08.09.2000, was issued to him calling upon him to explain his unauthorized absence. Since no explanation was given to the charge memo, an Enquiry Officer was appointed. The Enquiry Officer, by notice, dated 06.11.2000, informed the petitioner that he was appointed as an enquiring authority to conduct enquiry and that the enquiry will be commenced on 14.11.2000 at 2 PM in his chambers in HRD Section, NIMS and that at that enquiry the petitioner will be given full opportunity to adduce evidence in support of his case and that he should appear personally before him. Accordingly, he appeared before the Enquiry Officer along with his wife, who was also facing a similar enquiry on the similar ground of absenteeism during the relevant period. In the leave letters, he has taken a stand that his father was unwell and that his wife had suffered an abortion and was suffering from repeated gynec problems. Without substantiating any of the said contentions by producing medical certificates regarding ill-health of his wife and that of his father, he stated before the Enquiry Officer as follows: 'There was harassment from the senior doctors, namely, Dr. Sherke and Dr. Murthy of the Department of Nephrology. The said harassment is in the form of demanding work for more time, no appreciation for the work, not granting the leave, not recommending his case for promotion and other reasons, which cannot be mentioned by him. He further stated that he is willing to join duty in the month of January, 2001, that too if he is posted to any other Department other than Nephrology.' He *inter alia* submitted that his father is sick and bedridden with paralysis and he and his wife have to look after him at home and therefore, he is unable to attend duties and since both he and his wife are from medical background, they preferred to be at home for taking care of his father and that his wife was having gynec problem. Thus, he offered to join duties under two following conditions: viz., (i) If he is transferred to any other Department from Nephrology and (ii) prepared to join duty from January 2001.

7.2 In a case of this nature, where the petitioner is absent from duties for a very long time without prior sanction of leave and went on extending leave ignoring the telegrams, letters and memos of the authorities to join duty and in the light of the statement imposing conditions made by him before the Enquiry Officer for rejoining duty, the Enquiry Officer was satisfied that the reasons for the absence are not convincing and that the petitioner and his wife mentioned more than one reason, which are not related to each other and that he and his wife are not showing any interest to join duty and they have no fear of losing job and that they imposed conditions for joining duty and therefore, they can be terminated from services, if they do not join duties. On 23.11.2000, a show cause notice was issued by the Executive Registrar, NIMS, informing the petitioner that the Enquiry Officer submitted a report and that the entire period of absence from 07.1.2000 is treated as unauthorized absence and that disciplinary action may lead to termination of service on disciplinary grounds and that their requests before the Enquiry Officer for transfer to other Department are negated and that they may report to duty within 20 days of the receipt of the show cause notice and otherwise, their services will be terminated and extension of leave will not be granted. To the said letter/show cause notice, the report of the Enquiry Officer was enclosed. Again, the petitioner submitted a letter, dated 31.01.2001, seeking transfer to other Department other than Dialysis unit. Therefore, a letter, dated 20.02.2001, was addressed to him and his wife requesting to meet the Executive Registrar. The petitioner did not give any reply to the show cause notice, which was sent along with a copy of the Enquiry Officer's report, and also did not report before the Executive Registrar, as requested in the letter, dated 20.02.2001. Further, on 06.06.2001, another show cause notice was issued to the petitioner by the Executive Registrar stating that it is proposed to award a major penalty under The Nizam's Institute of Medical Sciences Employees (Control & Appeal) Rules, which came into force with effect from 28.06.1986 taking into

consideration the gravity of misconduct; and, before taking a decision on the quantum of penalty, the petitioner was given an opportunity of personal hearing to explain the circumstances as to why penalty should not be imposed against him in pursuance of the said Rules. Thus, by this letter (show cause notice), an opportunity was once again given to make a representation on the penalty proposed to be imposed and to make a representation which the petitioner wishes to make in respect of the penalty that may be imposed. Even for such show cause notice, there was no reply. Therefore, order, dated 30.06.2001, was passed terminating his services with effect from 07.01.2000; and, thus, a major penalty was imposed. He having received the termination orders gave a representation, dated 19.04.2002, with a request to appoint him as Computer Assistant in NIMS. His request was examined and was rejected by orders, dated 23.10.2002. He filed W.P.No.16846 of 2003 questioning his termination. This Court directed by its order, dated 03.03.2006, to file an appeal. Accordingly, he filed an appeal on 03.04.2006. The Board rejected his appeal and he was accordingly informed, on 24.05.2006. The rejection order, dated 24.05.2006, was passed narrating the circumstances leading to termination of services and reasons for rejection of the appeal filed by the petitioner. All the grounds urged in the writ petition are false. The procedure was duly followed while issuing the charge memo and conducting the domestic enquiry by appointing an Enquiry Officer and also in conducting the enquiry. Considering the key post held by the petitioner, he was given an option to report to duty and avoid termination of services. There is no irregularity as alleged in the writ petition. NIMS is a super specialty hospital catering to the needs of the patients from the State and the neighbouring states. Every day about 2000 patients visit NIMS. If an employee like the petitioner abstains from attending to duty, it causes inconvenience and hardship to the co-employees. The patients who come for treatment to NIMS need high care from doctors and Dialysis Technicians. The absence of the petitioner caused inconvenience to

the patients and colleagues of the petitioner. During the same period, the wife of the petitioner who is also a Dialysis Technician absented from duty. They both were requested to join duties. But, they did not turn up. Opportunities were given to join duty; but, he did not turn up. He imposed conditions to join duty. Hence, the writ petition is liable for dismissal.

7.3 Having received the termination orders dated 30.06.2001; the petitioner went on making representations to reinstate or reappoint him on the grounds of generosity and mercy and on humanitarian grounds. But, he was informed that it is not possible to reinstate him. On 01.03.2003, he submitted an application to the Minister concerned who is also the President of the Executive Board of the NIMS to reconsider and revise the orders of termination without preferring an appeal to the appellate authority. Then, he filed W.P.No.16846 of 2003 before this Court. This Court, by its orders dated 03.03.2006, gave an opportunity to the petitioner to prefer an appeal and directed that the appeal may be considered without reference to the delay in filing the appeal. Later, on 03.04.2006, he filed an appeal, i.e., nearly five years after the termination orders. His appeal was rejected by order dated 24.05.2006. Thereafter, he filed the instant writ petition on 24.09.2006. Thus, having applied for Earned Leave for ten days, he did not thereafter report to duty and when called upon by Telegrams, letters and memo to report to duties, sent reply Telegrams and further telegrams and letters seeking extension of leaves and thus, went on seeking extension of leave unmindful of his responsibilities and duties and ignored the charge memo and took inconsistent stands from time to time and also imposed conditions for re-joining duty by stating that he may be posted in another Department and that he would join duty from January 2001 and exhibited a recalcitrant and indifferent attitude by his deliberate unauthorized absence without prior sanction of leave from 07.01.2001 onwards till the termination order dated 30.06.2001. Even after the termination order was passed, he was adamant and was insisting upon for

posting to another Department and ultimately, sought either for his reinstatement or reappointment on the grounds of mercy and generosity. Further, after the belated appeal filed in April 2006 was rejected in May 2006, he filed the instant writ petition challenging that the enquiry was not conducted in accordance with the procedure and that no evidence was adduced before the Enquiry Officer. When it is a case of unauthorized absence from duty without either prior sanction of leave or for any valid reasons, the Department is not supposed to adduce any evidence and it is for the petitioner to adduce evidence in support of his absence and his entitlement for grant of leave. Except making inconsistent statements and imposing conditions for joining duty, he did not produce any medical record of either his wife or his father to substantiate that his absence is on reasonable grounds. In that view of the matter, this Court finds that there is no irregularity or illegality in the conduct of the enquiry warranting interference and that in the facts and circumstances, the respondents are justified in terminating the services of the petitioner and in rejecting the appeal.

8. In the decision in *Chennai Metropolitan Water Supply and Sewerage Board v. T.T.Murali Babu*², the Supreme Court reiterated the legal position in *State of Punjab v. P.L. Singla* [(2008) 8 SCC 469], wherein it was held as follows:

‘Where the employee who is unauthorisedly absent does not report back to duty and offer any satisfactory explanation, or where the explanation offered by the employee is not satisfactory, the employer will take recourse to disciplinary action in regard to unauthorized absence. Such disciplinary proceedings may lead to imposition of punishment ranging from a major penalty like dismissal or removal from service to a minor penalty like withholding of increments without cumulative effect. The extent of penalty will depend upon the nature of service, the position held by the employee, the period of absence and the cause/ explanation for the absence.’

² (2014) 4 Supreme Court Cases 108

In Tushar D.Bhatt v. State of Gujarat [(2009) 11 SCC 678], the appellant therein had remained unauthorisedly absent for a period of six months and further had also written threatening letters and conducted some other acts of misconduct. Eventually, the employee was visited with order of dismissal and the High Court had given the stamp of approval to the same. Commenting on the conduct of the appellant the Court stated that he was not justified in remaining unauthorizedly absent from official duty for more than six months because in the interest of discipline of any institution or organization such an approach and attitude of the employee cannot be countenanced.”

Referring to the two legal principles, the Supreme Court held in the cited decision as follows:

“Thus, the unauthorized absence by an employee, as a misconduct, cannot be put into a straightjacket formula for imposition of punishment. It will depend upon many a factor as has been laid down in P.L. Singla (supra).”

The facts and the ratios in the cited decisions of the Supreme Court squarely apply to the facts of the case. In the case on hand, the petitioner was continuously absent from duty having applied for Earned Leave on 05.01.2000 and till the order, dated 30.06.2001, terminating his services and took indifferent stands without preferring an appeal till April 2006 and at one stage, sought reinstatement or reappointment and after all doors are closed, filed a writ petition and then an appeal and then eventually, the present writ petition. In fact, the petitioner's conduct in not attending to his duties without prior sanction of leave and not reporting to duty despite opportunities given by the authorities is sufficient to draw an inference that he abandoned his services. His unauthorized and deliberate absence from duty for a period of about one and half years and his conduct in filing this writ petition belatedly in the year 2006 after rejection of his appeal, by order dated 24.05.2006, sufficiently justify the penalty of termination from service and in a case of this nature, there is no place for mercy or generosity.

9. On the above analysis, this Court finds that the petitioner is not entitled to any relief in this writ petition and that this writ petition which is devoid of merit is liable for dismissal.

10. Resultantly, the Writ Petition is dismissed.

No costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

20th March, 2017
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