

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.2458 of 2011

Date : 24.03.2017

Between :

V.Hemalatha W/o Keshava Rao, Aged 56 years,
Occu: Trained Graduate Teacher (Hindi),
(now under orders of discharge), Hyderabad
Public School, Ramanthapur, Hyderabad,
r/o. Hyderabad.

..... Petitioner

And

The State of Andhra Pradesh, rep.by its
Secretary, School Education Department,
Secretariat, Secretariat Buildings, Hyderabad
and others.

.....Respondents



The Court made the following:

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ORDER:

Heard Sri Abhinand Kumar Shavili learned counsel for petitioner, learned Government Pleader for School Education for respondent no.1, Sri L.Ravichander, senior counsel, appearing for Sri Sarang Afzulpurkar, counsel on record for respondents 2 & 3.

2. At the relevant point of time, petitioner was working as Head of Department of Hindi. Petitioner applied for leave on 12.12.2007 on medical grounds. On 18.12.2007, petitioner was directed to submit medical reports in support of her request for sanction of medical leave. Accordingly, petitioner submitted required medical reports. From 24.12.2007 to 17.01.2008, school was closed for winter vacation. Since petitioner did not receive any response rejecting her medical leave and as she was suffering from serious ailment and her children are living in United States of America (USA), she left to USA to spend time with her children and to recoup. By order dated 26.12.2007, petitioner leave application was rejected. Though petitioner had gone to USA, she was enquiring from the School Administration over telephone regarding the status of her leave application, but petitioner was not informed of rejection of her leave application. However, having come to know that her leave application was rejected, petitioner cut short her stay in America and returned to India. In the mean time, her mother was seriously sick. Petitioner, therefore, proceeded to village, where her mother was living. Few days later, her mother expired. After completing the rituals, petitioner returned to Hyderabad and reported to duty on 22.02.2008. On 29.02.2008,

charge memo was served alleging that petitioner was absent without sanction of leave from 17.01.2008 to 21.02.2008. On 07.03.2008 petitioner submitted her explanation. On 13.3.2008, petitioner was served with memo directing her to inform the School of her whereabouts after leave application was submitted. Not satisfied with her explanation, domestic enquiry was ordered. On 19.04.2008, an enquiry sitting was held. Petitioner attended the enquiry. Thereafter, on 02.06.2008, order of discharge was passed. Petitioner preferred appeal. Since no orders were passed on appeal, this writ petition was filed. By way of interim order, this Court directed the appellate authority to dispose of her appeal. The appellate authority passed orders rejecting the appeal by order dated 03.09.2011. Challenging the appellate order, amendment of prayer was sought and the same was granted.

3. Learned Counsel for petitioner Sri Abhinand Kumar Shavili made the following submissions:

3.1. Disciplinary proceedings are vitiated as there are serious lacunae in conducting the proceedings, clear violation of the Service Rules and provisions of Andhra Pradesh Education Act, 1982.

3.2. He would submit that false enquiry was conducted and without supplying the copy of enquiry report final order of discharge was passed. The employees of the Public School are governed by the Hyderabad Public Schools' Service Rules, 2002, Hyderabad Public Schools Employees Conduct Rules, 2001, Hyderabad Public Schools Employees Leave Rules, 2001 and Disciplinary and Appeal Rules for the Employees of Hyderabad

Public Schools, 2001. Rule 6 of Disciplinary and appeal Rules prescribes penalties that can be imposed on employees. Rule 8 prescribes procedure for imposing major penalty. The procedure prescribed in Rule 8 is not followed.

3.3. The disciplinary action is not maintainable on the allegation of unauthorized absence from duty. Absence from duty does not amount to misconduct. It can be called as misconduct only in case of deliberate and willful disobedience of the order of competent authority by not attending to duty after leave was refused and absence was willful and deliberate without just cause. In the instant case, petitioner applied for leave on medical grounds. In support of her statement that she was un- well, she has submitted relevant documents. Thus, her absence was neither deliberate nor willful. It cannot be classified as unauthorized absence, as leave application was submitted for grant of leave, and before the commencement of winter vacation and her travel abroad, there was no intimation rejecting her application for grant of leave. Even assuming that she was absent from duty, it cannot be classified as major misconduct warranting disciplinary action and throwing her out of employment.

3.4. He would further submit that according to Rule 15 (ii) of Conduct Rules, 2001, an employee can apply for leave. Ordinarily, the leave applied should be granted. If the authority rejects leave, it must assign due reasons for rejection of such leave application. In the case on hand, it appears an endorsement was made on the leave application as 'rejected', which was never communicated to the petitioner. However, it does not contain reasons for rejection.

He would therefore submit that rejection of leave application was not in accordance with the Rule referred to above and, therefore, absence of the petitioner cannot be treated as unauthorized, more so alleged rejection of leave application was in violation of the statutory mandate.

3.5. He would further submit that by order impugned, petitioner was discharged from service by way of disciplinary action. Rule 6 enumerates penalties that can be imposed. In rule 6, discharge is not enumerated as one of the penalties that can be imposed. As per the explanation appended to Rule 6, discharge of a short time employee is only provided and such discharge does not amount to penalty. No permanent employee can be discharged from service ordinarily and at any rate as a measure of punishment.

3.6. He would further submit that A.P.Education Act is applicable to the respondent-School. Section 79 of the A.P.Education Act mandates obtaining of prior approval before terminating the service of an employee by way of penalty. Even assuming that imposing of punishment of discharge is permissible, no such punishment can be imposed without obtaining prior approval from the competent authority under Section 79 of the A.P.Education Act and admittedly, no such approval was obtained.

3.7. He would further submit that entire events narrated and the perusal of the documents would show that respondent management was pre-determined to punish the petitioner and throw her out of the employment and they were only searching for alibi and illegally petitioner is denied to work. Moreover, the order

of discharge is stigmatic and sticks on the face of the petitioner for the rest of her life.

3.8. He would lastly submit that even assuming that the absence of the petitioner was without sanction of leave, punishment imposed on the allegation of absence, more particularly in the peculiar facts of this case, is excessive and disproportionate and on that ground also, the order impugned is liable to be set aside.

4. In support of the above contentions, learned counsel placed reliance on the following decisions.

- i) **Rajnit Thakur v. Union of India and others**¹;
- ii) **Diddi Rambabu v. Principal, Hyderabad Public School, Ramanthapur and others**² ;
- iii) **K.C.Narayana v. Managing Director, APSRTC, Hyderabad and others**³;
- iv) **Peddireddy Thimma Reddy Farm Foundation, Hyderabad v. District Collector, Ranga Reddy District and another**⁴.

5. Learned senior counsel submitted that even before the leave was sanctioned and without prior intimation or authorization petitioner left to United States. He would submit that merely because school was on vacation, member of teaching faculty cannot automatically assume to be on holiday and proceed abroad. He would further submit that even after reopening of the school, petitioner did not report to duty till 22.02.2008. Since leave applied by the petitioner was not sanctioned, it is deemed that petitioner was unauthorisedly absent and, therefore, disciplinary action was validly initiated. Petitioner is not a new employee and

¹ 1987 AIR 2386

² 1998 (3) ALT 310

³ 2007(5) ALD 416

⁴ 2008(3) ALD 712

was aware of the procedures and rules governing the service. The Rules prohibit an employee absenting from duty without sanction of leave. Admittedly, leave applied by the petitioner was not sanctioned. Therefore, petitioner could not have gone abroad on the only premise that rejection of leave was not intimated to her.

6. On following due procedure, as required, and having considered that it is not desirable to continue the petitioner in service, the order of discharge was passed. He would submit that punishment imposed is in accordance with Rule 6 of the Disciplinary and Appeal Rules. He would submit that disciplinary authority was competent to impose punishment of removal or dismissal. However, in order to impose less severe penalty, petitioner services were discharged. There is no illegality in imposing the punishment of discharge, more so when disciplinary authority was competent to impose higher punishment than one of discharge and when such punishment was imposed after following due procedure, the punishment imposed cannot be nullified.

7. He would further submit that the Public School is not amenable to the control of the Government and A.P.Education Act is not applicable to the respondent school. Thus, there was no requirement to obtain prior consent from the competent authority of the Education Department before discharging the employee from the service and, therefore, the punishment cannot be said as vitiated on that ground. He further submitted that even if what is contended by the petitioner is valid, Section 80 of the Act provides right of appeal to an aggrieved employee. Petitioner ought to have preferred appeal. The right vested in the aggrieved employee under

Section 80 is an efficacious and effective remedy and without availing such remedy, petitioner could not have invoked jurisdiction of this Court. He, therefore, justifies the punishment imposed.

8. As noted above, learned counsel for petitioner raised several contentions in support of the prayer sought in the writ petition. The infirmity in punishment imposed against petitioner is primarily challenged on the ground that punishment of discharge is not prescribed in the disciplinary and appeal rules and, therefore, such punishment cannot be imposed. Further, even assuming that such punishment is validly imposed, in view of the provision in Section 79 of the Education Act, no such punishment could have been imposed without prior approval of the competent authority. For the reasons recorded hereunder, there is merit in the contentions urged by the learned counsel for petitioner. Thus, I am not expressing any opinion on other contentions.

9. Rule 6 of disciplinary and appeal rules enumerate various punishments, which can be imposed on the employees working in Hyderabad Public School. Rule 6 (1)(a) listed out minor penalties and 6(1)(b) listed out major penalties. Punishments that can be imposed range from Censure to that of removal from service. Explanation appended to sub-rule (1) of Rule 6 mentioned what order do not constitute penalty. According to explanation (c), discharge do not constitute penalty. It further holds that person appointed on a short term officiating vacancy caused by the grant of leave, or suspension from service can be discharged and such discharge does not amount to penalty.

10. On a bare perusal of Rule 6 of the disciplinary and appeal rules, it is clear that 'discharge' as 'punishment' is not enumerated. It is also clear from the reading of the Rule 6, except the penalties prescribed there under, no other penalty can be imposed. It is not in dispute that in the instant case, petitioner was discharged as a measure of penalty consequent to the disciplinary action taken against her on the allegation of unauthorized absence. Therefore, discharge is *ex facie* illegal and void *ab initio*.

11. It is axiomatic that disciplinary authority has to function within the four corners of the Disciplinary and Appeal Rules and cannot traverse beyond the said boundaries. It is being a quasi-judicial authority, the exercise of power as disciplinary authority is constrained by the provisions of Disciplinary and Appeal Rules. Thus, while initiating disciplinary action and imposing punishment, procedure as envisaged by the Disciplinary and Appeal Rules have to be strictly followed. Thus, in exercise of power of disciplinary control, he cannot impose any punishment other than the punishment prescribed.

12. In **K.C.Narayana**, the issue of imposing of punishment, which is not prescribed in the Service Regulations governing APSRTC employees was considered. The disciplinary authority imposed punishment of removal from service. Punishment was affirmed by the appellate authority. On a review, reviewing authority modified the punishment and held that the employee should be appointed as Conductor afresh. On review of Discipline and Appeal regulations of RTC and the principles of law, learned

Judge held that no punishment which is not prescribed in the disciplinary and appeal regulations can be imposed. The disciplinary authority has jurisdiction to impose punishment, which is prescribed in the concerned disciplinary and appeal regulations.

13. Further even assuming that the management of the respondent school can cross this hurdle, for the limited purpose of appreciating the contention of the learned senior counsel, the order of discharge impugned in the writ petition, as upheld by the Appellate Authority, is liable to be set aside on the sole ground that the same is in violation of provisions of Section 79 of the A.P.Education Act. Proviso appended to Section 79 (1) of A.P.Education Act mandates that no person can be dismissed/ removed/reduced in rank without prior approval of the competent authority under the Act. In the instant case, admittedly, no prior approval was obtained. Thus, assuming what is contended by the learned senior counsel is accepted, that discharge is nothing but removal or dismissal, such punishment cannot be imposed without obtaining prior approval and, therefore, order impugned is void *ab initio* as the same is hit by Section 79 of the A.P.Education Act.

14. Though, learned senior counsel sought to contend that provisions of AP Education Act are not applicable to Hyderabad Public School, the said contention has no merit in view of the principle laid down by this Court in **Diddi Rambabu**. Having exhaustively considered the issue, learned single Judge of this Court held that Hyderabad Public School is an educational institution under Section 22 of the Act and the School is bound to

comply with the provisions of the Act and Rules made there under (Paragraph 123).

15. It is also appropriate to note that even though, specific contentions were urged by the petitioner in her appeal, without dealing with those submissions, appeal preferred by the petitioner was summarily rejected, affirming earlier decision. The appellate board merely held that the absence of petitioner by proceeding on leave without prior sanction amounts to gross act of indiscipline. The stand of the petitioner that she was sick and, therefore, applied for leave and that she had go to abroad since her children living in USA to take rest and recoup from ailment was not appreciated. Her contention that her absence cannot be treated as willful and deliberate was not discussed. The specific contention urged by her that discharge is not one of the punishments prescribed and punishment other than the punishments enumerated could not have been imposed was not even looked into. There is no discussion on the grounds urged by the petitioner in the appeal and in that view of the matter, the order of appellate authority is not a speaking order and on that ground also it is vitiated.

16. The orders impugned are set aside and it is declared that the petitioner is entitled to all the consequential benefits as if she was in service continuously. The writ petition is allowed. There shall be no order as to costs. Miscellaneous petitions if any pending shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 24.03.2017
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