

* IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

* HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN
AND

* HONOURABLE SRI JUSTICE M. GANGA RAO

+ WRIT PETITION No.37179 of 2013

% Date: 15-12-2017

BETWEEN:

C. Indira, (Clerk< A/c.No.8336274,
O/o. CDA, Secunderabad),
U-7, Sector 'C', AWHO Colony, Bowenpally,
Secunderabad – 500 009.

... Petitioner

Vs.

1. The Union of India, rep. by the Controller General of Defence
Accounts, West Block-V, R.K. Puram, New Delhi -110 066.
2. The Controller of Defence Accounts, Office of the CDA, No.1, Staff
Road, Secunderabad -500 009.

... Respondents

!Counsel for the Petitioner : Ms. T. Bala Jayasri
Nominated by Legal Services Authority
And party-in-person

^ Counsel for the Respondents : Mr. K. Lakshman ASG

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? Cases referred

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HON'BLE SRI JUSTICE M. GANGA RAO

WRIT PETITION No.37179 of 2013

ORDER: (per VRS,J.)

The petitioner, whose application challenging a penalty of removal from service was dismissed by the Central Administrative Tribunal, has come up with the above writ petition.

2. The writ petition was filed by the petitioner as a party-in-person. Subsequently, a counsel was allotted by the Legal Service Authority.

3. We have heard Ms. T. Bala Jayasri, learned counsel nominated by the Legal Services Authority, as well as the petitioner, who was present in Court and who also made submissions. We have also heard Mr. K. Lakshman, learned Assistant Solicitor General appearing for the respondents.

4. The writ petitioner was originally appointed as a clerk in the Ministry of Agriculture in the year 1993 at Delhi. Subsequently, she was appointed in the Ministry of Defence, Hyderabad on 11.04.2000. The petitioner terms the same as a transfer but the respondents claim that she was appointed as a fresh entrant in the Defence Accounts Department at Hyderabad, on her technical resignation from the post to which she was appointed in the Ministry of Agriculture.

5. It appears that the petitioner was sanctioned maternity leave of 135 days w.e.f. 21.07.2004. During that time, she was transferred to the office of the Controller of Defence Accounts, Secunderabad.

6. After the expiry of the maternity leave, she did not join duty, but sought extension of leave. Since she did not specify the kind of leave

required, she was advised to follow the rules. But it appears that she did not. Therefore, her absence was treated as unauthorised absence and disciplinary proceedings were initiated with the issue of a charge memo dated 25.05.2007.

7. An enquiry followed. The petitioner did not attend the enquiry under one pretext or another. Therefore, the Enquiry Officer submitted a report dated 28.12.2007 holding the charges proved. Thereafter, the Disciplinary Authority passed an order dated 12.06.2008 imposing the penalty of removal from service.

8. Challenging the order of removal, the petitioner filed O.A.No.64 of 2011, but the Central Administrative Tribunal disposed of the application on 26.04.2011 directing the petitioner to avail the alternative remedy of appeal.

9. The petitioner preferred an appeal, but the same was rejected by order dated 03.07.2011. Therefore, challenging the said order, the petitioner filed O.A.No.790 of 2011. The said application was dismissed by the Tribunal by an order dated 13.06.2013. Challenging the said order the petitioner is before us.

10. By the charge memo dated 25.05.2007, two articles of charges were framed against the petitioner. They were – (1) that the petitioner was sanctioned maternity leave of 135 days from 21.07.2004 to 02.12.2004 with a direction to report for duty upon expiry of the said maternity leave, but the petitioner failed to report for duty despite several reminders; and (2) that when called upon to explain the reasons for unauthorised absence, the petitioner failed to respond, but left the Headquarters without prior permission of the Competent Authority.

11. Unfortunately, the petitioner did not submit any reply to the charge memo. Therefore, an enquiry was ordered. The Enquiry Officer fixed a preliminary hearing at Secunderabad on 29.10.2007 and communicated the same by registered post acknowledgement due, vide letter dated 10.10.2007. But the petitioner did not attend the enquiry on 29.10.2007.

12. The Enquiry Officer postponed the enquiry to 19.11.2007 and the Daily Order Sheet recording her absence and postponing the enquiry, was communicated to her.

13. But again on 19.11.2007 she failed to turn up. Once again the Enquiry Officer adjourned the matter to 03.12.2007 and sent intimation to the petitioner. Even on 03.12.2007 she did not appear. The Presenting Officer filed documents in support of the charges. Therefore, the enquiry was completed ex parte. The Presenting Officer submitted his presentation on 05.12.2007. Even the Daily Order Sheet dated 03.12.2007 was communicated to the petitioner. Subsequently, the Presenting Officer's brief dated 05.12.2007 was also communicated to the petitioner.

14. In the mean time, the Enquiry Officer received a representation dated 03.12.2007, at about 12.50 p.m., after the enquiry was over, wherein the petitioner expressed her inability to attend the enquiry because of having an infant.

15. But the Enquiry Officer sent a reply dated 05.12.2007 informing her about the conclusion of the enquiry and asking her to submit a representation. Accordingly the petitioner submitted a representation on 17.12.007.

16. After considering the same, the Enquiry Officer submitted a report holding the charges proved.

17. The Enquiry Officer had no alternative but to hold the charges proved, in view of the fact that the petitioner failed either to submit a reply to the charge memo or to appear before the Enquiry Officer and defend herself. All the communications sent by her seeking leave, beyond the period of maternity leave sanctioned to her, did not contain the nature of leave and the period of leave. But she seems to have enclosed some medical prescription advising bed rest. From the communications received, it was also clear that the petitioner shifted her residence to Bangalore, where her husband was employed. Therefore, the Enquiry Officer had no alternative except to hold the charges proved.

18. In the light of the same, the disciplinary authority was also left with no option to impose the penalty of removal from service, not only in view of the charges having been proved but also in view of the failure of the petitioner to participate in the enquiry.

19. It appears that before the Tribunal, the petitioner appeared. More than being apologetic (1) for extending her leave from time to time without justifiable cause; (2) for her failure to reply to the charges; (3) for her failure to appear before the Enquiry Officer; and (4) for her failure to justify the repeated requests for leave, the petitioner seems to have adopted a confrontationist posture before the Tribunal. Therefore, the Tribunal recorded that even while arguing her own case, she maintained that she had no responsibility to indicate the type of leave that she wanted. In that view of the matter, the Tribunal dismissed her Original Application.

20. Even before us, the claim of the petitioner was that for going on maternity leave and for extending the leave due to her ill health and her child's ill health, the respondents could not have imposed the penalty of removal from service. According to the petitioner, she had huge quantum of leave available to her credit and that the respondents could have adjusted the leave taken by her against the leave to which she was eligible.

21. But we are not impressed with the above submissions. A Government Servant is entitled to different kinds of leave. All kinds of leave cannot be available at the same time or in quick succession. As a matter of fact, certain types of leave cannot even be clubbed together. Therefore, it is the duty of the petitioner to have indicated the nature of the leave she applied for.

22. In any case, she has no justification as to why she did not appear before the Enquiry Officer for defending herself.

23. In any case, the petitioner appears to have resigned herself to fate. Apart from the present writ petition challenging the order of Central Administrative Tribunal arising out of her removal from service, the petitioner appears to have filed another writ petition in W.P.No.24277 of 2014 seeking the grant of pensionary benefits. The said writ petition was disposed of by an order dated 26.08.2014 allowing the petitioner to make application under Rule 24. The petitioner seems to have made an application on 29.03.2016 for compassionate allowance. By the proceeding dated 31.01.2017, the Union of India has sanctioned compassionate allowance of Rs.3,500 per month w.e.f., 10.06.2008, on account of the exceptional circumstances mentioned by her. Therefore,

we do not think that we can grant any other relief to the petitioner in the light of such a development. Hence the writ petition is dismissed.

24. As a sequel, miscellaneous petitions pending in this writ petition, if any, shall stand closed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J.

M. GANGA RAO, J.

15th December 2017.
Js



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