

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.26771 OF 2017

ORDER:

This writ petition is filed through GPA stating that the petitioner was joined duty in the year 1993 as Assistant Executive Engineer and was allotted to Irrigation & CAD Department and later he was promoted as Deputy Executive Engineer in August, 2009. Thereafter, he left the country on 16.02.2010 after applying for leave. The petitioner also states that though he handed over leave application to one of his colleagues to submit the same to the competent authority, but the same appears to have not reached the 2nd respondent within time. Thereafter, he fell sick in Canada and could not come back to India within time. He reported to duty on 14.10.2010 before the 3rd respondent and he was issued posting orders and he worked from 14.10.2010 to 31.01.2011. Again he was forced to go to Canada to attend his spouse who was hospitalized and thereafter the petitioner underwent kidney operation. The petitioner again reported to duty before the 3rd respondent and explained the reason for his absence and requested to sanction leave for the said period. The 3rd respondent forwarded the same to the 2nd respondent. Subsequently, the 2nd respondent issued Memo No.Rc/ENC/VC-1/17656/2010, dated 05.10.2013 calling

upon the petitioner to show cause as to why major punishment should not be imposed on him for his unauthorized absence from duty, for which the petitioner submitted explanation on 21.01.2014 stating reasons for his absence and requested the 2nd respondent to issue posting orders. The 2nd respondent issued posting order vide proceedings dated 04.02.2014 and posted the petitioner to Sub-Division No.2, Jagtial of Division No.3, Jagtial of GVC-1, SRSP, Pochampadu, Adilabad District and also directed him to obtain re-posting orders from the 3rd respondent and join duty at the new station. But, the 3rd respondent has not issued re-posting orders to the petitioner. Simultaneously, the 2nd respondent issued Articles of Charge vide Memo dated 04.02.2014 proposing to conduct an enquiry under Rule 20 of the APCS (CC & A) Rules, and called upon the petitioner to submit written statement. In pursuance of the same the petitioner submitted written statement of defence to the said Memo and denied all the charges leveled against him and requested the 2nd respondent to drop further action and to consider his case for voluntary retirement from service. Thereafter, the petitioner is under the impression that the charges leveled against him are dropped and the period of his absence would be regularized in due course of time. Meanwhile, again the petitioner fell sick and he was advised bed rest from

10.02.2014. As such, the petitioner could not report to duty and he has submitted an application dated 05.12.2014 to the 2nd respondent stating that on account of his health problem as well as domestic problems, he is unable to continue any further in service and requested the 2nd respondent for voluntary retirement from service. Thereafter, the petitioner submitted several representations to the 2nd respondent and awaiting orders on his representation for voluntary retirement. But, as the 2nd respondent has not considered petitioner's request for voluntary retirement, the petitioner filed WP.No.10317 of 2017 seeking direction to the 2nd respondent to consider his case for voluntary retirement from service with pensionary benefits, duly regularizing his absence from service as leave and with all other benefits, monetary or otherwise. The said writ petition was disposed of on 24.03.2017 directing the respondents to examine the said request of the petitioner and pass appropriate orders and communicate the same to the petitioner. But the 2nd respondent did not communicate its decision to the petitioner. Meanwhile, the petitioner was forced to leave for Canada to attend his spouse who fell seriously ill and requested the presence of the petitioner immediately. Subsequently, the petitioner was informed by his neighbour in the last week of May that a sealed cover containing proceedings of anti dated

01.05.2017 was received from the 2nd respondent posting the petitioner to Sub-Division No.5, Jainath, Penganga Project Division, Adilabad and also there was a direction to the petitioner to join duty at the new station. As the 2nd respondent ignored the order dated 24.03.2017 passed in WP.No.10317 of 2017 the petitioner got issued a legal notice dated 29.05.2017 calling upon the 2nd respondent to consider the case of the petitioner for voluntary retirement from service in terms of the order dated 24.03.2017 passed in WP.No.10317/2017. After receipt of the said legal notice the 2nd respondent by impugned Memo, by giving anti date as 01.05.2017 issued Articles of Charge and directed the petitioner to submit written statement of defence within one week. Simultaneously the 2nd respondent issued another memo dated 13.06.2017 and directed the petitioner to join duty immediately in Sub-Division No.5, Jainath, Penganga Project Division, Adilabad District and also to submit written statement of defence within 15 days, failing which disciplinary proceedings would be concluded with a major penalty of removal from service without any further notice. Aggrieved by the same present writ petition is filed.

Learned counsel for the petitioner submits that without passing any orders on the application of the petitioner for

voluntary retirement, the impugned memo dated 01.05.2017 was issued followed by Memo dated 13.06.2017 in which it is also proposed that major punishment of removal from service would be imposed and that the 2nd respondent has no jurisdiction to impose major punishment and that the Memo dated 13.06.2017 is without jurisdiction. He also submits that the respondents should have considered the request of the petitioner for voluntary retirement as the petitioner is unable to work, due to ill health or should have imposed punishment of compulsory retirement.

On the other hand learned Government Pleader for Services submits that without obtaining any permission, the petitioner left for another country twice and that the writ petition is filed through GPA. He also submits that petitioner's application for voluntary retirement was rejected on the ground that disciplinary proceedings initiated against the petitioner are pending and the other ground that he has not completed 20 years of qualifying service for grant of voluntary retirement. He further submits that petitioner himself filed application dated 27.02.2017 either to grant permission for voluntary retirement or issue posting orders. Since he is not eligible for grant of voluntary retirement, the respondents have issued posting

orders, but the petitioner instead of joining duty as per posting orders, filed the present writ petition.

In this case it is to be seen that admittedly, petitioner left the country without obtaining permission from the respondents. The 2nd respondent by way of impugned proceedings dated 01.05.2017, informed Articles of Charges to the petitioner and consequently, the 2nd respondent also issued proceedings dated 13.06.2017 directing the petitioner to join duty and to submit written statement of defence within fifteen days, otherwise disciplinary proceedings will be concluded with major punishment of removal from service. But, as stated by the learned counsel for the petitioner, no punishment of removal is imposed against the petitioner in the said proceedings. The petitioner himself asked in his representations either to consider his case for voluntary retirement or to issue posting orders. Petitioner can plead all his defence in the disciplinary enquiry initiated against him and it is for the 2nd respondent to consider the defence of the petitioner. Further, petitioner has not challenged order dated 13.06.2017 rejecting his application for voluntary retirement though it is filed in material papers. In view of the same I do not see any illegality or infirmity in the

impugned orders and I do not see any reason to quash the impugned proceedings issued by the 2nd respondent.

Accordingly, the writ petition is dismissed. No order as to costs.

As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.

11.08.2017
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A.RAJASHEKER REDDY,J

