

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2018

CORAM

THE HON'BLE MRS. V. BHAVANI SUBBAROYAN

W.P.Nos.4440 and 4441 of 2008

and

M.P.Nos.2 & 2 of 2008

1. Dr. Jayant Kumar Shukla ... Petitioner in W.P.No.4440/2008
2. Skandj Ji Pathak ... Petitioner in W.P.No.4441/2008

Vs.

1. The Union of India,
Represented by its Secretary,
Department of Human Resources Development,
New Delhi.
2. The Vice Chancellor,
Post Graduate and Research Institute,
(University Wing)
Dakshina Bharath Hindi
Prachar Sabha Madras,
T.Nagar, Chennai - 17.
3. The Registrar,
Post Graduate and Research Institute,
(University Wing)
Dakshina Bharath Hindi
Prachar Sabha Madras,
T.Nagar, Chennai - 17. ... Respondents(in both WPs)

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the 3rd respondent dated 10.07.2007 and quash the same and consequently reinstate the petitioner with all attendant and monetary benefits.

For Petitioner : Mr.N.A.Nissar Ahmed
(in both WPs)

For Respondent-1 : Mrs.S. Meenakumari,
[Central Govt. Standing Counsel]

For Respondent-3 : Mr.Srinath Sridevan
For Respondent-2 : No Appearance
(in both WPs)

C O M M O N O R D E R

The petitioner has filed these writ petitions seeking to quash the telegram issued by the third respondent/The Registrar dated 10.07.2007 and consequently to reinstate the petitioners with all attendant and monetary benefits.

2.The case of the petitioner in W.P.No.4440 of 2008 is that the postgraduate and research complex is running and managed by Dakshin Bharath Hindi Prachar Sabha Madras, which has been declared by the parliament as an Institution of National Importance by Act 14 of 1964 and it receives grant in aid from the Central Government. The learned counsel appearing for the petitioner would submit that the institution called for 10 posts of Lecturer in Hindi by publishing the same in all dailies and the essential qualification was Ph.D. and 1st or higher 2nd division in post graduation in Hindi and it was informed that preference would be given to candidates having Diploma or Degree in Hindi patrakarita etc., Since the petitioner was M.A. 1st division in Hindi literature and Master's Degree in Mass Communication and Journalism, Doctorate of Ph.D., qualification, apart from J.R.F., S.R.F. and 14 years of teaching experience as research associate (UGC), as such the petitioner was highly and fully qualified to the post of Lecturer in Hindi as called for by the respondents and that the 3rd respondent issued an interview letter, dated 23.03.2007 and the petitioner has also attended the interview on 24.04.2007 and was selected and appointed on 28.04.2007 to the post of Lecturer in Hindi. As per the appointment order, the petitioner has to undergo probation for a minimum of one year and maximum of two years and the services could be terminated by one month prior notice. Appointment order was not communicated and on knowing, the petitioner joined the service and posting was different to the advertised post. The petitioner took charge on 01.06.2007 and he applied for leave from 04.06.2007 and the respondent/Institution has granted 10 days leave and directed him to join duty on 21.06.2007. He was suffering from chest disease and as the doctor advised him to take bed rest from 20.06.2007 to 19.07.2007, the petitioner further sought for extension of leave from 21.06.2007 by submitting the medical certificate. The third respondent declined the petitioner's request and on 29.06.2007, the third respondent sent a communication letter by stating that, if the petitioner is not joined duty by 01.07.2007, his services will be deemed to be terminated on 05.07.2007. The petitioner has received the said communication letter dated 29.06.2007 only on 09.07.2007 and he could not join the duty as per the said communication letter. The said courier cover shows that the same has been sent only in the month of July and not in the month of June. Immediately, the 3rd respondent sent a Telegram to the petitioner on

10.07.2007 stating that "Leave not extended Service Terminated.

3.The petitioner would further submit that the 3rd respondent has not sent any notice of show cause or no opportunity was given to the petitioner and without following the principles of natural justice, the third respondent/The Registrar sent a telegram dated 10.07.2007. Even one month notice as per the appointment order was not adhered before terminating the services of the petitioner. Hence, the petitioner has filed a writ petition before the Hon'ble High Court of Allahabad, in W.P.No.41707 of 2007 for a Writ of Certiorarified Mandamus to quash the order of third respondent dated 29.06.2007 and to direct the respondents not to give effect to the order dated 29.06.2007 and permit him to join duty and the said writ petition was dismissed as withdrawn with liberty to approach the appropriate Forum, by an order dated 03.09.2007. Since the petitioner was bed ridden and advised to be under treatment, he could not join duty and sought for consideration of his case along with permission to join duty and to reinstate him.

4.The petitioner in W.P.No.4441 of 2008 holds M.A. 1st division in Hindi apart from N.E.T.J.R.F. and S.R.F. and he assumed charge on 19.05.2007 and thereafter, he immediately submitted leave application and the same was granted from 24.05.2007 to 24.06.2007 by the third respondent/Registrar. The petitioner sought for leave owing to the sudden death of his grand mother. Subsequently, he fell ill owing to hepatitis and was advised to take bed rest and hence, the petitioner could not join duty by 24.06.2007 and therefore, sought for extension of leave on 23.06.2007. Under these circumstances, the petitioner could not join duty within the stipulated time by 24.06.2007. The petitioner sought for extension of leave and he also submitted medical certificate. The 3rd respondent/The Registrar (University Wing) declined his request and on 29.06.2007 a communication letter was sent by the 3rd respondent, if he did not join duty by 01.07.2006, his services will be deemed to be terminated on 05.07.2007. He has also received the aforesaid communication letter dated 29.06.2007 only on 09.07.2007. It is pertinent to point out that the letter dated 29.06.2007 seems not to have been sent by Registered Post on 29.06.2007 and received by him during the month of July 2007.

5.The learned counsel appearing for the petitioner would submit that on 10.07.2007 received a telegram issued by the third respondent/Registrar stating that "Leave not extended Service Terminated". The petitioner counsel further submitted that no enquiry, was conducted and no show cause notice was served upon him and no opportunity was afforded and without following the principles of natural justice, the 3rd

respondent/Registrar issued order of termination by telegram on 10.07.2007. Even one month notice, as per the appointment order was not adhered before terminating his service.

6.The petitioner counsel further submitted that the petitioner has filed Civil Miscellaneous Writ Petition No.41707 of 2007 against the respondents before the High Court of Allahabad for issuance of Writ of Certiorari to quash the order dated 29.06.2007 passed by the 3rd respondent and for a mandamus directing the respondents not to give effect to the order dated 29.06.2007 and to permit the petitioner to join duty and the above writ petition was dismissed as withdrawn with liberty to approach the appropriate forum by order dated 03.09.2007.

7.The learned counsel for the petitioner further contended that as per the doctors advised the petitioner was bedridden and to be underwent medical treatment and had therefore sought for extension of leave. The 3rd respondent without any notice or enquiry has straightaway passed the impugned order dated 10.07.2007 by telegram that his services had been terminated. Even for rejecting his leave no reason is assigned. In fact the petitioner was made to join unadvertised post and as such no job security.

8.No counter affidavit has been filed by the respondent.

9. It could be seen from the Typed set of papers filed in support of the affidavit filed by the writ petitioners, the respective petitioners were asked to join duty as per the appointment order dated 28.04.2007. From the perusal of the English version of the appointment order, it could be seen that the petitioners' probation period will be minimum one year upto two years and within probation period, they may be terminated prior to one month of notice. It could be also seen from the records that the petitioners joined the duty on 01.06.2007 and immediately after joining the duty, applied for leave on 04.06.2007 and it was also granted ten days by the third respondent and the petitioners were directed to join duty on 21.06.2007. But the petitioners did not join duty till the date of termination, for which the petitioner in W.P.No.4440 of 2008 stated that he was suffered with chest pain and as per the doctors advise, he was taken bed rest and could not join duty; and the petitioner in W.P.No.4441 of 2008 stated that he applied for leave owing to the sudden death of his grandmother and subsequently, he fell ill owing to hepatitis and was advised bed rest and hence, he could not join duty. The petitioners claim that they had sent a letter to the authorities regarding their illness and facts and sought for extension of leave, but the third respondent/Registrar has not issued any letter sanctioning extension of leave.

10. In the courier copy of the Termination Order dated 29.06.2006 issued to the petitioners, the respondent stated as follows:

"After going on leave, you have not informed that when you are joining duty. Due to your absence there is bad effect in the working of Directorate.

It seems to be no interest in your work. Contact immediately or your services will be terminated."

11. From the copy and clean copy of the telegram, which are enclosed at page Nos.6, 7 and 7a, it could be seen that the respondents have sent a telegram to the petitioners, by giving opportunity to the respective petitioners before terminating their services by stating that;

"LETTER RECEIVED NO LEAVE EXTENSION
POSSIBLE WORK SUFFERING JOIN LATEST
BY 10TH JULY THE SERVICES WILL BE
DEEMED TERMINATED OTHERWISE"

Hence the petitioners' allegation that the petitioners have received the above telegram sent by the respondents only on 10.07.2007 cannot be accepted. After receipt of the telegram on 10.07.2007 stating that;

" LEAVE NOT EXTENDED
SERVICE TERMINATED"
on 29.06.2007.

12. The learned counsel appearing for the petitioners would submit that he has no instructions regarding the present status of the petitioners' case.

13. The learned counsel appearing for the respondents would submit that the after receiving the message from the concerned authorities and even after the termination orders were issued by the third respondent/Registrar, the petitioners can approach the authorities in person or by way of giving representations, but the petitioners have not done so. The learned counsel appearing for the respondents would further submit that the petitioners, without giving any representations, have straightaway filed the writ petitions, which is not maintainable and even after filing the writ petitions, the petitioners have not approached the authorities and since there was no interim order passed by this Court, various other persons were appointed in the place of the petitioners.

14. Hence, in view of the above facts and submissions, this Court, without going into the merits of the case, finds that within four days of joining the duty, a person cannot state that he has got disease and could not join duty and even after joining the duty, the person stated that he applied for different post, but he was in different field, which itself would show that the petitioners joined duty without much interest and after that, within four days of joining, they applied for leave. Since the writ petitions latches on merits, this Court is not inclined to interfere with the orders passed by the third respondent.

15. Accordingly, the Writ Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

msm

To

1. The Union of India,
Represented by its Secretary,
Department of Human Resources Development,
New Delhi.
2. The Vice Chancellor,
Post Graduate and Research Institute,
(University Wing)
Dakshina Bharath Hindi
Prachar Sabha Madras,
T.Nagar, Chennai - 17.
3. The Registrar,
Post Graduate and Research Institute,
(University Wing)
Dakshina Bharath Hindi
Prachar Sabha Madras,
T.Nagar, Chennai - 17.

+1cc to M/s.S.Meena Kumari, Advocate SR.No.76320

W.P.Nos.4440 & 4441 of 2008

PM(CO)
GMY(03/05/2019)