

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.19188 OF 2003

ORDER:

The petitioner, who worked as a Manager, filed this Writ Petition being aggrieved by the Proceedings in R.C.No.2500/97.A2 dated 31.12.1998 and R.C.No.1896/2000.Admn.2 dated 08.11.2001 rejecting the petitioner's appeal confirming the removal of the petitioner from service, as illegal and arbitrary.

The case of the petitioner is that he was appointed as a Junior Manager in the year 1980 in Girijan Co-Operative Corporation Limited, Visakhapatnam (for short 'Corporation') and posted at Adilabad. In the month of May, 1981, he was transferred to Kannapuram, West Godavari District. Subsequently, he was posted at Seethampet, Srikakulam District, in the year 1982. In the year 1984, he was posted at C.H.O., Visakhapatnam. While, the petitioner was working at Visakhapatnam, he was issued a charge memo dated 06.04.1998 alleging that he was absconded from duty unauthorizedly from 11.09.1996 and he sent piece meal leave applications dated 01.10.1996, 22.02.1996, 18.11.1996, 11.12.1996, 20.01.1997, 16.02.1997, 16.04.1997 and 09.05.1997 seeking leave up to 30.06.1997 on medical grounds. From 01.07.1997 onwards, he failed to extend his leave and completely stayed away from his duties without informing his whereabouts. The Disciplinary proceedings were initiated against the petitioner by issuing charge memo framing four charges. Petitioner was removed by impugned order dated 31.12.1998 without conducting any departmental enquiry preceded by provisional conclusion orders dated 12.10.1998 concluding that as the petitioner was

unauthorizedly absent from duty, he shall be liable to lose his lien in the appointment unless he resumes to duty within 15 days and personally explains to the authorities the circumstances under which he was absented from duty as per Rule 17 Part-A of Chapter II of the Service Rules of the Employees of Girijan Co-operative Corporation (for short 'GCC'). He was asked to submit his explanation as to why the proposed punishment of removal should not be imposed on him, within 15 days from the receipt of the order, failing which it shall be construed that he has no explanation to offer and provisional conclusion order will be confirmed on the material available on record. The impugned order of termination was passed even without considering his explanation submitted on 08.11.1998 and his request for perusal of the material to enable him to file an appeal was also rejected. The appeal filed by the petitioner was also rejected vide proceedings dated 08.11.2001 confirming the termination order. Being aggrieved by the same, the present writ petition came to be filed.

Sri J.Sudheer, learned counsel for the petitioner, would contend that the petitioner was selected and appointed as a Junior Manager in the year 1980 in the Corporation and posted at Adilabad. Due to frequent transfers, petitioner's health was affected and was admitted in hospital due to Hypertension. When he applied for leave, on medical grounds, the same was sanctioned. However, the petitioner was issued charge memo on 06.04.1998 stating that the petitioner was absconding from duties from 01.07.1997 onwards followed by another notice dated 13.08.1998 of the second respondent asking the petitioner to submit his

explanation to charge memo dated 06.04.1998. The first respondent through proceedings dated 12.10.1998 issued the provisional order concluding to remove the petitioner from services and petitioner was asked to explain as to why the proposed punishment should not be imposed on the petitioner. Based on the same, the second respondent also issued notice dated 07.11.1998 asking the petitioner to submit his explanation as to why he should not be removed from service. Thereafter, petitioner submitted his joining report on 05.09.1998. While he was waiting for further orders, in the month of September, 1998, he was admitted in Intensive Care Unit of CDR Hospital due to breathlessness, hyper tension and chest pain. A letter was sent by the petitioner through special messenger to the General Manager (A) stating that he was in ICU and he could not attend office. Petitioner vide letter dated 03.12.1998 submitted that while undergoing treatment he fell down and his collar bone was fractured and thereby requested for sanction of leave up to 02.12.1998. Along with letter dated 03.12.1998, petitioner submitted medical certificates issued by CDR Hospital, Heart Specialist Dr.Sai Gopal and Bone Specialist Dr.Reddy. Later the petitioner submitted his joining report to duty. But, without permitting the petitioner to join duty, he was finally removed from service by order dated 31.12.1998 without conducting any enquiry in respect of the charge memo dated 06.04.1998 on the ground that the petitioner has not submitted his explanation. The disciplinary authority without considering petitioner's explanation dated 08.11.1998, passed the impugned order dated 31.12.1998 stating that the petitioner has not submitted any explanation,

which shows that the disciplinary authority has not applied his mind to the material evidence on record while passing the impugned order. The impugned order is a non-speaking order. Hence, the removal order is bad in law. Petitioner's request for perusal of the record was also rejected by proceedings dated 17.04.1998 contrary to the Rules, which entitle the petitioner to peruse the records before submitting proper appeal. However, the petitioner preferred appeal. The appellate authority-Board of Directors were influenced by the disciplinary authority-Vice Chairman and Managing Director of the first respondent being a member of the Board of Directors, in rejecting the appeal. The appellate authority by passing a non-speaking order and without considering appeal in its proper perspective rejected the appeal confirming the removal order.

Learned counsel would further contend that the charges framed against the petitioner are vague in nature and are framed without indicating the misconduct committed by the petitioner. Non-mentioning of specific rule or regulation under which the petitioner has committed misconduct, itself is bad in law, for which, the charge memo is liable to be set aside. Petitioner was removed from service preceded by proceedings dated 12.10.1998 wherein the provisional conclusions were arrived that the petitioner's lien on the post should not be cancelled for absenting from duty as per Rule 17 Part A Chapter II of the Service Rules of the Employees of GCC, for which, petitioner submitted his explanation on 08.11.1998, but without considering the same, he was removed from service, which is illegal.

Learned counsel further contends that under Chapter-IV of the Service Rules of the Employees of Girijan Co-operative Corporation Limited, Visakhapatnam, deals with 'Disciplinary, Punishments and Appeal Rules'. As per Rule 3 sub-rule (II) speaks of 'Removal From Service'. Clause (e) thereof stipulates that an employee shall be liable to be removed from service for irregular attendance and clause (f) stipulates for absenting himself or overstaying without sanction of leave without sufficient cause. Section 5 prescribes the 'Procedure to be followed for inflicting punishments as detailed in Appendix-E'. As per procedure, an Enquiry Officer has to be appointed first by the authorized officer. Then, the Enquiry Officer should frame charges containing (1) definite charge or charges (2) for each charge the ground on which the charge is based (3) any other consideration/it is proposed to take consideration to pass in the orders in the case. Thereafter, the delinquent has to submit written statement of defence in his support. After completing the enquiry, as per the Rules and in strict adherence to the principles of natural justice, on submission of the Enquiry Report on different charges, the disciplinary authority on perusal of the enquiry proceedings shall come to a provisional conclusion and record the penalty to be imposed, thereafter a show cause notice has to be issued calling for the explanation from the petitioner along with Enquiry Officer's report. The disciplinary authority having considered the explanation to the show cause notice, independently, has to pass the final order of removal, which shall contain the reasons for such removal. But in the instant case, the removal order does not contain any reasons for inflicting the major punishment of

removal. Under Rule 8, the petitioner is entitled to prefer an appeal against the removal order within 30 days from the date of receipt of copy of the order. As per Rule 8 enumerated under Appendix-E, before submitting the appeal, delinquent employee should be given an opportunity to peruse the documents/records necessary for the purpose of preparing his defence or for preferring the appeal. Accordingly, he should be given opportunity to peruse the records. But, the said opportunity was denied to the petitioner herein and appeal filed by the petitioner was also rejected without assigning any reasons. The order of the appellate authority-Board of Directors suffers from irregularity as the same is passed being influenced by the disciplinary authority-Vice Chairman and Managing Director being a member of Board of Directors. The appellate authority being a *quasi* judicial authority has to pass reasoned order to understand the order on what grounds his appeal was rejected, if aggrieved to prefer writ petition before this Court under Article 226 of the Constitution of India. If no reasons are assigned by the appellate authority, it will be difficult for this Court to exercise the power of judicial review in effective manner. Hence, the appellate order as well as removal order are liable to be set aside.

Per contra, Sri PVV Satyanarayana, learned counsel appearing for respondents, would contend that a charge memo was issued against the petitioner framing four charges and the same was served on the petitioner. As the petitioner failed to submit any explanation to the same, *in spite* of affording several opportunities, an *ex parte* enquiry was conducted. Basing on the same, order dated 12.10.1998 was passed provisionally concluding to remove

the petitioner from the services of the Corporation and also directing him to submit his explanations, to which petitioner had not submitted any explanation. Hence, the disciplinary authority passed removal order dated 31.12.1998. He would further submit that under Chapter II of the GCC Service Rules, Rule 17 states that an employee who is unauthorizedly absent himself from duty shall be liable to loose his lien, unless he resumes to duty within 15 days and personally explains to the authority competent, under what circumstances he was absented himself from duty. As the petitioner could not appear before the competent authority even after receipt of the provisional conclusion order to explain the reasons for his unauthorized absence, the disciplinary authority passed the impugned order. The petitioner preferred appeal and the appeal was also rejected by proceedings dated 08.11.2001. The disciplinary authority being a member of Board of Directors his presence in the Board of Directors would not influence the decision of the Board of Directors, which is appellate authority. Hence, the contention of the counsel for the petitioner that the Board of Directors were influenced by the disciplinary authority, who is the Vice Chairman and Managing Director being a member of the Board of Directors, and at his instance, the appeal was rejected does not merit any consideration. Hence, there are no irregularities and illegalities in passing the removal order and appellate order.

This Court on careful consideration of the evidence on record and considering the rival contentions of the counsel, found that the petitioner was terminated without conducting departmental enquiry, without issuing any show cause notice of removal and

supplying the Enquiry Officer's report to the petitioner. Hence, the termination order is liable to be set aside as held by this Court and Hon'ble Apex Court in a catena of decisions. Even the appellate authority has not considered the appeal in its proper perspective and no reasons were given for dismissing the appeal. The Hon'ble Apex Court held that the orders passed by the appellate authority without assigning reasons are liable to be set aside on the ground of violation of principles of natural justice. Non-giving of reasons for reaching the conclusion by the appellate authority, being the quasi judicial authority, amounts to violation of principles of natural justice. Regulation (3) of the Regulations states that employee should be dismissed from service for the proved misconduct. Sub-rules II (e) and (f) to Regulation 3 enables the respondents to dismiss the employees for irregular attendance and absenting himself or over staying without sanction or leave or without sufficient cause. But, in the present case, petitioner's over stayal is due to medical grounds, which is not disputed by the respondents. When sufficient reasons are shown by the petitioner for his absence by submitting relevant medical certificates, it can be construed that the petitioner has not committed any misconduct of unauthorized absence. The disciplinary authority as well as the appellate authority found that the act of the petitioner in absenting from duty without permission tantamount to misconduct, without holding that the absence of the petitioner from duty is wilful, which is illegal in view of the ratio laid down in ***Krushnakant B.Parmar vs. Union of India***¹, wherein the Apex Court held as follows:

¹ (2012) 3 SCC 178

“ 16. In the case of the appellant referring to unauthorized absence the disciplinary authority alleged that he failed to maintain devotion to duty and his behaviour as unbecoming of a government servant. The question whether “unauthorized absence from duty” amounts to failure of devotion to duty or behaviour unbecoming of a government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances.

17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorized absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization, etc., but in such case the employee cannot be held guilty or failure of devotion to duty or behaviour unbecoming of a government servant.

18. In a departmental proceeding, if allegation of unauthorized absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in the absence of such finding, the absence will not amount to misconduct.”

As seen from the record, the petitioner was not allowed to join duty in spite of submitting medical certificates along with his joining report. Hence, this Court finds that removal of the petitioner from service, even for the proved misconduct, is disproportionate as the petitioner has over stayed the leave on medical ground supported by sufficient reasons of ill-health and it is not a case of fraud or embezzlement of funds.

For the above reasons, the orders passed by the disciplinary authority as well as the appellate authority are liable to be set aside and are accordingly set aside. Petitioner was removed from service on 31.12.1998 and after availing the appeal remedy, he

filed this Writ Petition in the year 2003. At this length of time, this Court feels that the matter could not be remitted back to the disciplinary authority for re-consideration of the issue as the petitioner has also reached the age of superannuation. In these circumstances, this Court feels apt in the interest of justice to direct the respondents to pay *lumpsum* amount, equivalent to 50% of back wages, to the petitioner in *lieu* of his reinstatement with continuity of service and the petitioner is entitled for service benefits.

Accordingly, the Writ Petition is allowed as indicated above. The respondents are directed to complete the exercise of payment of *lumpsum* amount, equivalent to 50% of back wages, to the petitioner within a period of two months from the date of receipt of a copy of this order, to prevent further sufferance of the petitioner financially as well as mentally.

Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

21st August, 2018
sur