THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.25116 OF 2005

ORDER:

Petitioner, who worked as Deputy Manager in the respondent-National Insurance Company Limited (for short 'Insurance Company'), filed this Writ Petition being aggrieved by the orders dated 04.07.2005 sent with covering letter of HRO dated 12.07.12005 of the Chairman-cum-Managing Director and appellate authority whereby the petitioner was made to retire compulsorily and the same was confirmed by the appellate authority, being illegal and arbitrary and set aside the same.

Brief facts of the case are that the petitioner joined in the services of the respondent-Insurance Company as Assistant Administrative Officer in the year 1981. Thereafter, considering her merit, she was promoted as a Deputy Manager, Regional Office, Hyderabad, in the year 1994. While she was working at Regional Office, Hyderabad (for short 'HRO'), she applied for leave on 15.05.2002 and the HRO granted earned leave from 25.06.2002 to 19.10.2002 vide letter dated 14.06.2002. She sought extension of leave from 20.10.2002 to 14.02.2003 vide letter dated 09.10.2002 and the same was sanctioned vide HRO's letter dated 20.11.2002. Before expiry of leave, she sent a fax letter dated 10.02.2003 from USA to HRO requesting to grant six months' leave on medical grounds along with medical certificate dated 02.07.2003 (American date 07.02.2003). The HRO vide letter dated 11.03.2003 sanctioned leave from 15.02.2003 to 03.06.2003 without stating anything about the period from 04.06.2003 to 14.08.2003. Petitioner again sent another letter dated 02.06.2003 requesting extension of leave from 04.06.2003 on medical grounds and loss of pay. In reply to the said request, the HRO sent a letter dated 06.06.2003 stating that her request for extension of leave from 04.06.2003 has not been considered. The said letter was received by the petitioner on 30.06.2003. Immediately, on 01.07.2003, petitioner sent a representation by fax from New Jersy requesting to grant leave for six months as she is unable to report to duty. By letter dated 11.09.2003, the HRO sanctioned leave from 04.06.2003 to 02.09.2003, on medical grounds, stating that while absence from 03.09.2003 is treated as unauthorized and liable for disciplinary action. Letter dated 11.09.2003 was received by the petitioner on 24.09.2003. Immediately, she sent a letter on 24.09.2003 by fax from USA to Assistant General Manager, HRO, enclosing medical certificate dated 06.08.2003 (American date 08.06.2003) and there was a medical advise not to work and requested for extension of leave for six months w.e.f.03.09.2003 on medical grounds, for which, a reply dated 09.10.2003 was sent from HRO granting leave from 03.09.2003 to 09.12.2003 revoking the previous decision taken in letter dated 11.09.2003. In letter dated 09.10.2003, it was stated that leave on loss of pay could not be granted for a period more than 180 days during the entire service. Thereafter, again the petitioner sent a fax from USA on 01.12.2003 requesting leave for six months w.e.f.03.09.2003 to 02.03.2004 on medical grounds since she was advised by the Doctor not to work for a period of 6 months. Till 02.03.2004, petitioner's request was either expressly or impliedly negatived.

While things stood thus, a show cause notice dated 26.02.2004 was sent to the petitioner's USA address by Assistant

General Manager, HRO, to resume duties immediately and called for her explanation as the petitioner remained absent from duties unauthorizedly, though her request for extension of leave was not considered. The petitioner sent a reply on 01.03.2004 by fax explaining the genuine medical ground for remaining absent and seeking leave and a medical certificate dated 04.02.2004 (American date 02.04.2004) was enclosed to her request. No reply was received by the petitioner to her request letter dated 01.03.2004. Thereafter, petitioner received a letter dated 14.06.2004 to her USA address enclosing Memorandum of Charge dated 31.05.2004, which reads as under:

> "Smt.M.Anuradha, Deputy Manager, Hyderabad R.O., absented herself from Office without prior sanction/permission of the Competent Authority from 3.12.2003 to 31.5.2004. Earlier she was on LOP for 182 days from 4.6.2003 to 2.12.2003.
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> Therefore, the act of Smt.M.Anuradha in not attending to her duties from 3.12.2003 to 31.5.2004 without prior permission of the Competent Authority tantamount to misconduct under GIC (Conduct, Discipline & Appeal) Rules, 1975. Her absence in such a manner grossly prejudices the interests of the Company."

Petitioner submitted written statement of defence dated 12.07.2004 denying the charges framed against her, clearly explaining as to how she was not guilty of charges. In spite of her ill-health, she returned from USA and submitted a joining report letter dated 19.07.2004 to the Regional manager, HRO, but she was not allowed to join duty duly endorsing on her letter that 'as per Rules of the employment submit fitness certificate for resuming the duties'. Later on, she submitted joining report on 20.09.2004 along with fitness certificate dated 30.08.2004 and she was allowed to duty. Thereafter, Sri Pillai was appointed as an Enquiry Officer and the on 19.11.2004 the Enquiry Officer submitted report stating that the charges framed against the petitioner for absenting from office without prior sanction/permission from the competent authority from 03.12.2003 to 31.05.2004 in spite of being advised in this regard by correspondences as also consequent abandonment of post in a manner grossly prejudicial to the interest of the Company is proved. To the Enquiry Report, petitioner submitted her explanation dated 07.12.2004 stating that the conclusion of the Enquiry Officer is not correct and without application of mind, without considering her reply. Based on the Enquiry Officer's report, the competent authority (General Manager) passed orders dated 10.12.2004 imposing punishment of compulsory retirement on the petitioner. Petitioner preferred appeal on 18.02.2005 to the appellate authority i.e. Chairman-cum-Managing Director, her appeal was rejected by order dated 04.07.2005. The same was communicated to the petitioner by covering letter ddated 12.07.2005 of the HRO and there is no further appeal or revision. Being aggrieved by the order dated 10.12.2004 and the appellate authority order dated 04.07.2005, the petitioner filed this writ petition.

Sri D.V.Seetha Rama Murthy, learned senior counsel appearing for Sri Aka Venkata Ramana, learned counsel for the petitioner, would contend that the petitioner was originally appointed as an Assistant Administrative Officer in the respondent-Insurance Company. Based on her merit, she was promoted as Deputy Manager and posted at Regional Office, Hyderabad. While working as such, on 15.05.2002 petitioner applied for Earned Leave to accompany her husband to USA. Accordingly, the HRO granted leave from 25.06.2002 to 19.10.2002. Her request for extension of leave was considered on several occasions. On every further occasion, she replied to the letters of the HRO and she sought for extension of leave by enclosing valid medical certificates well before expiry of the leave granted to her. Finally, on the representation of the petitioner dated 09.10.2003, the HRO granted leave from 03.09.2003 to 09.12.2003 revoking the previous decision taken in letter dated 11.09.2003. Through letter dated 09.10.2003, she was informed that leave on loss of pay cannot be granted for a period more than 180 days during the entire service. Petitioner sent a fax letter dated 01.12.2003 requesting leave for three months w.e.f.03.09.2003 to 02.03.2004 on medical grounds, but petitioner failed to receive any letter from the HRO whether leave was granted or rejected. While pending consideration, petitioner applied for voluntary retirement to the respondent-Insurance Company on 19.01.2004. On 26.02.2004, a show cause notice was sent to the petitioners' address by the Assistant General manager, HRO, asking her to resume duties immediately stating that if she fails to resume duties, it will be treated that she remained absent from duties unauthorizedly. She replied vide letter dated 01.03.2004 from USA explaining genuine medical reasons for remaining absent and she submitted her joining report on 19.07.2004 to the Regional Manager, HRO, but she was not allowed to join duty with an endorsement that without a fitness certificate she will not be allowed to resume duties. Accordingly, she submitted joining report on 20.09.2004 with a fitness certificate dated 30.08.2004.

However, Sri Pillai was appointed as an Enquiry Officer. The Enquiry Officer without considering the leave granted to her on medical grounds and she sought for extension of leave on medical grounds, without application of mind and contrary to the rules, submitted Enquiry Report and the competent authority (General Manager) without independent application of mind to the Enquiry Officer's report and the evidence available on record, issued a show cause notice asking her explanation. The competent authority without considering her representation submitted to the show cause notice, imposed punishment of Compulsory Retirement and thereby the petitioner was deprived of service and all pensionary benefits. The appeal filed by the petitioner was also rejected by the appellate authority i.e. Chairman-cum-Managing Director without considering the grounds of appeal in its proper perspective and without giving reasons, which is illegal and arbitrary. Submission of the Enquiry Officer's report and the competent authority's order in imposing compulsory retirement and the order of the appellant authority show the inductive attitude of the respondent authorities. The over-stayal of leave pending extension of leave on medical grounds would not constitute misconduct under Rule 3 (1) of General Insurance (Conduct, Discipline and Appeal) Rules, 1975 (for short 'Rules, 1975). The rule reads as follows:

> 3. General :-
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> (1) Every Employee shall all times:
>
> i. maintain absolute integrity
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> ii. maintain devotion to duty; and
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> iii. do nothing which is unbecoming of a public servant
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> iv. confirm to and abide by these Rules and shall observe, comply with and obey all orders and directions which may, from time to time be given to him, in the course of his official duties by any person or persons under whose jurisdiction, superintendence or control he may, for the time being, be placed;

Learned counsel would further contend that the order of the competent authority does not reflect the consideration of the petitioner's explanation and sufficiency or otherwise before taking a decision to impose punishment of compulsory retirement. Hence, Rule 4 (7) of the GIC (CDA) Rules, 1975, which states that absence without leave or over-stayal of sanctioned leave without sufficient grounds would constitute misconduct. The conclusion reached by the respondents that the petitioner breached the said rule is not legal as the petitioner availed leave on medical grounds and the medical certificates produced by the petitioner are not disputed by the respondents. Learned counsel also contends that the respondents failed to prove 'wilful' absence from duties in proving the alleged misconduct as required under Rule. Even the enquiry report is silent about the wilful conduct of the petitioner for absenting from duties. Hence, the charge and finding of authorities that the petitioner committed misconduct under Rule 4 of Rules, 1975, could not stand for legal scrutiny. Learned counsel further contend that the respondent having sanctioned leave for more than 180 days and allowed the petitioner to join duty after issuance of charge memo, cannot impose severe punishment of compulsory retirement from service on the petitioner for the proved misconduct, which was within the knowledge of the employer. Learned counsel also submits the petitioner was under reasonable expectation that her leave would be granted at a later point of time as was done in earlier occasions and it is a settled proposition that deemed confirmation has to be inferred from the conduct of the employer and in case conduct or act shows to the contrary deemed confirmation cannot be inferred. Having regard to such consistent pattern of conduct, which emerges from the above, inference can be drawn that the application was under consideration and has not been negatived. He would further contend that since the leave obtained was supported by medical certificate, it cannot be said that the petitioner was absent without any sufficient cause. In the absence of any evidence produced by the employer that the medical certificate was not genuine or that the leave application was specifically denied, the charge of wilful unauthorized absence, cannot stand for scrutiny. The punishment of compulsory retirement is harsh and disproportionate to the proved misconduct. He would further contend that the Assistant General, HRO, has issued show cause notice dated 26.02.2004 to the petitioner and sent the same to her address at USA. But, the Assistant General, HRO, is not competent authority to issue show cause notice or initiate disciplinary proceedings under Rules, 1975. Learned counsel would contend that the petitioner has submitted application under voluntary retirement scheme. As she satisfies the conditions in the said scheme, the Regional Manager recommended her case and forwarded the application to Head Office. That being so, the respondents ought to have acted upon the same instead of initiating disciplinary proceedings against the petitioner. Thus, he would finally contend that act of the respondents imposing the punishment of 'compulsory retirement from service' is highly arbitrary and illegal and disproportionate to the proved misconduct. In support of his contentions, learned counsel placed reliance on ***Krushnakant B.Parmar vs. Union of India***[1] and ***Suman Tuteja vs. Hindalco Industries Ltd***[2].

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[1] (2012) 3 SCC 178

Per contra, Sri V.Padmanabha Rao, learned counsel for the respondents, while reiterating the averments of the counter, would contend that leave cannot be claimed as a matter of right as per General Principles governing Grant of Leave in the Organization. The Assistant General Manager, being the Regional Head, is authorized to issue show cause notice to an Officer working in the Region. Since the petitioner has not resumed to her duties even after receipt of charge sheet and letter issued by the competent authority, the Disciplinary Authority after dispassionately and objectively assessing the evidence adduced during the course of departmental proceedings and duly examining the findings of the inquiry officer, imposed the punishment of compulsory retirement on the petitioner and the same was confirmed by the appellate authority in the appeal. He would further contend that the petitioner was extending her leave only with a view to over stay at USA and she had been extending her leave only to have a lien on her job till she succeeds in getting relieved through Special Voluntary Retirement Scheme. Admittedly, the petitioner submitted leave extension petitions subsequent to the date on which she has to attend the Office and she never obtained prior sanctioned leave, which clearly establishes that the petitioner had over stayed from her leave at USA without sanctioned leave and remained unauthorized absence from the office. Just to avail the benefit of SVRS scheme, which is going to be introduced soon, the petitioner went on extending the leave to have a lien on the job. Rule 5 (a) and Rule 4 have no application to the case of the petitioner. As per Rule 12 (d) '*if an employee remains absent*

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[2] (2012) IVLLJ 557 Del

beyond the maximum permissible period i.e. 180 days his/her absence would be treated as unauthorized which as per CDA rules is a misconduct and action may have to be taken in such cases as per CDA rules.' Thus, he would contend that the Disciplinary Authority has followed the procedure prescribed under Rules, 1975 in imposing the punishment of compulsory retirement on the petitioner and the same was confirmed by the appellate authority. He would finally submits that when the findings of the Inquiry Officer and decision of the Disciplinary Authority are based on evidence available on records, this Court cannot act as an Appellate Court to re-appreciate the evidence and come to a different conclusions to that of the Enquiry Officer and even cannot substitute the punishment. Hence, the Writ Petition is liable to be dismissed.

In the facts and circumstances of the case and in considered view of this Court, it is found that the petitioner joined as an Assistant Administrative Officer in the respondent-Insurance Company in the year 1981. In the year 1996, she was promoted as Deputy Manager and posted at Regional Office, Hyderabad. She maintained unblemished record of service and she was never issued any memos, adverse remarks regarding her service and conduct. On 15.02.2002, petitioner applied for earned leave from 25.06.2002 to 19.10.2002 to accompany her husband to USA and the leave was sanctioned by the competent authority. Thereafter, she extended the leave from 20.10.2002 to 14.02.2003 and the same was belatedly sanctioned on 20.11.2002. As the petitioner has undergone medical treatment in USA for Thyroid, Anemia and

Arthralgia, she sought for extension of leave on medical grounds for a further period of six months from 15.02.2003 to 14.08.2003 along with a medical certificate. But, the leave was granted up to 03.06.2003 only. On 02.06.2003, again the petitioner sought extension of leave on medical grounds from 04.06.2003 on loss of pay. Leave was sanctioned from 04.06.2003 to 02.09.2003 on medical grounds. Again the petitioner sought extension of leave for six months from 03.09.2003 on medical grounds stating that the doctor in USA advised her not to work. The respondent sanctioned leave in part for want of competence as the leave sought was beyond 180 days. Again the petitioner sent another letter dated 01.12.2003 requesting leave for rest of the three months on medical grounds. However, the same was not either expressly or impliedly negatived by the respondent. On 01.01.2004, the Central Government introduced a Special Voluntary Retirement Scheme in public sector organizations conferring special benefits to people who seek retirement voluntarily. On 19.01.2004, the petitioner applied for voluntary retirement under the said Scheme to the competent authority-Regional Manager, who recommended and forwarded the same to the Head Office. Pending consideration of the same, on 26.02.2004 a show cause notice was issued to the petitioner by the Assistant General Manager, HRO, who was not the competent authority to initiate disciplinary proceedings under Rules, 1975 of the respondent-Insurance Company. Petitioner submitted a reply dated 01.03.2004 to the show cause notice explaining the genuine medical grounds for remaining absent and seeking leave. The respondents without considering the petitioner's request for grant of leave, sent a letter dated 14.06.2004 to the petitioner enclosing a Memorandum of Charge dated 31.05.2004 stating that petitioner, by her alleged unauthorized absence from duty, has contravened Rule 3 (1) of Rules, 1975 and committed misconduct under Rules 4 (5), 4 (6), 4 (7), 4 (17) and Rule 18 of Rules, 1975. On 19.07.2004, petitioner submitted her joining report to the Regional Manager, HRO, but, she was not allowed to join duty stating that as per Rules of employment, she has to submit fitness certificate for resuming duties. On 20.09.2004, petitioner submitted her joining report along with fitness certificate dated 30.08.2004, upon which, the petitioner was allowed to join duty. An enquiry was conducted for the alleged unauthorized absence of the petitioner and a report was submitted by the Enquiry Officer holding that the charges are proved against the petitioner holding that the petitioner was absent from office without prior sanction/permission from the competent authority from 03.12.2003 to 31.05.2004. On 07.12.2004, petitioner submitted a reply to the Enquiry Officer's report. The competent authority of the first respondent without application of mind and considering the reply submitted by the petitioner on 07.12.2004, without independent application of mind to the Enquiry Officer's report and the evidence available before him, passed orders on 10.12.2004 imposing punishment of compulsory retirement. The petitioner preferred appeal to the appellate authority under Rule 31 of Rules, 1975 and the same was rejected on 04.07.2005 confirming the order of the competent authority.

The appellate authority being a quasi judicial authority, dismissed the statutory appeals, without giving any reasons is a negation of the rule of law. The Hon'ble Apex Court had occasion to deprecate this practice in several decisions more particularly in ***Madhya Pradesh Industries Ltd vs. Union of India***[3] wherein it has been held that if no reasons are given, this Court would be placed under a great disadvantage position to deal with the case under the power of Judicial Review exercising power under Article 226 of the Constitution of India. The Apex Court observed that insisting on disclosure of reasons in support of the order on two grounds; one that the party aggrieved in a proceeding before the High Court or Supreme Court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous, the other is that the obligation to record reasons operate as a deterrent agent possible arbitrary action by the executive authority invested with the Judicial power. Hence, the unreasoned order is liable to be set aside.

Further, in the case on hand, the competent authority as well as the appellate authority mechanically held that the petitioner has committed misconduct under Rule 3 (1) of Rules, 1975. Rule 3 (1) envisages that '*every employee shall all times maintain absolute integrity and maintain devotion to duty*'. The over stayal of the sanctioned leave and the subsequent sanction of leave on medical grounds on loss of pay and unauthorized absence from duty do not amount to failure to maintain integrity and devotion to duty. The question of unauthorized absence from duty by the petitioner or behaviour unbecoming of a government servant cannot be decided without deciding the question whether the absence is wilful or because of compelling circumstances.

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[3] AIR 1966 SC 671

In ***Krushnakant (1 supra)***, the Apex Court held as follows:

> " 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.
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> 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.
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> 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."

Therefore, the finding and charge that the petitioner contravened Rule 3 (1) GIC (CDA) Rules, 1975, cannot be held to be proved.

Rule 4 (7) of the Rules, 1975 states that absence without leave or over-stayal of sanctioned leave constitutes misconduct only where there are no sufficient grounds or proper or satisfactory explanation for such absence. In the case on hand, no such order is passed by the competent authority rejecting the explanation of the petitioner as not being sufficient, proper or satisfactory. The term 'misconduct' should involve the element of 'wilful', but in the present case, the charge framed against the petitioner and the finding of the Enquiry officer only reveal that the act of the petitioner in not attending duties without permission tantamounts to misconduct and there is no whisper about the element of 'wilful' in the acts of the petitioner to prove misconduct.

In the present case also, either the charge framed against the petitioner or the enquiry report are silent about the element of 'wilful' and the department has failed to prove that the absence of the petitioner from duty is wilful. Hence, in view of the ratio laid down by the Hon'ble Supreme Court in ***Krushnakant (1 supra)***, this Court is of the view that the respondents failed to prove the wilful absence on the part of the petitioner, which tantamounts to misconduct envisaged under Rules, 1975. Hence, the charges are held not proved under Rule 4 (5), 4 (6), 4 (7), 4 (17) & 18 of Rules, 1975. Further, the respondents alleged that the petitioner acted in a manner prejudicial to the interest of the respondents Company. But, the respondents failed to demonstrate as to how the act of the petitioner was prejudicial to the interest of the respondents Company.

Further, as seen from the material on record, when the petitioner sought extension of her medical leave, sometimes the respondents sanctioned the leave even after expiry of previous leave with retrospective effect. When that be so, the contention of the petitioner's counsel that the petitioner was under the impression that her leave would be granted, in the absence of any rejection order being passed on her leave, could merit consideration.

In ***Suman Tuteja (2 supra)***, the Delhi High Court held that when the workman has submitted leave application supported by medical certificate, after sanction, it cannot be held that the medical certificate was not genuine. In the absence of evidence produced by Management that medical certificate was not genuine or that leave application was specifically denied, charge of wilful unauthorized absence was not made out. In the case on hand also, the respondent-Insurance Company having accepted the medical certificates produced by the petitioner and having not disputed their genuineness, again cannot take a plea of misconduct on the part of the petitioner.

Further, the punishment of compulsory retirement imposed on the petitioner is disproportionate to the charges levelled against her and is in violation of the principle of proportionality. It is to be noted that even the application of the petitioner for voluntary retirement was pending consideration by the respondent-Insurance Company at the time of initiation of enquiry proceedings. During pendency of the Writ Petition, husband of the petitioner whom petitioner accompanied to USA by applying earned leave, has died. This Court, to subserve the interest of justice, decided to conclude the *lis* instead of remanding the matter to the Disciplinary authority at this long length of time, thereby further extending the petitioner's long drawn agony and miserable life.

For the reasons stated above, the order of the competent authority imposing punishment of compulsory retirement dated 10.12.2004 and the order of the appellate authority dated 04.07.2005 confirming the order of the competent authority are liable to be set aside and are accordingly set aside.

The Writ Petition is allowed directing the respondents to reinstate the petitioner into service with continuity of service and all other attendant benefits. As the petitioner was put to severe hardships and financial troubles by imposing illegal punishment of compulsory retirement, which deprived the petitioner of her remaining service and retirement benefits, to sub-serve the interest of justice, the respondents are further directed to pay 50% of the back wages to the petitioner. The respondents are directed to complete the above exercise within a period of two months from the date of receipt of a copy of this order.

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

(M.GANGA RAO, J)

03.08.2018
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