

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE N.BALAYOGI

+ Writ Petition No.42784 of 2015

% Date: 13-6-2018

Smt. Banothu Pushpa, W/o. Nageswara Rao Naik,
Aged 35 years, Koya Rajahmundry,
Buttaigudem Mandal, West Godavari District

... Petitioner

Vs.

\$ 1. The Registrar (ADMN.), High Court of Judicate at
Hyderabad for the State of Telangana and the
State of Andhra Pradesh, High Court Bldgs.,
Hyderabad-500 066

2. The District Judge, West Godavari District,
District Court Complex, N.R. Peta, Eluru-534 006

... Respondents

! Counsel for the Petitioner: Mr. Y.V. Anil Kumar

Counsel for Respondents 1&2: Mr. Swaroop Oorilla,
Standing Counsel for TAPHC

< Gist:

> Head Note:

? Cases referred:
Nil.

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE N.BALAYOGI

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Order: (per V.Ramasubramanian, J.)

The petitioner has come up with the above writ petition challenging the penalty of compulsory retirement from service.

2. Heard Mr. Y.V. Anil Kumar, learned counsel for the petitioner and Mr. Swaroop Oorilla, learned Standing Counsel for the Registry.

3. The petitioner was appointed as a Field Assistant in the Court of the Junior Civil Judge, Chintalapudi, in October, 2001. She got married to one B.Nageswara Rao Naik, working in the Indian Navy as a Machinist, in February, 2002. Two children were born in the wedlock.

4. But unfortunately, the petitioner's husband seems to have suffered a set back in his health leading to his being confined to bed from February, 2008 onwards.

5. The ill health of her husband and the frequent visits to the hospital, made the petitioner take leave on and off from 24-5-2009. Initially, the petitioner availed medical leave on loss of pay from 24-5-2009 to 24-6-2009. Later, she availed leave from 19-9-2009 to 20-12-2009, from 21-12-2009 to 15-6-2010, from 18-6-2010 to 18-8-2010 and from 19-8-2010 to 31-7-2011.

6. A charge memo dated 09-8-2011 was issued to the petitioner under Rule 20 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991, for unauthorised absence from duty for the period from 19-8-2010 to 05-8-2011. Before the issue of the charge memo, a show cause notice dated 25-5-2011 was issued, but the petitioner did not submit any reply to the same. Therefore, the failure of the petitioner to submit a reply to the show cause notice dated 25-5-2011 was also made one of the charges in the charge memo dated 09-8-2011.

7. In the enquiry that followed, the petitioner pleaded the health condition of her husband and submitted that it was not a case of dereliction of duty.

8. But the Enquiry Officer submitted a report on 25-01-2012 holding that the charges were proved.

9. Enclosing a copy of the enquiry report, the Disciplinary Authority issued a memo dated 31-01-2012 calling upon the petitioner to submit her written representation. The petitioner submitted her written statement of defence on 14-02-2012. Thereafter, the District Judge passed an order dated 13-4-2012 imposing the penalty of removal from service upon the petitioner. However, by a subsequent order passed within three days viz., on 16-4-2012, the penalty was modified into one of compulsory retirement from service with immediate effect.

10. The petitioner filed a statutory appeal on 14-5-2012, but the same was dismissed by the Registrar (Administration) of this Court by an order dated 19-3-2013. Challenging these orders, the petitioner has come up with the above writ petition.

11. The main contention of the learned counsel for the petitioner is that it was not a case of dereliction of duties on the part of the petitioner, but a case of over-stayal of leave, due to the peculiar circumstances in which the petitioner was placed. The only defence taken by the petitioner to the charge was that due to the calamities that struck her in succession, the petitioner was compelled to be on leave and that this aspect has not been considered properly either by the Enquiry Officer or by the Disciplinary Authority or by the Appellate Authority.

12. We have carefully considered the above submissions.

13. There is no dispute about the fact that the petitioner secured employment in October, 2001 and got married in February, 2002. It is the case of the petitioner that her husband who was working as a Machinist in the Indian Navy, got afflicted by a very rare disease attacking his kidneys, heart and lungs, virtually confining him to bed from February, 2008. It appears that to begin with, he was diagnosed with what is called "Deep vein thrombosis" of the left leg, which made him immobile. Since two children were

born in the wedlock and both of them were small kids when the petitioner's husband became ill and immobile, the petitioner found it extremely difficult to balance work and family life. Therefore, she started taking leave from 24-5-2009 onwards.

14. Unfortunately, the health condition of the petitioner's husband became critical in February, 2010 and he had to be hospitalised. He was diagnosed with what was called as "Post urinary junction obstruction" and he was referred to another hospital in Eluru in January, 2011. In that hospital, the petitioner's husband was diagnosed to have deterioration in the right side valves of the heart. Since the facility for treating the said ailment was not available in Eluru, the petitioner's husband was again shifted to Visakhapatnam. In the meantime, the leave sanctioned to the petitioner expired but the petitioner could not join duty.

15. The defence pleaded by the petitioner as narrated above, was not disputed by the Department. No doubt or suspicion was cast upon the plea of the petitioner that her husband suffered a series of set backs in his health.

16. But unfortunately, the Disciplinary Authority did not take note of the defence, at least for the purpose of finding out the proportionality of penalty. 3 parameters should weigh in the matter of imposition of penalty and they are – (i) gravity of the misconduct, (ii) past conduct and

(iii) any extenuating circumstances. But the Disciplinary Authority did not care to apply these parameters.

17. A very curious thing had happened in this case. The original order of penalty dated 13-4-2012 was for removal from service. But within three days, the Disciplinary Authority *suo motu* modified the penalty into one of compulsory retirement by another order dated 16-4-2012. Though the Appellate Authority noted this irregularity, he confirmed the order.

18. What appears to have weighed in the mind of the Disciplinary Authority, for modifying the penalty *suo motu*, were the extenuating circumstances, but he did not record the same.

19. The petitioner is a lady belonging to Lambadi caste, which is classified as a Scheduled Tribe. Within five years of her marriage, she suffered a series of set backs. Therefore, in the absence of any doubt about the defence set up by the petitioner, the penalty of compulsory retirement is highly disproportionate. As a matter of fact, the petitioner joined service only in October, 2001. She started applying for leave from May, 2009. Therefore, the penalty of compulsory retirement imposed in April, 2012, will not make the petitioner eligible for any pensionary benefits. As the total length of service rendered by her from 2001 to 2012, interrupted by a long spell of leave on loss of pay, is not sufficient to make her eligible for pension, the sympathy

purportedly shown by the Disciplinary Authority in converting the penalty of removal from service into one of compulsory retirement, was not fruitful to the petitioner. Therefore, we are of the considered view that the impugned order of penalty as confirmed by the Appellate Authority is liable to be set aside.

20. Once an order of penalty is set aside on the ground of proportionality, the matter should be remanded back to the Disciplinary Authority for a fresh consideration with regard to the penalty that can be properly imposed. But in this case, a long period of time has elapsed. Therefore, we are of the considered view, especially in the light of the fact that the petitioner belongs to the Judicial Ministerial Service, that the petitioner can be imposed some other penalty by this Court itself so that the agony on both sides is terminated.

21. In view of what is stated above, the writ petition is allowed, the impugned orders are set aside and the following directions are issued:

(i) The petitioner shall be reinstated into service within a period of 4 (four) weeks from the date of receipt of a copy of this order;

(ii) The period from the date of order of penalty viz., 13-4-2012 up to the date of reinstatement, shall be treated as not on duty, for all purposes except for counting as qualifying service for the grant of pension;

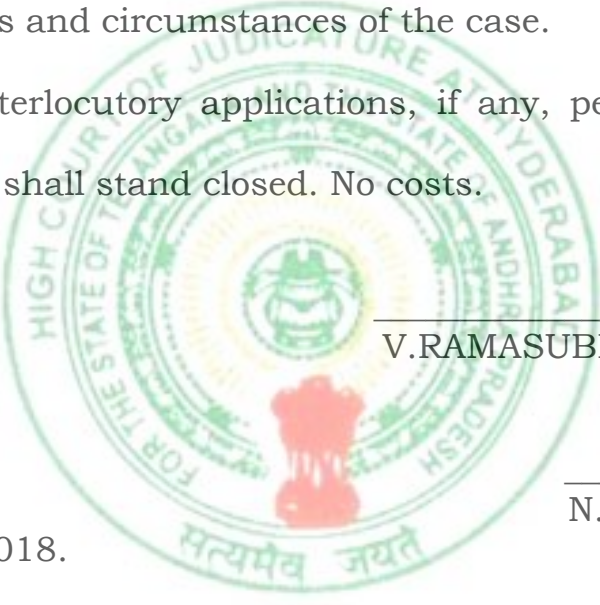
(iii) Upon reinstatement, the petitioner will be fixed at the same stage in the Scale of Pay that she was drawing at

the time of imposition of the penalty and she will not be entitled for the increments during the period from 13-4-2012 up to the date of reinstatement;

(iv) The denial of monetary benefits for the period from 13-4-2012 up to the date of reinstatement and the denial of increments during the said period, shall be treated as adequate penalty for the charge held proved against the petitioner; and

(v) We make it clear that this order is passed in the peculiar facts and circumstances of the case.

The interlocutory applications, if any, pending in this writ petition shall stand closed. No costs.



V.RAMASUBRAMANIAN, J.

N.BALAYOGI, J.

13th June, 2018.
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AND
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Writ Petition No.42784 of 2015
[For Orders - per VRS, J.]



13th June, 2018.
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