

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No. 11125 of 2001

ORDER:

This writ petition is filed seeking *Mandamus* declaring the action of the respondents in issuing the proceedings No. LC1/324/AISC/2001, dated 03.04.2001, rejecting the case of the petitioner for regularization of her services for the period from 19.10.1996 to 16.09.1999 as illegal, arbitrary and discriminatory, violating Articles 14 and 16 of the Constitution of India.

2. The petitioner was initially joined in respondent No.2- Corporation at Hyderabad, on daily wages on 17.08.1987 and promoted as Tracer-cum-Blue Print Operator in the time scale by order dated 18.05.1991 by Proceedings of respondent No.2. Later she was also promoted as Draughtsman Grade-III by order dated 27.01.1995. While so, one A.V.S. Kranthi, who was working in the office of respondent No.1 was transferred to respondent No.2 - Society and earlier to her transfer, one V.Indumati, who was initially appointed and working in the District Scheduled Caste Service Co-operative Society Limited, West Goldavari District, was transferred to Hyderabad. As stated, the said Kranthi was also transferred to Hyderabad from

West Godavari District. With these transfers, there are three Draftsmen in respondent No.2 society.

3. As the things stood thus, opining that there was no work load, respondent No.2, had issued proceedings dated 18.10.1996 by treating the petitioner as surplus in the Society and arbitrarily, placed her at the disposal of the Secretary, APSWER & I Society and transferred to West Godavari Branch, where the said AVS Kranthi worked earlier. Challenging the same, the said Indumati and the petitioner herein filed separate writ petitions in WP No.9395 of 1996 and WP No.25871 of 1996 respectively before this Court and this court by a common order dated 14.09.1997 was pleased to direct the respondents therein to continue the petitioner herein at Hyderabad District Society. However, the respondents therein preferred appeals in WA Nos.1180 of 1997 and 35 of 1998 and this Court by common order dated 17.04.1998 dismissed the appeals giving liberty to the respondents therein to effect transfers to take stock of the fresh situations or exigencies that may arise in future. Pursuant thereto, the petitioner herein submitted her joining report on 06.05.1998. The respondents herein instead of permitting her to join duty, directed her to report before APSWER & I Society. Challenging the same, the petitioner herein again approached this Court by filing a writ petition in WP No.33030 of 1998 wherein this Court initially granted interim

directions and later dismissed the writ petition by order dated 16.02.1999 and that she preferred an appeal in WA No.327 of 1999. During pendency of the appeal, the appellants, who are respondents herein passed orders to the effect that the said Indumati was repatriated to her parent department i.e., DSCSCS Limited, West Godavari and the petitioner herein was allowed to work at Hyderabad Division, where she was initially appointed. In view of the same, the writ appeal was disposed of by order dated 01.09.1999, giving liberty to the petitioner herein to make a representation to the authorities and as such, the respondents shall consider the same within one week from the date of that order. Thereafter, the petitioner submitted her joining report on 10.09.1999 and respondents herein issued proceedings dated 14.09.1999 giving posting to the petitioner in the office of the Deputy Executive Engineer, Social Welfare, Hyderabad and she joined duty on the date of proceedings.

4. The petitioner made a representation to the respondent authorities to treat the period from 18.10.1996 to 10.09.1999 as on duty and to grant annual grade increments. When her request was not considered, she approached this Court by filing a writ petition in WP No.4566 of 2001, wherein this court by order dated 15.03.2001 disposed of the same directing the respondents to consider the case of the petitioner and pass appropriate orders within three weeks.

5. The grievance of the petitioner in this writ petition is that in spite of the orders of this Court in WP No.4566 of 2001, the respondents herein rejected her claim of regularization of the period from 19.10.1996 to 16.09.1999 (both days inclusive) by treating it as Dies-Non i.e, no work no pay. In view of the same, the said period does not count for the purpose of increments and she can get her pay fixation under A.P.Revised Pay Scales, 1999 for all monetary benefits. Aggrieved by the same, the present writ petition is filed.

6. Heard Sri M.Surendra Rao, learned counsel for petitioner and Sri M.Yadav Reddy, learned standing counsel for respondents.

7. The learned counsel for the petitioner would submit that the respondents authorities without following due process of law and issuing any notice nor opportunity to the petitioner, passed the impugned order which is contrary to the law laid down under Service Rules and that therefore, the impugned proceedings are liable to be set aside.

8. On the other hand, learned Standing Counsel for respondents would submit that since the impugned order was passed pursuant to the order of this court dated 15.03.2001 in WP No.4566 of 2001, the point of giving opportunity to the petitioner does not arise at all and no illegality or irregularity committed by the respondents in this regard.

9. Perused the material on record and the impugned order.
10. The first and foremost point raised by learned counsel for the petitioner is that the respondents-authority did not follow the due process of law and no opportunity was given to the petitioner, while passing the impugned order. Now it requires to appreciate Rule-18 of the Fundamental Rules, which reads thus:

F.R.18. Unless the Government in view of the exceptional circumstances of the case otherwise determine, no Government servant shall be granted leave of any kind for a continuous period exceeding five years.

Note 1:- willful absence from duty nor covered by grant of any leave will be treated as a "dies-non" for all purposes viz., increment, leave and permission.

[Note 2:- Extraordinary leave to the extent of 36 months shall count as qualifying service when taken on M.C. or due to inability to join or rejoin duty on account of Civil Commotion. If the E.O.I. is availed for prosecuting higher scientific and/or technical studies such leave will count as qualifying service to the extent of 36 months, provided the Government Servant serves the Government for at least 36 months after completing the studies.

Note 3 :- Interruption between two or more spells of service shall be treated as automatically condoned without any formal orders of the sanctioning authority, excluding however, the periods of interruption themselves.]

Note 4:- In all cases of unauthorized absence to duty for a continuous period of exceeding "one year", the penalty of removal from service shall be imposed on the Government employee, after duty following the procedure laid down in the Andhra Pradesh Civil Services.

11. A perusal of the above rule position, as per Note-4 of F.R.18 of the A.P.Fundamental Rules, discloses that penalty of removal from service would be imposed if any government employee unauthorisedly absent from duty for a continuous period of one year. In the instant case, the contention of the learned counsel for the petitioner that respondents ought to have at least given notice or opportunity to the petitioner before issuing the impugned proceedings. The petitioner on one pretext or the other, has been roaming around this court to pursue the legal remedies since decades. When one person is pursuing legal remedies before the court of law, it cannot be permitted to term as a willful absence and treating the period as dies-Non. Admittedly, the respondents passed the impugned proceedings, only at the intervention of the court order dated 01.09.1999 and that the respondents cannot take the plea that the petitioner was absented to duties for the period for which she was absent.

12. Having considered the rival contentions of both the parties, this court is of the view that passing of the impugned order is violative of principles of natural justice and against the rules contemplated under law. In view of the same, to meet the ends of justice, the respondents are directed to consider the case of the petitioner to regularize the period of her absence from 19.10.1996 to 16.09.1999 (both days

inclusive) as in service for all purposes. the same is liable to be set aside.

13. With the above observations, the writ petition is disposed of No costs.

14. Miscellaneous Petitions, if any, pending in this writ Petition shall stand closed.

ABHINAND KUMAR SHAVILI, J

6th September, 2018
Mjl/*



427

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILIWRIT PETITION No. 11125 of 200106.09.2018

MJI/*