

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO**

WRIT PETITION No.39130 OF 2018

ORDER : (Per Hon'ble Sri Justice M.Ganga Rao)

The Union of India and its officials, who are respondents in O.A.No.733 of 2018 on the file of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad, filed this Writ Petition, being aggrieved by the order dated 14.08.2018 passed therein, whereby the Tribunal directed them to allow the respondent to re-join duty, permitting him to refund the benefits received pursuant to his voluntary retirement, if any, within 30 days from the date of the order, and also held that the respondent was not entitled to salary or other monetary benefits for the period he was not in service but the said period shall be taken into account for his pensionary benefits.

Brief facts of the case are that the respondent herein while working as Assistant in Regional Passport Office, Hyderabad, applied for Voluntary Retirement on 01.01.2015 under Rule 48-A of CCS (Pension) Rules, 1972, on health grounds and the same was accepted by the Ministry vide letter dated 17.02.2015. The respondent stood relieved of his duties w.e.f.31.03.2015 as per Rule 48-A of CCS (Pension) Rules, which states that the Government Servant who has completed 20 years of qualifying service may issue notice of not less than three months in writing to the competent authority to avail retirement from service. He was issued an Office memo dated 31.03.2015 to surrender the Government belongings, which he complied with. When the respondent was not paid pension and pensionary benefits, as per

his entitlement, he submitted representations dated 04.11.2015, 08.01.2016, 10.03.2016 and 24.08.2016, but in vain. He also submitted representations dated 24.08.2016 and 14.09.2017 requesting the petitioners to allow him to join duty. Then, vide order dated 02.05.2018, the respondent was informed that due to shortfall in the mandated minimum qualifying service of 20 years required for eligibility for pension and pensionary benefits as per CCS (Pension) Rules, his request for reinstatement into Government Service was not acceded to. The said order was assailed by the applicant before the Tribunal. The Tribunal, vide impugned order, allowed the O.A. Aggrieved by the same, the petitioners filed this Writ Petition before this Court.

Sri K.Lakshman, learned Assistant Solicitor General of India, would contend that the respondent without properly verifying as to whether he had completed 20 years of qualifying service, submitted application for Voluntary Retirement. However, without proper verification, the same was accepted by the petitioners on 31.03.2015, contrary to Rule 48-A of CCSS (Pension) Rules, and the same came to light in the month of May, 2018, when his pension papers were being processed. It further came to light that he was unauthorizedly absent from duty for long periods on two occasions, due to which he fell short of the required qualifying service for grant of pension and pensionary benefits as per Rule 48-A (4) of CCS (Pension) Rules and the same was informed to the respondent on 02.05.2018. He would further contend that the respondent remained absent unauthorizedly from duties from 04.09.2006 to 07.09.2007 (1 year 3 days), from 11.09.2007 to 17.09.2007 (4 days) and from 20.09.2007 to 11.12.2008 (1 year 2

months and 21 days), for which a departmental enquiry was conducted wherein he was found guilty and he was imposed the major penalty of reduction to a lower stage, vide proceedings dated 03.04.2013. Though the same was confirmed in appeal, the Tribunal set aside the same in O.A.No.1278 of 2013 against which the petitioners preferred W.P.No.28888 of 2015 and the same is pending before this Court, without any interim orders being passed therein. He would further contend that during the period of unauthorized absence, the respondent had also travelled abroad for a period of 14 days, which was confirmed by the Bureau of Immigration, without prior approval of the competent authority and the same was in violation of CCS (Conduct) Rules, 1964, and disentitled the respondent for pension and service benefits. His further contention is that the respondent's unauthorized absence for 1 year 2 months and 21 days was considered as *dies non*. However, the Tribunal on an erroneous appreciation of facts and law held that the authorities are under obligation to verify before accepting the respondent's application for voluntary retirement under Rule 48-A as to whether he had put in qualifying service of 20 years and acceptance of the respondent's application for voluntary retirement itself is not valid. Further, the Tribunal wrongly placed reliance on the decision rendered by the Hon'ble High Court of Tripura in Hariprada Chowdhary vs. State of Tripura & Others [W.P.(C) No.53 of 2016], which is not applicable to the present case and allowed the O.A. directing the petitioners to allow the respondent to rejoin duty, in spite of specifically observing that by virtue of the provisions of Rule 48-A strictly speaking once an application for voluntary retirement is made by the applicant

and the same has been accepted by the competent authority, it becomes irrevocable.

Per contra, Sri K.Sudhakar Reddy, learned counsel for the respondent, would contend that the respondent submitted an application for voluntary retirement and the petitioners accepted the same on 17.02.2015; asked the respondent to surrender the Government belongings and the same was complied with by the respondent. When the respondent was not paid pension and pensionary benefits, as per his entitlement, he requested to allow him to join duty. However, his request was rejected by proceedings dated 02.05.2018 on the ground of unauthorized absence, for which punishment was imposed on the respondent and the same was set aside by the Tribunal. Hence, the Tribunal rightly allowed the O.A. directing the petitioners to allow the respondent to re-join duty by following the decision of the High Court of Tripura in *Hariprada Chowdhary (supra)*.

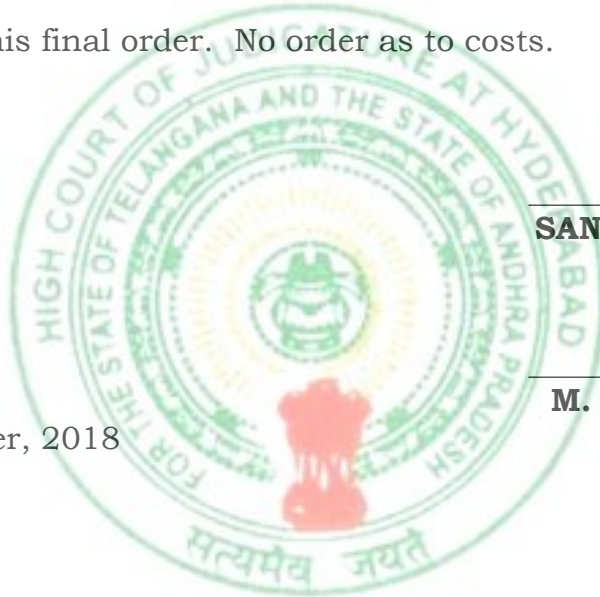
Having heard the learned counsel and considered the rival contentions, we find that the rejection of the respondent's request for reinstatement to duty by the proceedings dated 02.05.2018 by the competent authority was rightly set aside by the Tribunal. We are of the considered view, in the facts and circumstances of the case, that the action of the petitioners in accepting the respondent's application for voluntary retirement without proper verification and the subsequent rejection of the respondent's request for reinstatement to duty by the proceedings dated 02.05.2018 is wholly illegal and contrary to Rule 48-A of CCS (Pension) Rules. It was for the petitioners, being the lawful authorities concerned, to critically examine the respondent's

application for voluntary retirement and had they done so in right earnest, they would have immediately realized that he was ineligible to avail such voluntary retirement as he did not have the requisite qualifying service. They cannot therefore take advantage of their own lapses and penalize the respondent. Hence, the order of the Tribunal does not suffer from any error of fact or law warranting interference under Article 226 of the Constitution of India.

The Writ Petition is accordingly dismissed.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

15th November, 2018
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SANJAY KUMAR, J

M. GANGA RAO, J