

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

WRIT APPEAL NO.1644 OF 2018

J U D G M E N T
(Per Sri Justice Sanjay Kumar)

Telangana State Education and Welfare Infrastructure Development Corporation, Hyderabad (TSEWIDC), the successor-in-interest of the Andhra Pradesh Scheduled Castes Finance Corporation, Hyderabad (APSCFC), the first respondent in W.P.No.11125 of 2001, is the appellant. The said writ petition was filed by the first respondent herein assailing the proceedings dated 03.04.2001 of the Vice-Chairman and Managing Director of the APSCFC rejecting her claim for regularization of the period from 19.10.1996 to 16.09.1999 and treating the same as '*dies-non*'. She sought a further declaration that she was entitled to get her services during the said period regularized. By order dated 06.09.2018, a learned Judge of this Court disposed of the writ petition, being of the view that the impugned proceedings were passed in violation of the principles of natural justice and against the rules. The learned Judge directed the authorities to consider the case of the petitioner for regularization of the period of her absence from 19.10.1996 to 16.09.1999 (both days inclusive) and to treat the same as in service for all purposes. Aggrieved by these directions, the present appeal was preferred by the successor-in-interest of the APSCFC, viz., the TSEWIDC.

The first respondent-writ petitioner joined the service of the APSCFC in 1987. While working as a Draughtsman Grade-III, she was treated as surplus and placed at the disposal of the Secretary, Andhra Pradesh Social Welfare Residential Educational Institutions Society (APSWREI Society). Aggrieved thereby, she filed W.P.No.25871 of 1996.

The said writ petition was taken up along with W.P.No.9395 of 1996 filed by another employee and by common order dated 14.09.1997, a learned Judge of this Court took note of the submissions made and opined that the solution would be to direct the authorities to transfer the petitioner in W.P.No.9395 of 1996 in the place of the first respondent-writ petitioner at APSWREI Society and to retain the first respondent-writ petitioner at Hyderabad. W.A.Nos.1180 of 1997 and 35 of 1998 were preferred against this order by the APSCFC and the District Scheduled Castes Service Cooperative Society Limited. By common order dated 17.04.1998, a Division Bench of this Court expressed inclination to dismiss the appeals but made it clear that it would be open to the authorities concerned to take stock of the fresh situation or exigencies and review the need or otherwise of continuing the writ petitioners in both cases in their present posts. The Bench also made it clear that if administrative exigencies warranted and if there was a change of circumstances, it would always be open to the authorities to pass appropriate orders as regards their transfer, repatriation or deployment. The writ appeals were dismissed with this observation.

Thereupon, the first respondent-writ petitioner submitted her joining report on 06.05.1998. However, the authorities again directed her to report before APSWREI Society. She then filed W.P.No.33030 of 1998 before this Court but the said writ petition was dismissed on 16.02.1999. Aggrieved thereby, she filed W.A.No.327 of 1999 before this Court. The said writ appeal was disposed of by a Division Bench of this Court, *vide* order dated 01.09.1999. It is an admitted fact that the first respondent-writ petitioner was ultimately given posting orders under proceedings dated 14.09.1999 of the District Collector and Chairman, Hyderabad

District, HDSCSCS Limited. It was in these circumstances that the first respondent-writ petitioner made a representation requesting the authorities to treat the period from 18.10.1996 to 10.09.1999 as on duty. However, the same came to be rejected under the impugned proceedings dated 03.04.2001 leading to filing of the subject writ petition.

The aforestated facts would demonstrate that after passing of the common order dated 04.09.1997 in W.P.Nos.9395 and 25871 of 1996, the authorities were required to retain the first respondent-writ petitioner at Hyderabad in the light of the offer made by the petitioner in W.P.No.9395 of 1996 to go to APSWREI Society. Though Sri A.Yadava Reddy, learned counsel for the appellant Corporation, would point out that the said order stood modified in appeal, it may be noted that W.A.Nos.1180 of 1997 and 35 of 1998 arising out of the aforestated common order dated 04.09.1997 were dismissed on 17.04.1998 and only an observation was made to the effect that in the event of any administrative exigencies or change of circumstances, it would always be open to the authorities to pass appropriate orders as regards transfer, repatriation or deployment of the respondents therein, one of whom was the first respondent-writ petitioner. However, it is an admitted fact that despite this liberty, the authorities did not pass any order till 27.05.1998. Thereby, the District Collector, Hyderabad, being the Chairman of the HDSCSCS Limited, directed the first respondent-writ petitioner to report before the Secretary, APSWREI Society, Hyderabad, to work as a Draughtsman Grade-III in the newly created technical cell. The first respondent-writ petitioner remained unsuccessful in her challenge to these proceedings though she filed W.P.No.33030 of 1998 and W.A.No.327 of 1999. It was only on

14.09.1999 that the first respondent-writ petitioner was given posting orders at Hyderabad.

Note 1 under Fundamental Rules 18 states to the effect that willful absence from duty not covered by grant of any leave will be treated as a '*dies-non*' for all purposes, viz., increment, leave and pension. As the first respondent-writ petitioner did not abide by the initial proceedings dated 18.10.1996 which required her to report before the APSWREI Society and was successful only on 04.09.1997 when W.P.No.25871 of 1996 was disposed of under the common order bearing the said date, her absence up to that date would qualify as willful absence in terms of Note 1. Thereafter, by virtue of the order dated 04.09.1997 which continued to have effect till 27.05.1998, the failure of the authorities to either admit her to duty or give her a posting order would inure to her benefit and the said period cannot be treated as willful absence and consequently, as *dies-non*.

However, once the proceedings dated 27.05.1998 were issued requiring her to again report at APSWREI Society, Hyderabad, and she failed to do so, her failure and the resultant absence from duty would qualify as willful absence. In effect, the first respondent-writ petitioner would be entitled only to treat the period between the dates 04.09.1997 and 27.05.1998 as on duty. However, the learned Judge was of the opinion that the authorities ought to have extended an opportunity of hearing to the first respondent-writ petitioner before passing the impugned proceedings dated 03.04.2001. Reference in this regard was made by the learned Judge to Note 4 appended to Fundamental Rule 18. Note 4 related to unauthorized absence for a continuous period exceeding one year warranting removal from service and the requirement of

following the procedure laid down in the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (*for brevity*, 'the Rules of 1991'). It may however be noted that this Note was added to Fundamental Rule 18 only on 08.01.2004 and did not figure in the statute book on 03.04.2001, the date on which the impugned proceedings were issued. The finding of the learned Judge that the authorities did not follow the principles of natural justice and Note 4 appended to Fundamental Rule 18 therefore cannot be countenanced. Be it noted that it is not the claim of the first respondent-writ petitioner that she ever sought any personal hearing or a further opportunity of hearing before a decision was taken on her plea to count the subject period as on duty.

On the above analysis, the direction of the learned Judge to consider treating the entire period from 19.10.1996 to 16.09.1999 as on duty for all purposes cannot be countenanced. In the light of the admitted facts, as set out *supra*, the first respondent-writ petitioner would be entitled to have only the period from 04.09.1997 to 27.05.1998 treated as on duty for all purposes. The appellant Corporation shall act accordingly and extend benefit to her in terms of this finding.

The writ appeal is allowed to the extent indicated above. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

M.GANGA RAO,J

31st DECEMBER, 2018

PGS