

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1142 OF 2004
WITH
NOTICE OF MOTION NO. 94 OF 2006**

Ms. K. D. Rajee

...Petitioner

V/s.

Union of India & Ors.

...Respondents

Mr. Sujith Suresh a/w. Mr. Sebin Michael & Ms. Arundhati Saste for the petitioner.

Mr. Vishal Talsania a/w. Mr. Netaji P. Gawde, Mr. Rahul Sanghvi i/by M/s. Sanjay Udeshi & Co. for respondent no. 2.

**CORAM: DIPANKAR DATTA, CJ &
M. G. SEWLIKAR, J.**

DATE: APRIL 12, 2022

P.C.:

1. The petitioner, at the material time, was holding the post of Confidential Secretary to the Chief General Manager of Hindustan Petroleum Corporation Limited (hereafter "Corporation", for short) and posted at Mumbai. On 5th December 2000, a charge-sheet was issued by the Chief General Manager-MR of the Corporation alleging, *inter alia*, that the petitioner was granted earned leave from 15th May 2000 to 19th May 2000 to travel to Chennai and she was supposed to return back and resume duty effective 22nd May 2000; that the petitioner did not report for duty and instead went on sending medical certificates for remaining absent

during the period 29th May 2000 to 31st July 2000, 1st August 2000 to 15th September 2000, 15th September 2000 to 29th October 2000 and from 30th October 2000 for one month, i.e., up to 29th November 2000, for severe mental depression, hot flushes and vulvovaginitis. Till the date of issuance of the charge-sheet, the petitioner had not returned to resume duty. It was also alleged that the management by issuing instructions dated 20th June 2000 and 19th October 2000 had advised her to undergo medical examination by the company designated physician/medical advisor at GMO-South Zone, Chennai; however, she did not comply with the said instructions. Continuous absence of the petitioner from 22nd May 2000 till date in an unauthorized manner as well as failure to comply with the instructions to report to the company designated physician/medical advisor for medical examination were viewed as serious misconduct under the provisions of the Conduct, Discipline and Appeal Rules applicable to the management staff of the Corporation. The petitioner was, accordingly, advised to submit her written explanation within seven (7) days of receipt of the charge-sheet, failing which it would be presumed that she had no explanation to offer leaving the Corporation with no other alternative but to proceed with the matter as deemed fit.

2. It is the version of the petitioner that upon receipt of the charge-sheet, she submitted her response by letter dated 29th December 2000. It was stated therein that she had sent a medical certificate from her authorized physician advising her complete rest for a further period of sixty (60) days effective 30th November 2000 and that since she was still under

treatment, she was unable to leave Chennai without the doctor's advice. The petitioner went on to say that she had put in two (2) decades of service and had not taken any casual or sick leave and her attendance record would bear testimony to the same. Further, she said that she had enough leave to her credit which is more than enough to cover the absence, which is certified by a qualified and experienced physician. It was also assured that as soon as she recovered from her illness, she would resume duties at Mumbai. Finally, the petitioner accused the Corporation of compelling her to undergo serious physical stress and complained that the letters sent by the Corporation are purely a mental torture and harassment which she hoped would be discontinued.

3. Pertinently, the petitioner did not in her response dated 29th December 2000 either dispute that she had not received any instructions from the Corporation advising her to undergo medical examination by the company designated physician/medical advisor nor did she explain why she felt it appropriate to stay away from being medically examined by the Corporation's designated physician/medical advisor despite receiving such instructions.

4. Be that as it may, the Corporation being of the further view that the conduct of the petitioner was serious enough to warrant an enquiry, the same followed wherein the petitioner chose not to participate. The enquiry officer returned a finding that the charges levelled against the petitioner were proved. Copy of the enquiry report was forwarded to the petitioner seeking her comments and such opportunity was availed of by

her. Considering the materials on record including the response of the petitioner, the disciplinary authority by an order dated 14th January 2002 imposed the penalty of removal from service upon the petitioner. The order of removal was carried by the petitioner in an appeal before the appellate authority which stood rejected by an order dated 13th May 2002. The petitioner thereafter preferred a revision and the same was also dismissed by an order dated 31st January 2003. All these orders are impugned in this writ petition dated 5th March 2004.

5. We have heard Mr. Sujith Suresh, learned advocate for the petitioner and perused the materials on record. Learned advocate for the Corporation is not called upon to respond.

6. We have read the impugned order dated 14th January 2002 removing the petitioner from service. For the reasons assigned, the disciplinary authority of the petitioner was of the view that there was no proper reason for the petitioner to stay away from her place of work. Accordingly, she was held guilty of the charge of absence without leave or over-staying the sanctioned leave without sufficient reason or proper or satisfactory explanation. The disciplinary authority also found her remiss in not complying with the instructions given for subjecting herself to medical examination by the Corporation's medical advisor. The disciplinary authority found that for a long stretch of time the petitioner continuously absented herself and instead of resuming duties went on making representations to high dignitaries for cancellation of a transfer order that was issued to her.

7. Law is well settled that in case an officer/employee absents from duty either by overstaying leave or without obtaining leave and this forms the ground for his/her termination from service following disciplinary proceedings, it ought to be the endeavour of the Court to ascertain whether the absence is caused by compelling reasons under which it is not possible for him/her to report for duty or whether the absence is willful. If any authority is required, we may refer to the decision of the Supreme Court reported in (2012) 3 SCC 178 (**Krushnakant B. Parmar vs. Union of India**).

8. Here, the defence of the petitioner was that she was suffering from post-menopausal syndrome and consequently under constant medical treatment. The Corporation was well within its right to ascertain the medical condition of the petitioner. Also, having regard to the cause of illness put forward by the petitioner, it was open to it to have any remote possibility of feigning of illness by the petitioner ruled out. Instructions were issued by the Corporation to the petitioner advising that she should subject herself to a medical examination by the Corporation's designated physician/ medical advisor. That the petitioner did not abide by such advice or that the petitioner did not even deny that such an instruction was issued to her, appears to be clinching. We see no reason as to why the petitioner should have stayed away from being examined by the Corporation's designated physician/ medical advisor if she was under a genuine

physical disability and, thus, unable to resume duty. Based on the test of preponderance of probability, the conclusion drawn by the disciplinary authority cannot be faulted.

9. Additionally, what we find from the materials on record is that prior to the petitioner proceeding on leave, she was transferred and that she had been making frantic efforts to have such order of transfer cancelled. In such circumstances, not to resume duty after the expiry of the sanctioned period of leave appears to us to be a ruse to avoid the order of transfer. In a somewhat similar situation, the Supreme Court in its decision reported in (2009) 11 SCC 678 (**Tushar D. Bhatt vs. State of Gujarat**) held that such an approach and attitude of the employee avoiding to comply with a transfer order cannot be countenanced in the interest of discipline of any organization or institution and that absence without proper intimation being a grave offence is sufficient to warrant the penalty of removal from service. We would read "proper intimation" as intimation that has proper grounds for staying away from work and not mere intimation of absence. In the present case, "proper intimation" was sadly lacking.

10. Even otherwise, we find from the petitioner's response dated 29th December 2000 that her attending physician had advised her complete rest for sixty days effective 30th November 2000. Although such advice does not find support from any document annexed to the writ petition, we would assume its existence. However, nothing turns on it. We had called upon Mr. Sujith Suresh to draw our attention to any subsequent advice given by the petitioner's attending

physician that she was unfit to resume duty with effect from 1st February 2001, i.e., upon expiry of the period of sixty days referred to in such letter dated 29th December 2000. No such advice/document has been brought to our notice. This is sufficient reason for us to hold that the absence of the petitioner was willful.

11. That apart, the enquiry report was forwarded to the petitioner on 1st October 2001 whereafter the final order of penalty was imposed by the order dated 14th January 2002. There is not a single explanation offered by the petitioner as to what prevented her from even attending the enquiry and justifying her absence by producing documents to prove that it was not a case of willful absence from duty; rather, it was due to physical disabilities which were beyond her control.

12. Considering the above, we have no other option but to hold that the petitioner, while feigning illness, stayed away from duty wilfully. Such an employee, in the view of the Corporation, was unfit to be retained in service. We find the same to be a plausible view in the given circumstances. Once again, it is settled law that if two views are possible in a given set of facts and circumstances and the disciplinary authority takes a view out of two such views which is not absurd or unreasonable, it is not for the Court to substitute its view for the view taken by the said authority.

13. For the reasons aforesaid, we find no ground to grant relief to the petitioner. The writ petition is dismissed.

14. In view of dismissal of the writ petition, nothing survives for consideration in the notice of motion and the same stands disposed of.

15. No costs.

(M. G. SEWLIKAR, J.)

(CHIEF JUSTICE)

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