

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

**WEDNESDAY, THE ELEVENTH DAY OF JANUARY
TWO THOUSAND AND TWENTY THREE**

PRESENT

THE HONOURABLE MRS JUSTICE SUREPALLI NANDA

WRIT PETITION NO: 2024 OF 2020

Between:

K.Vagdevi, W/o N.Raghunatha Rao, aged about 51 years, School Assistant (Biological Science), Govt. High School, Esamia Bazar, Hyderabad. R/o D.No2-2-24/A/BL, Sri Kamakshi Bhavan, F.No.302, D.D.Colony, Baghamberpet, Hyderabad.

...PETITIONER

AND

1. The District Educational Officer, Hyderabad.
2. The Director of School Education, Government of Telangana at Hyderabad.
3. State of Telangana, rep., by its Principal Secretary, School Education Dept., Secretariat, Hyderabad.

...RESPONDENTS

Petition Under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ Order or Order more in the nature of Writ of Mandamus declaring the impugned Proc. Rc.No.8704/E1/2013-2018 dt.12/10/2018 and its consequential Proc. Rc.No.8704/E1/2013-2018 dt.18/10/2019 issued by the 1st respondent and quash the same as it is against the procedure contemplated under C.C.A. Rules 1991 and also Rule 30 of State and Subordinate Service Rules, and consequently hold that petitioner is entitled to be reinstated into service as School Assistant with all consequential benefits like pay and allowances for suspension period and also pay the salary from the date of reporting to duty.

I.A.NO:1 OF 2020

Petition Under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondents to reinstate the petitioner as School Assistant into service by suspending the impugned Proc. Rc.No.8704/E1/2013-2018 dt.12/10/2018 and its consequential Proc.Rc.No.8704/E1/2013-2018 dt.18/10/2019 issued by the

1st respondent as it is against the statutory Rules, and pending disposal of the above writ petition.

I.A.NO:2 OF 2020

Between:

1. The District Educational Officer, Hyderabad.
2. The Director of School Education, Government of Telangana at Hyderabad.
3. State of Telangana, rep., by its Principal Secretary, School Education Dept., Secretariat, Hyderabad.

...PETITIONER/RESPONDENTS

AND

K.Vagdevi, W/o N.Raghunatha Rao, aged about 51 years, School Assistant (Biological Science), Govt. High School, Esamia Bazar, Hyderabad. R/o D.No2-2-24/A/BL, Sri Kamakshi Bhavan, F.No.302, D.D.Colony, Baghamberpet, Hyderabad.

...RESPONDENTS/PETITIONERS

Petition Under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to vacate the interim order Dated: 03-02-2020 in W.P.No. 2024 of 2020 and dismiss the writ petition.

Counsel for the Petitioner : SRI.M.RAMGOPAL RAO

Counsel for the Respondents : G.P FOR SERVICES-I / GP FOR EDUCATION

The Court made the following ORDER

HON'BLE MRS JUSTICE SUREPALLI NANDA

WRIT PETITION No.2024 of 2020

ORDER:

Heard the learned counsel for the petitioner,
learned Government pleader for services-I and also
learned Government Pleader for Education.

2. PERUSED THE RECORD.

**3. The petitioner in the Writ Petition sought the
prayer as follows:**

*"..... to issue a Writ Order or Order more in the nature
of Writ of Mandamus declaring the impugned
Proc.Rc.No.8704/E1/2013-2018 dt:12.10.2018 and its
consequential Proc.Rc.No.8704/E1/2013-2018
dt:18.10.2019 issued by the 1st respondent and quash
the same as it is against the procedure contemplated
under C.C.A Rules 1991 and also Rule 30 of State and
Subordinate Service Rules, and consequently hold that
petitioner is entitled to be reinstated into service as
School Assistant with all consequential benefits like pay
and allowances for suspension period and also pay the
salary from the date of reporting to duty and pass such
other order or orders as this Hon'ble Court may deem fit
and proper in the circumstances of the case."*

**4. The brief facts leadings to filing of the present
writ petition are as follows:**

a) The petitioner was selected as Secondary Grade Teacher
in 1995 DSC and joined service on 15.06.1995 and

subsequently promoted as School Assistant on 12.08.1998 as per seniority and eligibility.

b) As the petitioner fell sick he was admitted in Apollo DRDO Hospital and had undergone all tests and had applied for medical leave. The said leave has been extended.

c) At the instance of Smt C.Nirmala, Dy. Educational Officer, the petitioner was placed under suspension by the 1st respondent w.e.f. 13.06.2013 vide proceedings dated 17.09.2013 and charges were also framed. The said DEO harassed and threatened the petitioner to resign from service, otherwise, the petitioner will face dire consequences and harassment from the department.

d) Due to the pressure of DEO, the petitioner fell sick mentally and the respondents have taken the resignation letter on 15.10.2014 without conducting any regular enquiry.

e) Respondents have neither conducted any enquiry against the Charge Memo issued by 1st Respondent against the petitioner vide Proc.No.Rc.No.8704/E1/2014 dated 09.09.2014 nor have the respondents accepted the resignation of the Petitioner.

f) Petitioner then made representation to the 1st Respondent on 10.07.2018 for reinstating the petitioner into service and the same is pending as on date. The acceptance of the petitioner's resignation, which was made on 14.10.2014 does not arise as the charges against the petitioner are pending and more fully that the petitioner had withdrawn the resignation before the resignation had taken effect.

g) The 1st Respondent had disposed the representation of the petitioner for reinstatement into service vide Proc.Rc.No.8704/E1/2013-2018 dated 12.10.2018 stating that the unauthorized absence is more than 5 years and this order of the 1st Respondent is without following any rules as contemplated under C.C.A Rules under rule-30(a).

h) The Headmaster, Govt. High School, Esamia Bazar addressed a letter dated 12.07.2018 to 1st Respondent stating that departmental proceedings against the petitioner are submitted to the D.E.O's office on 16.07.2017, which shows that no enquiry had been conducted regarding the continuation or accepting the petitioners resignation.

i) 1st Respondent had issued impugned Proceedings vide Proc.Rc.No.8074/E1/2013-2018 dated 18.10.2019 stating that the request of the petitioner cannot be considered as the respondents on 12.10.2018 have passed orders accepting the resignation of the petitioner. The orders of 1st Respondent dated 12.10.2018, 09.04.2019 and 18.10.2019 only speak about the unauthorized absence and not about the resignation of the petitioner. Hence the Writ Petition.

5. The case of the Respondents, in brief, is as follows:

a) The Petitioner had been suspended with immediate effect under Rule 8 (1) of APSC (CCA) Rules and Sri S. Malla Reddy, Deputy Education Officer (D.E.O) had been appointed as Enquiry Officer to inquire into the allegations against the Petitioner and the D.E.O vide Proceedings dated 17.10.2006 had reinstated the petitioner as School Assistant with immediate effect pending disciplinary action.

b) The Petitioner working as School Assistant, GHS, Esamia Bazar was continuously absent from duty w.e.f 13.06.2013 without any sanction of leave and basing on the

report of D.E.O, Nampally Zone the D.E.O, Hyderabad had placed the petitioner under suspension vide proceedings dated 17.09.2013 and charges have been framed against the petitioner vide Proc.No.8704/E1/2014 dated 09.09.2014 and directed the petitioner to furnish her written explanation within 10 (Ten) days but the petitioner had not submitted any reply.

c) Petitioner had submitted her resignation letter dated 15.10.2014 to the School Assistant requesting the District Educational Officer, Hyderabad to accept the petitioners resignation and the petitioner failed to submit written explanation to the charge memo dated 09.09.2014.

d) Petitioner had submitted resignation w.e.f 13.06.2013 much prior to the suspension orders issued by the District Education Officer, Hyderabad dated 17.09.2013 and hence the provision 30-A of the Telangana State and Subordinate Service Rules are not applicable.

e) As enunciated under Rule-18A, a government servant shall be deemed to have resigned from service, if he/she remains absent from duty for a continuous period exceeding 5

(five) years with or without leave, as is the case of the petitioner, who had unauthorizedly absent from 13.06.2013 i.e., for more than 6 years.

f) The Respondents have followed the CCA Rules in terms of Rule 18-A, calling for the petitioners explanation for unauthorized absent for more than 5 years for which the petitioner had not submitted any Written Explanation. Hence the respondent, left with no alternative but to accept the resignation of the petitioner vide Proc.Rc.No.8704/E1/2013-18 dated 12.10.2019 and also Proc.Rc.No.8704/E1/2013-18 dated 18.10.2019 and there is no violation of any rule by the Respondents.

g) Hence the Writ Petition is devoid of Merits and is liable to be set aside and to vacate the interim order dated 03.02.2020 in I.A.No.1/2020 in Writ Petition No.2024 of 2020.

6. Paras 13, 14 and 15 of the counter affidavit filed by the respondents read as under:

"13. It is submitted that the petitioner has given her resignation w.e.f. 13.06.2013 much prior to the

suspension order issued by the District Educational Officer, Hyderabad dated 17.09.2013 and also charge memo issued dated 09.09.2014. Thus, the provision under 30-A of the Telangana State Subordinate Services Rules is not applicable as contended by the petitioner.

14. It is submitted that Rule 18-A of FR stipulates:

A Government servant shall be deemed to have resigned from the service if he-

(a) Is absent without authorization for a period exceeding one year; or

(b) Remains absent from duty for a continuous period exceeding five years with or without leave; or

(c) Continues on foreign service beyond the period approved by the State Government.

Provided that a reasonable opportunity to explain the reason for such absence or continuation on foreign service shall be given to the Government Servant before the provisions of this sub rule are invoked."

15. It is submitted that as per the above FR 18, the Government servant is deemed to be resigned about, if he is absent without authorization for a period exceeding one year. In the instant case, the petitioner is unauthorized absent from 13.06.2013 i.e. more than six years. Thus, the petitioner is resigned from service w.e.f. 13.06.2013 as per the above provision. As per proviso to FR 18-A, the petitioner has been given show cause notice calling for her explanation for the unauthorized absence, but she failed to give the explanation till date. She was also not given her residential address in any of the applications submitted

by her to the competent authority. Consequently, further notices could not be served directly to the petitioner and served through Head Master, GHS, Esamia Bazar."

7. The proceedings Rc.No.8704/E1/2013-2018, dated 12.10.2018 reads as under:

"It has been brought to the notice of under signed through the reference 1st read above that Smt.K.Vagdevi, SA, GHS, Esamia Bazar, Hyderabad is continuously absent from the duties 13.06.2013 onwards, unauthorizedly without sanction of leave and this office has issued suspension orders to Smt.K.Vagdevi, SA, GHS, Esamia Bazar, Hyderabad vide ref.2nd cited.

Further the Dy.Educational Officer, Nampally Zone, Hyderabad vide his letter under 4th cited, stated that Smt. K.Vagdevi, SA, GHS, Esamia Bazar, Hyderabad who was suspended from service not reporting duty since 13.06.2013 and her whereabouts are not known since receipt of suspension orders nor she did not come to school and not responding to calls later this office has framed article charges against her vide this office proceedings ref 5th cited with instructions to submit the defense statement of Smt.K.Vagdevi, SA, GHS, Esamia Bazar, Hyderabad within (10)days. But she has not submitted her defense statement within stipulated time.

Smt.K.Vagdevi, SA, GHS, Esamia Bazar, Hyderabad vide her letter dated 15.10.2014 under reference 6th cited, wherein resigned from duty with effect from 13.06.2013 to the post of School Assistant and also submitted a Doctor Certificate issued by Civil Surgeon/RMO Sir Ronald Ross Institute of Tropical & Communicable Diseases, Nallakunta, Hyderabad stating that Mrs. K.Vagdevi, aged about 46 years is physically and mentally in Good health.

In this context this office has once again requested the Smt.K.Vagdevi, SA, GHS, Esamia Bazar, Hyderabad to submit her defense statement to this office proceedings cited under ref.5th, vide this proceedings under ref.7th cited. But this office has not received any kind of reply from her.

Now, after lapse of five years period i.e., from 13.06.2013, through Gaz. HM, GHS, Esamia Bazar,

Hyderabad under ref.9th cited, Smt. K.Vagdevi, SA,GHS, Esamia Bazar, Hyderabad submitted an application for reinstatement into the service.

In view of the above, after careful examination the request made by the Smt.K.Vagdevi, SA, GHS, Esamia Bazar, Hyderabad may not be considered for reinstatement into service as the period of unauthorized absence is more than five(5) years. The individual is hereby informed the same and the question of reinstatement does not arise.

Therefore, the appeal of Smt.K.Vagdevi, SA, GHS, Esamia Bazar, Hyderabad for reinstatement for service is hereby disposed off.

The Dy.E.O./H.M. concerned is requested to serve the original copy of proceedings to the incumbent under proper acknowledgment on the duplicate copy of proceedings and submit the same to the under signed immediately and necessary entries to be made to the Original Service Book of the individual and also in the educational qualification certificates."

8. The consequential proceedings Rc.No.8704/E1/ 2013-2018, dated 18.10.2019, reads as under:

"It has been brought to the notice of under signed through the reference 1st read above that Smt.K.Vagdevi, SA, GHS, Esamia Bazar, Hyderabad was continuously absent from the duties 13.06.2013 onwards, unauthorizedly without sanction of leave from the competent authority. Accordingly this office has issued suspension orders to Smt.K.Vagdevi, SA, GHS, Esamia Bazar, Hyderabad vide ref.2nd cited w.e.f 17.09.2013.

Further the Dy.Educational Officer, Nampally Zone, Hyderabad vide his letter under 4th cited, stated that Smt.K.Vagdevi, SA, GHS, Esamia Bazar, Hyderabad who was suspended from service and her whereabouts are not known since receipt of suspension orders, she did not come to school and not responding to phone calls. Later this office has framed article charges against her vide this office proceedings ref. 5th cited with instructions to submit the defense statement of Smt.K.Vagdevi, SA, GHS, Esamia Bazar, Hyderabad within (10) days. But she has not submitted her defense statement within stipulated time.

Smt.K.Vagdevi, SA, GHS, Esamia Bazar, Hyderabad vide her letter dated 15.10.2014 under reference 6th

cited, wherein stated that she resigned from duty w.e.f. 13.06.2013 to the post of School Assistant and also submitted a Doctor Certificate issued by Civil Surgeon/RMO Sir Ronald Ross Institute of Tropical & Communicable Diseases, Nallakunta, Hyderabad stating that Mrs.K.Vagdevi, aged about 46 years is physically and mentally in Good health. She further also stated that not to claim the salary on her name.

In this context this office has once again requested the Smt.K.Vagdevi, SA, GHS, Esamia Bazar, Hyderabad to submit her defense statement on Article of charges issued by this office proceedings cited under ref.5th, vide this proceedings under ref.7th cited. But this office has not received any kind of reply/explanation from her, which shows that she was unwilling to continue in Govt. Service.

Keeping in view of the above detailed report and the request made by the individual to accept the resignation w.e.f. 13.06.2013 after thoroughly examination and scrutinized it is decided the District Educational Officer, Hyderabad Dist. vide ref.10th cited, is pleased to accord permission for acceptance of resignation from service w.e.f 13.06.2013 onwards in respect of Smt.K.Vagdevi, SA, GHS, Esamia Bazar, Hyderabad.

Therefore, H.M. GHS, ESamia Bazar, Hyderabad is requested to process the final payment of benefits from the department if any of the individual and submit compliance report to this office immediately."

9. The Interim orders passed in I.A.No.1 of 2020 in WP.No.2024 of 2020 dated 03.02.2022 reads as under:

Petitioner challenges the order dated 18.10.2019 accepting the resignation stated to have been made by her on 13.06.2013.

Learned counsel for the petitioner submits that since resignation stated to have been given on 13.06.2013 was withdrawn and no such order can be passed when disciplinary proceedings were already initiated on the allegation of unauthorized absence. He would submit that that once disciplinary proceedings were already initiated by serving a charge memo on the petitioner making allegation and after disciplinary proceedings have reached the stage of passing orders, the disciplinary authority could not have resorted to

acceptance of alleged resignation, which was withdrawn long ago.

Prima facie, I see merit in the said contention. Having initiated disciplinary proceedings on the allegation of unauthorized absence and when request for resignation was not accepted, the disciplinary authority on 18.10.2019 could not have stated that he is accepting the resignation stated to have been submitted on 13.06.2013 more so when petitioner asserts that such letter of resignation was withdrawn long ago.

However, rejection of revocation of suspension vide proceedings dated 12.10.2018 requires consideration after counter is filed.

Hence, there shall be interim suspension of proceedings in Rc.No.8704/E1/2013-2018 dated 18.10.2019. However, this order does not come in the way of disciplinary authority taking appropriate action as warranted by law consequent to the charge memo issued against the petitioner."

DISCUSSION AND CONCLUSION

10. This Court opines that since the petitioner has already been placed under suspension, Vide proceedings dated 22.07.2013 and though charges are framed against the petitioner vide proceedings Rc.No.87041/E1/2014, dated 09.09.2014 but however, as borne on record no enquiry officer had been appointed till as on date and the fact that departmental enquiry did not attain any finality till as on date and duly considering the fact that the petitioner's resignation letter dated 15.10.2018 also had not been accepted till now and therefore, in the present

circumstances the petitioner's representation dated 11.07.2018 for reinstatement into services is to be necessarily considered by the authorities and appropriate orders need to be passed in accordance to law. But however, the said request of the petitioner has been considered mechanically and rejected vide proceedings Rc.No.8704/E1/2013-2018, dated 12.10.2018 and also the consequential proceedings vide Rc.No.8704/E1/2013-2018, dated 18.10.2019.

11. This court opines that there cannot be any retrospective resignation and admittedly the petitioner's resignation, as borne on record, has not been accepted by the authorities till as on date. Duly taking into consideration the fact that the petitioner's resignation given on 13.06.2013, was requested to be withdrawn by the petitioner and to that effect petitioner even made a representation dated 11.07.2018 to the 1st respondent for re-instatement into job, this Court opines that the impugned order cannot be passed by the respondent authorities when

disciplinary proceedings were already initiated against the petitioner on the allegation of unauthorized absence. This Court opines that once disciplinary proceedings were already initiated by serving a charge memo on the petitioner making allegation of unauthorized absence against the petitioner and without the disciplinary proceedings having attained a finality this Court firmly opines that the disciplinary authority could not have resorted to acceptance of alleged resignation which was withdrawn by the petitioner long ago. This Court further opines that the pleas raised by the respondent in their counter affidavit Paras 13, 14 and 15 are not sustainable and the impugned proceedings are clearly contrary to the procedure contemplated under CCA Rules 1991 and also Rule 30 of State and Subordinate Service Rules and therefore, this court opines that the petitioner is entitled for reinstatement into service and accordingly, impugned proceedings Rc.No.8704/E1/2013-2018, dated 12.10.2018 and the consequential proceedings Rc.No.8704/E1/2013-2018, dated 18.10.2019 are set

aside and the respondents are therefore, directed to reinstate the petitioner into service as School Assistant with all consequential benefits pay and allowances of the suspension period.

12. Accordingly, the Writ petition is allowed directing the respondents to reinstate the petitioner into service as School Assistant with all consequential benefits pay and allowances of the suspension period, in accordance to law, within a period of (3) weeks from the date of receipt of a copy of this order, duly communicating the decision to the petitioner. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble the Chief Justice UJJAL BHUYAN, on this Wednesday, the Eleventh day of January, Two Thousand and Twenty Three.

SD/-A.V.S. PRASAD
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1. The District Educational Officer, Hyderabad
2. The Director of School Education, Government of Telangana at Hyderabad.
3. The Principal Secretary, School Education Dept., Secretariat, State of Telangana at Hyderabad.
4. Two CCs to GP FOR SERVICES-I, High Court for the State of Telangana at Hyderabad. [OUT]
5. Two CCs to GP FOR EDUCATION, High Court for the State of Telangana at Hyderabad. [OUT]

6. One CC to SRI M. RAMGOPAL RAO, Advocate [OPUC]
7. Two CD Copies
8. One spare copy

S.A.

BS



HIGH COURT

DATED:11/01/2023

ORDER

WP.No.2024 of 2020



ALLOWING THE W.P
WITHOUT COSTS.

(11)

MBL
2/2/23