



2024:DHC:8864-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 390/2020 & CM APPL. 33292/2020

INDIRA GANDHI NATIONAL OPEN UNIVERSITY ... Appellant

Through: Mr. Aly Mirza, Advocate.

versus

BHUVANESH VYAS

...Respondent

Through: Mr. A.P. Nagrath and Mr.
Anish Kumar, Advs.

%

Date of Decision: 14th November, 2024

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT (ORAL)

TUSHAR RAO GEDELA, J:

1. Present appeal has been preferred by the appellant seeking quashing and setting aside of the impugned order dated 23.04.2019 passed by the learned Single Judge of this Court in underlying writ petition being W.P.(C) 104/2008 captioned "*Bhuvanesh Vyas vs. I.G.N.O.U.*", whereby the learned Single Judge had set aside the Termination Order bearing Office Order No.488 dated 07.04.1993 wherefrom the services of the respondent was terminated from 22.09.1992, and restored the services of the respondent-employee entitling him for 50% backwages till the respondent-employee attained superannuation.



2. Briefly stated, the respondent was appointed as Senior Software Engineer in appellant university, i.e., IGNOU in the pay scale of 3700-6700 *vide* letter dated 02.06.1989 and joined on 11.07.1989 at Delhi. The respondent was confirmed *w.e.f.* 11.07.1990 *vide* letter dated 6/7.02.1991. The respondent applied for leave for 90 days to visit USA *vide* application dated 04.09.1992 and claims that his leave application was approved by the approving officer on 07.09.1992. He further sought extension up to 12.07.1993 *vide* his application dated 06.12.1992 sent from Arlington, USA. On 15.02.1993, the respondent received a telegraphic message that his Earned Leave and Extra Ordinary Leave had not been sanctioned and was asked to report for duty within a period of 30 days failing which his services would stand terminated *w.e.f.* 22.09.1992, retrospectively. The respondent, claiming to be physically unfit to join duties, sent an application dated 23.02.1993 along with a medical certificate from USA. He returned to India on 22.03.1993 and informed the Registrar that he was still not fit to join duties and sent a Medical Certificate in support thereof. On being declared medically fit, the respondent resumed duty on 01.06.1993 along with sickness certificate and medical fitness certificate. The respondent was allowed to join duty and mark his attendance. On 03.06.1993, the respondent submitted a representation requesting for regularisation of his leave period. On 11.06.1993, the respondent was informed that his services had been terminated *w.r.e.f.* 22.09.1992 *vide* impugned order dated 07.04.1993. The appellant claims that the communication dated 07.04.1993 was sent to the respondent under



registered post on 08.04.1993 on the address of USA. Thereafter the respondent was not permitted to mark his attendance from 11.06.1993. He was not paid any salary for the period for which he had applied for leave.

3. On 17.06.1993, the respondent sent a representation indicating that his termination was illegal and should be reconsidered. The said representation was rejected and thereafter the respondent filed W.P.(C) 5023/1993 in the High Court of Judicature for Rajasthan at Jodhpur and challenged the action of termination of his service as being violative of statutory rules and principles of natural justice. The same was dismissed for lack of territorial jurisdiction on 16.08.2005. Being aggrieved, the respondent filed a Civil Special Appeal No.488/2005 before the Division Bench of the aforesaid court and the same was disposed of *vide* order dated 28.11.2007 by observing that they do not find any error in the impugned judgement of the learned Single Judge.

4. It was only thereafter, in the year 2008, that the respondent had approached this Court by filing the underlying writ petition challenging the order of termination, which proceedings culminated into impugned order challenged in the present appeal.

Contentions on behalf of the appellant:-

5. Mr. Aly Mirza, learned counsel for the appellant, at the outset submits that the learned Single Judge has misread and misconstrued the factual statements contained in the counter affidavit filed by the appellant regarding sanctioning of the leave sought by the respondent. He argues that if one were to appreciate the facts correctly, the edifice on which the



impugned judgement is premised, would dissipate. He contends that, manifestly, the impugned judgement also misinterpreted the rules governing leave that can be applied for by an employee, particularly Statute 19(3) of the appellant University.

6. Learned counsel for the appellant drew attention to para (ii) at page 27 of the paperbook to submit that the conclusion drawn by the learned single judge on facts is absolutely contrary to the correct facts. Arguing thus, he points to the leave application dated 04.09.1992 to submit that the leave applied for by the respondent w.e.f 22.09.1992 to 21.12.1992 was never sanctioned by the Competent Authority, i.e., the Vice Chancellor (hereinafter referred to as the “VC”). He contends that the application was only signed by the Director which was not an approval inasmuch as the Director was not the Competent Authority. In support, learned counsel points out to the Administrative Order dated 08.02.1990 respecting “*Delegation of Powers for Sanctioning Leaves*”, particularly to para (iii) to submit that the Vice Chancellor of the appellant-university had delegated his power to sanction leaves to the Directors of School/Heads of Division. He submits that the approval by the concerned Director is subject to the final approval by the VC, provided the applicant has sufficient leaves credited to his account.

7. That apart, he strenuously argued that so far as the second purported leave application seeking leave from 22.12.1992 to 12.07.1993, was not even a proper application as per the Rules nor was it ever sanctioned by the Competent Authority. This application, he asserts, was not processed at all.



Resultantly, the entire period from 22.09.1992 to 12.07.1993 is to be reckoned towards unauthorised leave. According to him, the learned single Judge ought to have noted this crucial fact and appreciated correctly in the impugned order. He stated that had the learned single Judge considered both the applications distinctly, the true and correct facts would have emerged and possibly the writ petition of the respondent may have been dismissed. He thus contends vociferously that the leave, not having been sanctioned on facts and not approved by the Competent Authority in accordance with the Statute and other Circulars/Administrative Orders, the absence of respondent from duty, could not have been construed “*as on leave*”. He contends that the aforementioned facts were grossly overlooked by the learned single Judge.

8. Dilating further on the aforesaid aspect, learned counsel drew attention to the alleged leave application dated 06.12.1992 at page 55 of the paperbook to contend that this document is not even in the proper format of a leave application. He states that by way of this document the respondent sought further leave uptill 12.07.1993. He asserts that so far as this document/letter is concerned, the Competent Authority never sanctioned this leave which fact was incorrectly projected in the impugned order. Predicated on the above, Mr. Mirza argued that once it is established from the correct facts that the respondent was never sanctioned any leave at all, the subsequent action of the appellant in terminating his services cannot be faulted.

9. By referring to pages 127 and 128 of the paperbook in LPA No.



445/2019, he submits that the case of the respondent was put up before the VC who did not approve the leave as sought and it was decided to issue notice to the respondent. Pursuant thereto, notice dated 15.02.1993 was issued to the respondent. According to learned counsel, these crucial and relevant documents were not even looked at and considered by the learned single Judge leading to erroneous findings on facts.

10. Moreover, he drew attention to Statute 19 particularly clauses (2), (3) and (4) of the Statutes of IGNOU to submit that an employee of the appellant can be removed by issuing notice and affording a reasonable opportunity explaining why he should not be removed. According to him, the respondent does not dispute that he had received the notice dated 15.02.1993 in the USA and had responded by his letter dated 23.02.1993. Predicated on this document, he vehemently contends that the appellant fully complied with the provisions of the Statute 19 as also the principles of natural justice. He contends that the learned single Judge did not even take all this into consideration before recording incorrect findings. He also contends that even otherwise, the respondent did not join the duties within the 30 day period stipulated in the notice dated 15.02.1993, thus entitling the appellant to take appropriate action in that regard.

11. To the observation of the learned single Judge that the leaves were officially sanctioned by the appellant, he forcefully contends that mere approving of leaves, that too by the Director, does not mean that the same has been sanctioned by the Competent Officer. He points out to the Annexure-‘A’ to the aforementioned Administrative Order, to submit that



mere signatures of the approving officer over the leave application dated 04.09.1992, does not mean that the same has been sanctioned by the Competent Officer which is the Vice Chancellor and the same is appended only for the purposes for forwarding the same to the Competent Authority. This, according to him was wrongly construed by the learned single Judge to mean valid sanction of the leave applications. He was at pains to submit that the facts as narrated in the counter affidavit are correct and viewed from that perspective, learned single Judge could not have come to the finding that leaves were either approved or sanctioned by the Competent Authority. He categorically urges that the findings recorded are perverse and beyond the pleadings on record as also the rule position.

12. Learned counsel also argue that once the respondent did not join despite the notice dated 15.02.1993, that too for a long period of time, the respondent is deemed to have “*abandoned his services*” and therefore, the appellant was free from any obligation to issue any notice to show cause at all. He contends that having regard to the non acceptance of both the leave applications, it may be safe to infer that the long period of absence resulted in abandonment of services. In support, he relies upon the judgement of Supreme Court in ***Shahoodul Haque v. Registrar, Coop. Societies, (1975) 3 SCC 108*** and also one of Allahabad High Court in ***Ram Briksh Prasad v. Member-Secretary, Regional Administrative Committee, 2003 SCC OnLine All 533***.

13. He further submits that the Medical Certificate dated 19.02.1993



furnished by the respondent is purported to have been issued by a doctor in the USA is bereft of the qualifications of the said doctor and is vague in its recitals and may well be a fabricated document. The other medical certificates dated 22.03.1993 & 01.05.1993 furnished by the respondent citing reasons for not joining duties despite having arrived in India is equally questionable.

14. Mr. Mirza has also argues that the underlying writ petition was barred by delay and laches. He refers to the WP No. 5023/1993 filed by the respondent before the High Court of Judicature of Rajasthan at Jodhpur which was ultimately dismissed for lack of territorial jurisdiction observing in the penultimate paragraph that the respondent is free to approach the Court of competent jurisdiction. He also referred to the LPA No.488/2005 filed by the respondent before the learned Division Bench of the same High Court to submit that even the appellate Court *vide* the order dated 28.11.2007 upheld the order of the learned single Judge. He submits that the appellant had taken a specific plea of lack of territorial jurisdiction in its counter affidavit filed in the writ petition before the learned single judge. Despite such objections, the respondent hotly contested the same and lost. He thus, submits that it is trite that where a party has contested such objection and the same is ruled against it, such party is precluded from reagitating the same issue elsewhere.

15. Learned counsel thus submits that the impugned judgement is predicated on incorrect facts and misconstruction of the Statute and ought to be set aside.

**Contentions on behalf of Respondent:-**

16. Mr. Nagrath, learned counsel for the respondent supports the findings and conclusion arrived at by the learned single Judge, both on facts and on law.

ANALYSIS & FINDINGS:-

17. This Court has heard the arguments of Mr. Aly Mirza learned counsel for the appellant, Mr. A.P. Nagrath learned counsel for the respondent, perused the records in the underlying writ petition as also LPA No.445/2019, preferred by the respondent.

18. At the outset, learned counsel for the appellant fairly states that since there was no appearance by the appellant before the learned Single Judge, he is restricting his arguments in respect of issues enumerated in the counter affidavit in the underlying writ petition and dealt with by the appellant before the learned Single Judge. It is also pertinent to note that the appellant did not file any review before the learned single Judge seeking leave to draw attention to what, according to Mr. Mirza, are incorrect findings. Thus, this Court would have restricted scope while examining the correctness of the impugned judgement.

19. As the impugned judgement was ex parte, it would be apposite first to examine the same on legal parameters.

20. Learned counsel for the appellant would have us believe that by the communication dated 15.02.1993, the respondent was put to notice to show cause as to why he should not be terminated for failing to rejoin services. He verily believes that by issuance of such notice, the mandate under



Statute 19 of the Statutes of IGNOU were complied with and thus, as the respondent failed to rejoin services within 30 days prescribed in the notice, it had the right to terminate respondent's services. According to him, even the principles of natural justice were complied with.

21. This argument, to say the least, is fallacious and contrary to the principles of natural justice as understood in administrative jurisprudence. To appreciate this issue, it would be apposite to extract Statute 19 which governs the termination of employees of the appellant:-

"19. Removal of employees of the University

(1) Where there is an allegation of misconduct against a teacher, a member of the academic staff or other employee of the University, the Vice-Chancellor in the case of the teacher or member of the academic staff, and the authority competent to appoint (hereinafter referred to as appointing authority) in the case of other employee, may, by order in writing, place such teacher, member of the academic staff or other employee, under suspension and shall forthwith report to the Board of Management, the circumstances in which the order was made.

(2) Notwithstanding anything contained in the terms of the contract of appointment or of any other terms and conditions of service of the employees, the Board of Management in respect of teachers and other academic staff, and the appointing authority, in respect of other employees, shall have the power to remove a teacher or a member of the academic staff, as the case may be, other employee on grounds of misconduct.

(3) Save as aforesaid, the Board of Management, or as the case may be, the appointing authority, shall not be entitled to remove any teacher, member of the academic staff or other employee except for a good cause and after giving three months notice or on payment of three months salary in lie thereof.

(4) No teacher member of the academic staff or other employee shall be removed under clause (2) or clause (3) unless he has been given a reasonable opportunity of showing cause against the action



proposed to be taken in regard to him.

(5) The removal of a teacher, member of the academic staff or other employee shall take effect from the date on which the order of removal is made.

Provided that where the teacher, member of the academic staff or other employee is under suspension at the time of his removal, such removal shall take effect from the date on which he was placed under suspension.

(6) Notwithstanding anything contained in the foregoing provisions of this Statute, a teacher, member of the academic staff or other employee may resign:-

(a) if he is permanent employee, only after giving three months notice in writing to the Board of Management or the appointing authority, as the case may be, or by paying three months' salary in lieu thereof;

(b) if he is not a permanent employee, only after giving one month's notice in writing to the Board of Management or, as the case may be, the appointing authority or by paying one month's salary in lieu thereof;

Provided that such resignation shall take effect only on the date on which the resignation is accepted by the Board of Management, or the appointing authority, as the case may be

(c) the appointing authority may, however, waive the notice period in respect of a non-academic permanent or temporary employee on technical resignation to take up an appointment in the same or other organization, if he/she has applied through proper channel."

(Emphasis Supplied)

22. Clearly, the provisions of clauses (2), (3), (4) and (5) of the above statute mandate issuance of not only a notice but a reasonable opportunity to show cause against the penalty proposed. Clause (4) is couched in a negative language reflecting mandatory nature. Thus, unless the appellant complies with the twin condition of, (i) issuance of a proper show cause



notice and; (ii) affording a reasonable opportunity to the respondent, further proposed penalty may be vitiated. In this context it is pertinent to examine the purported show cause notice dated 15.02.1993. the same reads thus:-

*“RX-LN1
ZOZC ORN380 BOT319 NDS9/1
UTNX HL INND 058
NEWDELHI 58/56 1 1300*

*LT
SRI BHUVNESHBYAS
4301 COLUMBIA BIKE APT 702
ARLINGTON VA 22204*

*REF YR LEAVE APPLICATION 4TH SEP AND 8TH DEC 1992 (,
EARNED LEAVE AND EXTRA ORDINARY LEAVE NOT
SANCTIONED (,) RETURN BACK A RESUME DUTY WITHIN
THIRTY DAYS HERE OF FAILING WHICH SERVICES SHALL
STAND TERMINATED
FROM 22ND SEP 1992*

REGISTRAR IGNOU

NNNN”

Plainly read, this telegram directs the respondent to rejoin services within 30 days failing which the respondent would be liable to be terminated. This document clearly falls short of the mandate of Statute 19 of the appellant. Issuance of a notice to show cause as to why services be not terminated involves the recipient to have a clear understanding of what is proposed to be done with a clear intention to provide an opportunity to submit proper and satisfactory explanation by the recipient. Affording of a “reasonable opportunity” is not an empty formality, but principally an



indelible right of an employee. Communication dated 15.02.1993 clearly fails on both fronts. Except to state that the respondent must rejoin services within 30 days failing which his services were liable to be terminated, nothing is discernible to betray the intention of the appellant to afford any “reasonable opportunity” at all. In such circumstances, it is well nigh impossible for this Court to consider communication dated 15.02.1993 as complying with the mandate of Statute 19 of IGNOU.

23. Another relevant examination on law is with regard to the purported letter of termination dated 07.04.1993 and communication dated 11.06.1993 issued by the appellant. To appreciate the issue, it is appropriate to reproduce hereunder both the communications:-

Letter dated 07.03.1993

*“INDIRA GANDHI NATIONAL OPEN UNIVERSITY
Maiden Garhi, New Delhi – 110 088*

F.No.AD/2/NA/1216/89/2461

Dated: 7 April, 1993

Office order No. 488

Sh. Bhuvnesh Vyas, Sr. Software Engineer, has left office w.e.f. 22.9.92 without proper permission and sanction of leave and has gone to USA. He continued to be absent from duty till date even after issue of a notice of termination of his services in the event of his not joining duty.

Services of Sh. Bhuvnesh Vyas, Sr. Software Engineer therefore stand terminated w.e.f. 22.9.92 (F/N).

Sd/-

(K. Narayanan)

Registrar (Admn.)

Copy to :

1. *Director, Computer Div.*
2. *Sh. Bhuvnesh Vyas, 4301, Columbia Pike, Apartment*



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No. 702, Arlington, VA 22204, United States of America.

3. F&A Divison – Withhold all payments till further orders.

Sent by Registered
Post vide Receipt No.
3019 dt. 9.4.93”

Letter dated 11.06.1993

“INDIRA GANDHI NATIONAL OPEN UNIVERSITY
Maidan Garhi, New Delhi – 110 068
Administration Div.

F. No. AD/2/NA/1216/89/3198
Dated: 11 June, 1993

Shri Bhuvnesh Vyas
168, Pocket-B
Sukhdev Vihar,
New Delhi-110025

Dear Sir,

Please refer to your letter dt. June 10, 1993 addressed to the Registrar (Admn.)

Your services have already been terminated wef 22.9.92 vide our office order No.488 issued vide our F.No. AD/2/NA/1216/89/2461 dt. 7.4.93 sent to you under Registered Air Mail on 8.4.93 at your address in USA given by you.

Hence, the question of payment of salary after 21.9.92 does not arise. Further communication regarding the repayment of the amounts overpaid to you on account of salary will follow.

Your faithfully,
Sd/-
(K. Narayanan)
Registrar (Admn.)

Copy to :

1. Sh. Bhuvnesh Vyas, S/o Late Sh. P.L. Vyas, Vyas Sadan, Vijay Chowk, Fathea Ki Nahar, Jodhpur-342001 (Regd. Post)
2. Director, Computer Div.
3. A.R. Computer Div. with a copy of the above letter for delivering to Sh. Vyas if Sh. Vyas comes there against ad.....



4. *F & A Div.*
5. *Office copy*”

Both communications, undoubtedly, indicate the termination of the services of the respondent with retrospective effect from 22.09.1992, the date from when the respondent sought leave. Fundamentally, the termination of services with retrospective effect is flawed, unless the rules provide for such deviation. In the present context, such procedure is prescribed in clause (5) of the Statute 19 as extracted above. Clause (5) clearly stipulates that date of removal of an employee would be with effect from the date such order is passed. The proviso appended thereto clarifies that in certain cases, the date of removal could be with effect from the date of suspension, if any. Thus, it is clear that the Statute itself mandates removal of an employee to be effective only from the date such order is passed provided, such effective date could also be the date from when such employee is placed under suspension. In the present case, it is not even the case of the appellant that the respondent was placed under suspension at all, nor has it placed any such document on record, either before the learned Single Judge or before this Court. In which case, the removal, if at all, of the respondent would only be effective from 07.04.1993. Resultantly, the letter of termination dated 07.04.1993 itself is violative of Statute 19. Letter dated 11.06.1993 being in the nature of communication only, is inconsequential. Thus, the submission on this aspect is rejected.

24. Besides, this Court finds that the learned Single Judge has referred to Rule 14 of the CCS (CCA) Rules, 1965, to observe that no inquiry as contemplated therein was conducted by the appellant and proceeded to



allow the underlying writ petition filed by the respondent. Mr. Mirza's only submission is that, in view of Statute 19(4), there is no infirmity in the termination of the services. We have already found that there has been no compliance with Statute 19(4), which requires show cause notice to be issued to the respondent. Where the statute requires an act to be done in a particular manner, it has to be done in that manner alone or not done at all, all other methods of doing the act being necessarily forbidden (See *Nazir Ahmed v. The King Emperor*, (1936) 38 Bom LR 987; *Taylor v. Taylor*, (1875) 1 Ch. D. 426; *State of Uttar Pradesh v. Singhara Singh*, (1964) 4 SCR 485). Where, therefore, Statute 19(4) requires a show cause notice to be issued, nothing less than a show cause notice would suffice. No show cause notice, as envisaged by Statute 19(4) was issued in the present case.

25. Mr. Mirza has also argued that the underlying writ petition was barred by delay and laches. He refers to the WP No.5023/1993 filed by the respondent before the High Court of Judicature of Rajasthan at Jodhpur which was ultimately dismissed for lack of territorial jurisdiction observing in the penultimate paragraph that the respondent is free to approach the Court of competent jurisdiction. He also referred to the LPA No.488/2005 filed by the respondent before the same High Court to submit that even the appellate Court *vide* the order dated 28.11.2007 upheld the order of the learned Single Judge. He submits that the appellant had taken a specific plea of lack of territorial jurisdiction in its counter affidavit filed in the writ petition before the learned Single judge. Despite such objections, the respondent hotly contested the same and lost. He thus, submits that it is



trite that where a party has contested such objection and the same is ruled against it, such party is precluded from reagitating the same issue elsewhere.

26. This argument does not commend to this Court. The objection taken by the appellant in its counter affidavit in the underlying writ petition is bald and as vague as possible. The relevant paragraph of the counter affidavit reads thus:-

“1. The present petition has been filed seeking inter alia quashing and setting aside of office order no.488 dated 7.4.1993 whereby the Petitioner’s services with the Respondent University were terminated with effect from 22.9.1992. At the outset, it is submitted that the present petition is an abuse of the process and no such relief can be granted given the conduct of the Petitioner as explained hereinbelow and also keeping in view the delay and laches of 15 years by the Petitioner in approaching this Hon’ble Court.”

(Emphasis Supplied)

Though, this Court need not have deliberated upon such vague and bald assertions, yet is consciously dealing with the same in the interests of justice. That said, it is clear from the order of the learned Single Judge in W.P. No.5023/1993 that after deciding the issue of territorial jurisdiction and concluding that it did not have the same, while dismissing the writ petition, left the respondent herein, free to take appropriate remedies before the Court of competent jurisdiction. The learned division Bench had also upheld the order of learned Single Judge. This Court observes that the learned Single Judge of the Rajasthan High Court at Jodhpur granted the right to agitate the issue on merits in the court of competent jurisdiction. The dispute was not decided on merits which, may have amounted to constructive *res judicata*, but only on whether it had the territorial



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jurisdiction. This, would not preclude the respondent from approaching the appropriate court for redressal of his disputes. The order of learned Single judge was passed on 16.08.2005 and that of learned Division Bench was on 28.11.2007. The respondent approached this Court on 04.01.2008. It is clear that the respondent had approached the legal fora within reasonable time and thus, the objection regarding delay and laches is rejected. It also merits mention, in this context, that the appellant never chose to challenge the judgment of the learned Division Bench of the Rajasthan High Court.

27. Coming to the leave applications, it appears that the same needs examination. The leave application dated 04.09.1992 is extracted hereunder:-

*“INDIRA GANDHI NATIONAL OPEN UNIVERSITY
K-76, Hauz Khas, New Delhi-110016
Computer Division*

LEAVE APPLICATION				
TO Director		DIVISION Computer Division		
NAME BHUVANESH VYAS		DESIGNATION Sr. Software Engineer		DIVISION Computer
CASUAL	EARNED _/	MEDICAL	COMPENSATORY	OTHER (SPECIFY)
NO. OF WORKING DAYS 90		FROM (FIRST WORKING DAY) 22-9-92		TO (LAST WORKING DAY) 21-12-92
ADDRESS WHILE ASSENT Columbia Pike, Apartment No.702, Arlington, USA 22204.				
STAFF MEMBER'S SIGNATURE Sd/- DATE: 4-9-92			APPROVING OFFICER'S SIGNATURE Sd/- DATE : 7.9.92	

REASON FOR LEAVE : To visit close friend in US, for exploring possibility of higher studies etc and purpose to leave Delhi on 21-9-92 or 22-9-92 depending on availability of confirm ticket.



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.....

Counter Signature of”

Perusal of this document clearly indicates that the Approving Authority had approved the leave sought w.e.f. 22.09.1992 to 21.12.1992. Though, the learned counsel for the appellant has vehemently argued that the Director, whose signature is appended on the application granting approval, is not the Competent Authority, yet the Administrative Order dated 08.02.1990 specifying the Delegation of certain powers of granting leave by the VC to other Authorities, categorically stipulates that the Directors excepting Director (TA) were delegated the authority to sanction leave. This, was subject to sufficient leave being at the credit of the individual. It is not doubted that the respondent was working directly under the Director whose signature is appended on the said leave application. It is also not disputed that the respondent had 94 days earned leave to his credit. This is apparent from para 2 of the parawise reply to paras 4-7 to the underlying writ petition filed by the appellant. Thus, the argument is untenable and contrary to the Delegation of Administrative Powers conferred by the VC. Equally, with respect to the second leave application submitted by the respondent on 06.12.1992, Mr.Mirza submits that this application was not approved at all by the VC. On a pointed query by this Court, Mr. Aly Mirza, learned counsel for the appellant was unable to show any document to establish that the Earned Leave of 90 days and the Extra Ordinary Leave of 203 days was not sanctioned by the Vice Chancellor of the appellant university. In that view of the matter, this argument regarding



non sanctioning of leave by the Competent Authority, i.e., the VC, is untenable and is rejected.

28. Learned counsel for the appellant had made an attempt to buttress the above argument by drawing attention to pages 127 and 128 of the paperbook which are file noting relating to the leave application of the respondent. According to him, reading of the noting clearly indicates that the VC had not sanctioned any leave at all. This issue is not tenable for the reason that the respondent had been approved the leave w.e.f. 22.09.1992 to 21.12.1992 by the Competent Authority, i.e., the Director and so was the extension sought till 12.07.1993. It should also be kept in mind that the purported refusal of sanction of leave was neither informed to the respondent at anytime between 04.09.1992 till 15.02.1993 nor any such notice was issued to him. For the first time the respondent appears to have been informed *vide* the purported notice dated 15.02.1993 directing the respondent to rejoin services that his leave of 90 days against his credit on account of Earned Leave and its extension under Extra Ordinary Leave have not been sanctioned. Thus, no fault can be found with the respondent assuming that both his leave applications have been sanctioned.

29. The argument in respect of the deemed abandonment of service by the respondent equally does not commend to us. From a perusal of the contents of the reply/counter affidavit of the appellant it is apparent that no such legal ground has been taken. Moreover, from the record it is apparent that respondent had admittedly sought leave on 04.09.1992 for 90 days which was approved by the Director. It is also not disputed that the



respondent had sought extension of his leave under Extra Ordinary Leave by the communication dated 06.12.1992. The file noting dated 27.01.1993 of the Assistant Registrar (Admin) establishes this fact. The same is extracted hereunder:

*“Subject : Leave application of Sh. Bhuvnesh Vyas
Sr. Software Engineer.*

The note dt. 22.1.93 of Director, Computer Division and the leave applications of Sh. Bhuvnesh Vyas, Sr. Software Engineer enclosed thereto may kindly be pursued.

It is stated that Sh. Bhuvnesh Vyas had applied for EL for 91 days from 22.9.92 to 21.12.92 stating reason – “to visit close friend at USA for exploring the possibility of higher studies”, and the leave application was forwarded to Dy. Registrar (Admn.) on 7.9.92. The leave application does not appear to have been received in Administration. In continuation of the above leave, Sh. Bhuvnesh Vyas has sent an application for EOL 203 days from 22.12.92 to 12.7.93.

The Director, Computer Division has already sanctioned leave for 91 days and forwarded the extension of EOL for consideration in Administration. Sh. Bhuvnesh Vyas has 94 days leave at his credit upto 31.12.92.

If approved:

- i) Registrar may sanction 91 days EL from 22.9.92 to 21.12.92 under the powers delegated to him;*
- ii) V.C. may be requested to sanction EOL for 203 days from 22.12.92 to 12.7.93.*

Sd/-

*(M.K. Murugesan)
Asstt.Registrar (Admn.)*

Registrar (Admn.)”

30. This firmly establishes that respondent had no intention to abandon his services. Thus the question of deemed abandonment does not arise at all. On facts, this Court does not find any such “*abandonment of services*”



by the respondent.

31. Mr. Mirza, also placed reliance on the judgement of Supreme Court in *Shahoodul Haque v. Registrar, Coop. Societies, (1975) 3 SCC 108*. We find this decision to be clearly distinguishable, as, in that case, several communication's, granting opportunities to explain, were addressed to the officer, which were not responded to by the officer. *Per contra*, in the present case, there is not a single communication from the appellant to the respondent between the telegram dated 15.02.1993 and the letter of termination dated 11.06.1993.

32. As an upshot of the above, this Court does not find any grounds muchless any cogent grounds to interfere with the impugned judgement dated 23.04.2019. Resultantly, the appeal is dismissed along with applications, if any. No order as to costs.

TUSHAR RAO GEDELA, J

C. HARI SHANKAR, J

November 14th, 2024