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Court : Rajasthan

Decided On : May-19-2008

Reported in : RLW2008(4)Raj3146

Judge : Gopal Krishan Vyas, J.

Appellant : Farida Lukman

Respondent : State and ors.

Disposition : Petition dismissed

Judgement :

ORDER

Gopal Krishan Vyas, J.

1. By way of filing the present writ petition, the petitioner has challenged the impugned order dated 13.6.2001 (Annexure-7) whereby the petitioner's services were terminated by the District Education Officer (Secondary-I), Department of Education, Udaipur.

2. Brief facts of the case are that the petitioner was appointed after due selection as Teacher Gr.III (Urdu) vide order dated 30.3.1990 by the District Education Officer (Girls), Udaipur. Later on, her services were confirmed vide order dated 16.6.1993. The petitioner worked on the said post till 5.9.1998. Thereafter, as

stated in the writ petition, an application was filed by the petitioner for leave to proceed for Kuwait to stay with her husband for sometime. As per the petitioner, she has prayed for leave of 36 months w.e.f. 5.9.1998 and the said application was submitted to the Director, Education, Bikaner through District Education Officer, Udaipur. The District Education Officer, Udaipur called her in his Office on 27.10.1998 and it was personally conveyed to her that the leave sought by the petitioner and permission to leave headquarter during the leave period has been granted by the competent authority for three years. Further, it is informed that the order of requisite grant of the leave shall be kept by the Department in service book of the petitioner. As per the petitioner, a certificate was issued in her favour on the same day with regard to best wishes for her and success in life by the Mead Master of the School.

3. In pursuance to the verbal assurance given by the District Education Officer, the petitioner left for Kuwait on 9.11.1998 and before proceeding, she filled up the privilege leave form mentioning her address of Kuwait.

4. She had contacted marriage on 23.3.1998 in Udaipur and her husband was living in Kuwait and therefore, she proceeded on leave to met her husband at Kuwait.

5. According to the petitioner she gave birth to a premature baby in April, 2000 and son born to the petitioner was very weak, therefore, the petitioner remained in the hospital for about 20 days and thereafter due to certain mental tension, the petitioner suffered severe shock, therefore, she was hospitalized for quite long period. The petitioner returned to India on 17.2.2002 and thereafter on 25.2.2002, she reported for joining duties at Govt. Senior Secondary School, Savina Kheda, Udaipur but she was not allowed to join duties by the Head Master. Therefore, she filed an application before District Education Officer, Udaipur with the prayer for granting her permission to join duties.

6. The petitioner was informed that her services have already been terminated by the District Education Officer, Udaipur after holding disciplinary proceedings against her. Upon this information, she made a request for supplying the copies of the relevant documents of the inquiry proceedings but all her requests went in vain

and only a photo-stat copy of termination order dated 13.6.2001 was supplied to the petitioner but original copy was not supplied to the petitioner.

7. The petitioner filed an application in the School for joining but she was not allowed to join duties. Therefore, the petitioner time and again made requests to the respondents to supply the original copy of the order dated 13.6.2001, charge-sheet, the enquiry report and the notices which were sent to her at Kuwait but those documents were not supplied to the petitioner. Although in the termination order, a reference of charge-sheet and certain notices, which is said to be sent to the petitioner at Kuwait. But all these documents were not supplied to the petitioner though major penalty of removal from service was inflicted against her. Therefore, the decision of the respondents for imposing major penalty of termination is against the principles of natural justice and in violation of mandatory provisions as prescribed under the Rules of 1958. After filing an application with the prayer for letting her to join her duties before the respondent Department on 2.7.2004. When the prayer of the petitioner was not given any heed by the respondents, then in compelling circumstances, this writ petition has been preferred challenging the validity of the termination order.

8. Learned Counsel for the petitioner argued that the order dated 13.6.2001 is totally against the procedure laid down under Rule 16 of the Rajasthan Civil Service (Classification, Control & Appeal) Rules, 1958 and against the principles of natural justice. Further, it is argued that the so called notice, issued to the petitioner at Kuwait address was not served upon him, therefore, so called enquiry conducted ex parte against the petitioner deserves to be quashed. Learned Counsel for the petitioner while assailing the validity of the termination order, submitted that no finding on each charge has been given which is mandatory as per Rule 16 (9) of the CCA Rules 1958. The respondents were required to conduct the enquiry in proper manner after due service of the notice to the petitioner but while observing in the order that the delinquent did not appear in the enquiry, the ex parte order has been passed.

9. Without prejudice to the above arguments, it is submitted by learned Counsel for the petitioner that even in ex parte proceedings, the disciplinary authority was

required to record finding against the absentee after recording evidence, therefore, without recording any oral evidence and documentary evidence against the petitioner, the impugned termination order has been issued. Meaning thereby, no enquiry was conducted against the petitioner for her absence from duties. The petitioner was not afforded proper opportunity to prove her innocence before the enquiry officer because no notice to show cause was ever served upon the petitioner issued by the disciplinary authority. Thus, the action of the respondents is in gross violation of the principles of natural justice and the order impugned deserves to be set aside.

10. Learned Counsel for the petitioner further argued that under Rule 86 of the Rajasthan Service Rules, no notice was served upon the petitioner neither any charge sheet nor the notices dated 13.6.2000, 1.7.2000, 12.6.2000, 6.11.2000 and 7.4.2001 were served upon the petitioner. Therefore, the order impugned is illegal and in contravention of basic principles of law.

11. Learned Counsel for the petitioner submitted that before proceeding to leave the country, the petitioner filed an application for privilege leave in which she has specifically mentioned the address where she was to stay at Kuwait but in fact no postal receipts and copies of such notices were given to the petitioner. Further, it is submitted that even assuming that the document as mentioned in the order dated 13.6.2001 was sent through registered post then also, its actual service upon the delinquent was necessary but in this case, neither charge-sheet was served upon the petitioner nor any notice was sent to the petitioner knowingly well that the petitioner has left the country and living in Kuwait at the address supplied by the petitioner when she left the country, therefore, the order impugned is totally against the principles of natural justice, so also, has been passed in gross violation of the procedure laid down in CCA Rules for inflicting major penalty under Rule 16 of the CCA Rules.

12. According to the petitioner, the documents which are envelopes filed along with the reply, the address which is mentioned in the envelopes is not correct, therefore, on this ground also, it cannot be presumed that the notices were served upon the petitioner before passing the order of penalty. Therefore, the order

impugned may kindly be quashed.

13. In support of his arguments, learned Counsel for the petitioner has relied upon the judgment reported in RLW 2003 (4) 2244 Naina Ram v. State of Raj and submitted that in this case, this Hon'ble Court has quashed the termination order on the ground that genuineness of the documents has to be proved and verified by the evidence. Further, it is held by learned Single Judge that enquiry officer is required to grant opportunity of hearing to the incumbent before passing major penalty of removal, so also, no penalty of removal can be imposed without holding proper enquiry and giving proper opportunity to the petitioner.

14. The next judgment cited by the learned Counsel for the petitioner is reported in 1998 JT (6) 1 (UOI v. Dinanath Santaram and Ors.). While citing this judgment, it is pointed out by learned Counsel for the petitioner that the service of notice and charge-sheet sent by registered post returned with endorsement 'not found', then it cannot be said that notice was served upon the incumbent. Therefore, upon the facts of the present case, it is admitted position of the case that notices were sent but not served upon the petitioner when she was residing at Kuwait. Therefore, where the disciplinary proceedings are intended to be initiated by issuing charge-sheets, its actual service is essential as the person to whom the charge-sheet is issued is required to submit his reply and thereafter to participate in the enquiry. In the present case, the theory of communication cannot be invoked and actual service must be proved and established.

15. Per contra by way of filing reply by the State, it is submitted that the petitioner is guilty of suppressing material facts from this Court and she has mislead this Court by making false and incorrect averments and she has not approached this Court with clean hands. Therefore, this writ petition deserves to be dismissed on this ground alone. As per the respondents upon plain paper an application was filed by the petitioner for granting PL and same was not even sanctioned by the competent authority, so also, no permission was granted by the respondents to the petitioner to leave the country. As such the petitioner is guilty of making false averment by saying that District Education Officer has verbally asked her that your leave has been sanctioned and sanction letter will be kept in the service record. In

fact, the leave of the petitioner was not sanctioned by the competent authority and in application filed by her, she applied for privilege leave for 30 days. Therefore, deliberately she had made attempt to mislead this Court. While inviting attention towards Annexure-R/1, which is the application filed by the petitioner addressed to the Head Master, it is specifically stated in the subject that for granting 30 days E.L. while stating that she is leaving Udaipur to meet her husband and in the said application for leave address of Kuwait was given, which is outside the country. Likewise, along with rejoinder one more application (Annexure-11) has been filed by the petitioner herself, which was submitted before the Head Master in which it is mentioned that District Education Officer has sanctioned 36 months leave without pay. Therefore, permission to leave headquarter may be granted with effect from 4.11.98. This contention is false, so also the fact stated in the writ petition that she filed an application for grant of privilege leave is false. Therefore, petitioner is guilty of misleading this Court.

16. In reply, it is further stated that an application was submitted by the petitioner on simple paper praying therein for grant of privilege leave for 30 days from 4.11.1998. The petitioner left the country without permission and without sanction of leave. The leave application was not sanctioned by the Head Master of the school because Headmaster is not competent to grant permission to the employee to leave country. Therefore, the respondent has denied the contention of the petitioner that any application for privilege leave of 36 months was filed by the petitioner.

17. Learned Dy. Govt. Counsel argued that no employee can leave country or even can leave headquarter without prior sanction of the employer under the Rules. In this case, admittedly, the petitioner left the country and lived outside the country for three years and respondents took all efforts to serve charge-sheet and notice upon her to remain present before the disciplinary authority but for want of correct address, the notices were not served upon the petitioner and this fact itself proves that before leaving country, no leave was sanctioned by the respondents, so also, no permission was granted to leave the country, on the contrary, the competent authority has passed an order whereby the application for granting three years leave without pay was rejected vide communication dated 5.3.1999

but before that admittedly as per petitioner herself she left the country.

18. Learned Dy. Govt. Counsel submitted that in this case it is admitted that the petitioner left the country without prior permission and she was at Kuwait for near-about three years. Therefore, this fact itself proves that misconduct has been committed by the petitioner because she was out of country for three years and before leaving the country, no leave was sanctioned, so also, no order was passed for grant of any 'no objection certificate' to leave the country by the respondents, therefore, even if it is presumed that the notices were not served upon the petitioner, then also it is a case in which the conduct of the petitioner is required to be seen because being a government employee, she was required to follow the Rules and to get N.O.C. from the competent authority before leaving the country but admittedly, she left the country without any prior permission and sanction of leave. Therefore, such type of employee is not entitled to get any relief under extraordinary jurisdiction of this Court.

19. Learned Counsel for the respondents vehemently argued that such type of employee are not entitled to be reinstated in service. The petitioner left the country without permission and after return she filed an application for taking her on duty, therefore, conduct of the petitioner does not warrant any interference of this Court under Article 226 of the Constitution of India, so also, on the admitted position of the case it is not necessary for the enquiry officer to take any evidence on record to prove the misconduct because the petitioner herself is admitting that she was out of country and leave was not sanctioned by the respondents. Therefore, upon conduct of the petitioner, this writ petition deserves to be dismissed.

20. Learned Counsel for the respondents has invited my attention towards the judgment of Hon'ble Apex Court reported in 2006 (2) RDD 17 (SC) (State of Rajasthan and Anr. v. Mohammed Ayub Naz) wherein the Hon'ble Apex Court has held that in case of willful absence from service without intimation, punishment of removal is only punishment which is required to be inflicted against the employee. In the said appeal, the judgment of learned Single Judge and Hon'ble Division Bench of this Court was under challenge before Hon'ble Apex Court. In the said case, learned Single Judge of this Court while giving finding that the respondent

remained absent from duties for about three years and there was no satisfactory explanation to justify the absence still the learned Single Judge proceeded to reduce the punishment of removal into voluntary retirement. The Hon'ble Division Bench of this Court upheld the said judgment. However, the Hon'ble Apex Court reversed the judgments of learned Single Judge and Hon'ble Division Bench and held that upon admission of the employee with regard to absence for three years, the punishment of removal imposed upon him is absolutely correct and not disproportionate as alleged by the respondent of the said writ petition. Therefore, in this case also admittedly the petitioner was out of country for three years and before leaving the country no leave was sanctioned in favour of the petitioner and no order was passed for granting NOC to leave the country in favour of the petitioner. Therefore, as per respondents, this writ petition deserves to be dismissed on the aforesaid ground that the petitioner was out of country and left the country without any sanction of leave by the Department and remained outside the country for three years. Further, it is submitted that the conduct of the petitioner speaks that she is not entitled to get any benefit of technicalities, which is alleged by the petitioner with regard to conducting enquiry against her.

21. For the judgments cited by the learned Counsel for the petitioner, it is submitted that the facts of those cases are altogether different, therefore, upon facts the present case is squarely covered by the judgment of Hon'ble Apex Court in case of State of Rajasthan and Anr. v. Mohammed Ayub Naz (supra).

22. After hearing both the parties and perusing the entire record of the case, it is clear that admittedly the petitioner left the country on 5.9.1998 and she came back as per her own admission on 17.2.2002 after more than three years. It is also obvious from the facts narrated by the petitioner herself in the writ petition that an application was filed by her for granting leave but it is nowhere stated that leave was sanctioned and permission to leave the country was ever granted in her favour. Meaning thereby, without any prior permission and sanction of leave, the petitioner left the country while filing an application to the Head Master. According to the Rajasthan Civil Services Rules, no employee can leave even headquarter without permission but here in this case, the petitioner left the country while submitting false fact that District Education Officer had granted leave upon an

application filed by her. Meaning thereby, the conduct of the petitioner is very serious because she was substantively working on the post of Teacher Grade III and she left the country without any sanction of leave or permission by the Government Department. Further upon perusal of the specific averment made by the petitioner in para 7 that before proceedings she filled up the PL form mentioning her address of Kuwait. This assertion is totally false upon perusal of two application filed by the petitioner as well as respondents as Annexure -11 and Annexure-R/1. In both the applications, the contention made in para 7 are absent. In Annexure- R/1, it is stated by the petitioner that she is going out of Udaipur to meet her husband, therefore, 30 days PL may be granted whereas in Annexure-11, it is stated by the petitioner that:

mijksDr fo'k;kUrxZr fuosnu gS fd eS] Qjhmk eksbt vyh dkWadjksyh okyk nwZ v;/kfidk r`-o-J- us dqoSr v-t- tkus ds fy, Jheku~ ft-f'k-v- egksn; us esjk 36 ekg dk voSrfud vodk'k Lohdkj dj fn;k gS A ftl dh ewy izfr esjh lfoZI cqd ls layXu gS A

23. This application was filed before the Head Master of the School where she was working. Meaning thereby, a total false assertion was made by the petitioner in Annexure-11 in which it is stated by her that her 36 months without pay leave has been sanctioned by the District Education Officer. This document Annexure-11 has been filed by the petitioner in which altogether different averments and facts are mentioned which are contrary to the averments mentioned in para 7 of the writ petition. Therefore, obviously the petitioner has made an attempt to mislead this Court for getting relief of reinstatement. Such type of conduct is required to be deprecated by this Court. The petitioner admittedly left the country without sanction of leave is claiming her right to be heard in enquiry, for remaining willful absent from duties. In my opinion, upon such type of conduct, no relief can be granted by this Court. More so, the action taken by the department for terminating services of the petitioner is required to be upheld because petitioner has not only mislead the Court but she is guilty of making flase assertion in the writ petition for seeking relief.

24. In my opinion the facts of the present case are more serious then the facts of the case of State of Rajasthan v. Mohammed Ayub Naz (supra) in which the

Hon'ble Apex Court has held that no sympathy shall be granted to the employee who remained willful absent from duties. Para 9 and 18 of the judgment of Hon'ble Apex court in case of State of Rajasthan v. Mohammed Ayub Naz (supra) are as follows:

9. Absenteeism from office for prolong period of time without prior permission by the Government servants has become a principle cause of indiscipline which have greatly affected various Government Services. In order to mitigate the rampant absenteeism and wilful absence from service without intimation to the Government, the Government of Rajasthan inserted Rule 86 (3) in the Rajasthan Service Rules which contemplated that if a Government servant remains wilfully absent for a period exceeding one month and if the charge of wilful absence from duty is proved against him, he may be removed from service. In the instant case, opportunity was given to the respondent to contest the disciplinary proceedings. He also attended the enquiry. After going through the records, the learned Single Judge held that the admitted fact of absence was borne out from the record and that the respondent himself has admitted that he was absent for about 3 years. After holding so, the learned Single Judge committed a grave error that the respondent can be deemed to have retired after seeking of service of 20 years with all retiral benefits which may be available to him. In our opinion, the impugned order of removal from service is the only proper punishment to be awarded to the respondent herein who was wilfully absent from 3 years without intimation to the Government. The facts and circumstances and the admission made by the respondent would clearly go to show that Rule 86 (3) of the Rajasthan Service Rules is proved against him and, therefore, he may be removed from service.

18. For the foregoing reasons, we are of the opinion that a Government servant who has wilfully been absent for a period of about 3 years and which fact is not disputed even by the learned Single Judge of the High Court has no right to receive the monetary/retiral benefits during the period in question. The High Court has given all retiral benefits which shall mean a lumpsum money of lakhs of rupees shall have to be given to the respondent. In our opinion, considering the totality of the circumstances, and the admission made by the respondent himself that he was wilfully absent for 3 years, the punishment of removal imposed on him

is absolutely correct and not disproportionate as alleged by the respondent. The orders passed by the learned Single Judge in S.B. Civil Writ Petition No. 2239/1991 dated 24.8.2001 and of the order passed by the Division Bench in LPA No. 1073 of 2001 dated 13.12.2001 are set aside and the punishment imposed by the disciplinary authority is restored. However, there shall be no order as to costs.

25. In this case, admittedly the petitioner left the country without sanction of leave, more so while narrating false averments in the application (Annexure-11) submitted before the Head Master, therefore, such type of conduct disentitles the petitioner from seeking any relief from this Court under Article 226 of the Constitution of India. In my opinion, the action of the respondents in terminating the services of the petitioner upon alleged misconduct which is admitted by her in the writ petition is correct and in consonance with the law laid by Hon'ble Apex Court in case of State of Rajasthan v. Mohammed Ayub Naz (supra). In this view of the matter, the penalty imposed by the department against the petitioner is perfectly legal and within the four corners of law. The Government Departments are under obligation to take such serious view against such type of persons who disobeyed the mandatory provisions of law and in casual manner without permission leaving the country. Further the conduct of the petitioner is so serious that in para No. 4 and 7 of the writ petition, different facts are narrated and in the application Annexure-11 filed by the petitioner altogether different facts are mentioned and both are contrary to each other. Therefore, the petitioner has misled this Court while submitting false averments. Therefore, the conduct of the petitioner disentitles her to challenge the order of termination passed by the respondents. So also, for such Government employee, leaving the country without sanction of leave and prior permission, appropriate punishment is removal from service, which has been inflicted in this case. Therefore, I am not inclined to interfere with the order impugned dated 13.6.2001, terminating the services of the petitioner even if there is any lapse of procedural technicalities in the enquiry because for his own misconduct, the petitioner cannot claim any relief as a matter of course. Accordingly this writ petition is hereby dismissed with cost.