

Avadh Behari Pachauri Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-28-2003

Reported in : RLW2004(2)Raj954; 2004(2)WLC549

Judge : Gyan Sudha Misra, J.

Acts : Rajasthan Services Rules, 1951 - Rule 170; [Constitution of India](#) - Articles 14, 16, 226, 309 and 311

Appeal No. : S.B. Civil Writ Petition No. 4309 of 1992

Appellant : Avadh Behari Pachauri

Respondent : State of Rajasthan

Advocate for Def. : Sumitra Goyal, GA

Advocate for Pet/Ap. : Virendra Manjhu, Adv.

Disposition : Petition allowed

Judgement :

Misra, J.

1. The petitioner who was a Upper Division Clerk in the Rehabilitation Branch of the District Collector Jaipur and has subsequently retired from service has filed this writ petition challenged the order of his dismissal dated 23.10.91 as contained

in Annexure-15, This order was passed after an enquiry was held against him for the charge of wilfull absence from duty regarding which his explanation was not accepted by the enquiry Officer nor his leave was adjusted against the leave which were due to him. As a consequence of this order, the petitioner has been denied even his pensionary benefits inspite of long years of service.

2. In order to high-light the controversy involved in this writ petition, a slight enumeration of the facts appears to be essential. In this context it may be stated that the petitioner while he was serving as an Upper Division Clerk in the Office of the District Collector (Rehabilitation Jaipur remained on leave from 29.9.87 to 11.10.87 for thirteen days and thereafter from 16.10.87 to 18.10.87 for three days and again on 27.10.87. According to the petitioner's version, he went to join his duties on 1st February 1988 alongwith the medical and fitness certificate but he was not permitted to do the same and under compulsion he was sitting idle. On 20.2.88 a charge sheet was served on the petitioner laying down therein that he wilfully absented from duty for the period noted hereinbefore-that is from 29.9.87 to 11.10.87, 16.10.87 to 18.10.87 and 27.10.87 and as per the charge-sheet the petitioner continued his absence even after this period. The petitioner filed the reply and submitted his explanation in regard to this charge, He specifically took the plea that he had applied for leave from 29.9.87 to 11.10.87, 16.10.87 to 18.10.87 and 27.10.87 to 31.1.88 and thereafter when he went to join his duties on 1.2.88 alongwith the medical and fitness certificate, the same was not accepted and therefore he requested that the period of his absence from duty be adjusted towards his leave which were due on account of his earned leave and other leave.

3. The enquiry officer who conducted the enquiry was pleased to hold that the petitioner employee had failed to explain his absence beyond doubt and the medical certificate was also not accepted by the enquiry officer and therefore he was pleased to hold that the petitioner was guilty of the charge levelled against him as the petitioner failed to explain his absence from duty for the period during which he had remained absent as stated hereinbefore. Thereafter a show cause notice was served on the petitioner to explain as to why he should not be dismissed from service to which the petitioner did not respond and he was dismissed from service by order dated 23.10.91 with retrospective effect from

27.10.87 that is immediately after the period of his leave had expired as per the respondent's version. Consequently, the petitioner has been denied his pensionary benefits even though the petitioner has long years of service to its credit. Feeling aggrieved of the order of dismissal the petitioner has filed this writ petition urging that the order of his dismissal has resulted in denial of even his pensionary benefits he had valid reasons for the leave availed.

4. The counsel for the petitioner has first of all submitted that the petitioner had superannuated from service on 31.5.91 vide order dated 25.9.91 and the enquiry was initiated after he retired from service since a show cause notice was issued to him after his retirement on 4.7.91 as to why he should not be dismissed from service. He therefore relied upon Rule 170 of the Rajasthan Service Rules 1951 which envisages that if a Departmental proceeding is instituted after the retirement of the employee or during his re-employment it cannot be initiated without the sanction of the Governor and further the Rajasthan Public Service Commission ought to have been consulted before passing any final order.

5. This argument of the counsel for the petitioner is absolutely without substance as it is apparent that the charge sheet was issued to the petitioner while he was still in service on 20.2.88 and the enquiry report also was submitted on 1.6.90 with a conclusion that the petitioner was found guilty of charge which was levelled against him in the charge sheet. Thus it is obvious that the enquiry had been initiated against the petitioner while he was still in service and only the show cause notice for imposition of punishment was given to him on 4.7.91. Hence the argument advanced in support of the case of the petitioner that he would be protected by Rule 170 which envisages sanction of the Governor for instituting a proceeding and that approval of the Rajasthan Public Service Commission was essential before passing the final order does not improve the petitioner's case in any manner.

6. The counsel for the parties however, were permitted to address the court on other points. In this regard it could be noticed that the petitioner although had absented from duty for 13 days from 29.9.87 to 11.10.87 and thereafter for three days from 16.10.87 to 18.10.87 and thereafter for a day more on 27.10.87, he had

duly explained his absence for this period by virtue of the medical certificate which he had produced. The enquiry officer has disbelieved the medical certificate without assigning any cogent reason as to why medical certificate was disbelieved and it further does not stand to reason as to why the request of the petitioner for adjusting this period against the leave period which was due against him by way of earned leave or other leave was not adjusted by the competent authority which aspect has not been dealt with by the enquiry officer at all. Thus the absence of 16 days of duties appears to be fully explained by the petitioner which appears to have been arbitrarily rejected by the respondents without proper analysis and justifiable reasons. In so far the third charge regarding his absence from duty from 27.10.87 onwards is concerned, the enquiry officer has totally failed to scrutinise it and has not given any reason as to why the petitioner was not allowed to join the duty on 1.2.88 when he had appeared to join his duties alongwith the medical certificate. Thereafter, if the petitioner did not discharge the duty after 1.2.88, obviously the fault cannot be attributed to the petitioner by stating that he was absent from duty without any cogent reason as this liability cannot be fastened on him. It is in fact the Department which had to explain as to why the petitioner was compelled not to discharge his duties from 1st of February 1988 when there was no order of suspension or any enquiry pending against his. The report of the enquiry officer does not deal with all this material aspects as also the fact as to why the period of absence was not adjusted against his earned leave even if his medical certificate was disbelieved without assigning any reason. The enquiry officer appears to have been swayed by the fact that the petitioner did not respond to the show cause notice issued to him when an explanation was sought but if the petitioner was away from home and the notice was served on his daughter that cannot be the sole reason to restrain him from discharging his duties for all times to come when no order of suspension was in existence. It further transpires that the petitioner during pendency of the enquiry had already superannuated and thereafter the show cause notice for imposing penalty was issued against him and ultimately an order for his dismissal with retrospective effect from 27.10.87 was passed against him ignoring the fact that he had already offered to join his duties after 1.2.88 which was not accepted. It is difficult to appreciate how the order of dismissal with retrospective effect could be passed in a circumstance of this nature

specially when the enquiry officer has not dealt with a point as to why his joining on 1.2.88 was not accepted by the Department and whether the absence of the petitioner after he was compelled not to join his duties could be possible and legally taken as wilful absence from duty.

7. The question also emerges on the surface whether absence from duty can be construed as wilful absence from duty if the employee has remained absent for reasons beyond his control as it has been happened in this case and the petitioner on the first date of absence that is 29.10.87 was also on casual leave and some period during which he was allowed to have remained absent from duty were also national holidays or a Sunday then whether all these period could have been treated as wilful absence from duty. In the facts and circumstances of this case where the petitioner employee had remained absent on the ground of illness and the medical certificate was disbelieved without assigning any reason, it is difficult to treat such absence as wilful absence from duty, as the petitioner on 1.2.88 had gone to join his duty alongwith the medical certificate, but the Department restrained him from joining the duties and thus the employee-petitioner was compelled not to continue on his duty. The said period by any stretch of imagination cannot be treated as wilful absence from duty as it is difficult to understand how the petitioner could be charged for the offence of wilful absence from duty when he was restrained from continuing with his duties although he was not permitted to join. It is the respondent-department which issued charge sheet on him on 22.2.88 and without issuing any order of suspension he was not permitted to join his duties. These facts do not make out a case of wilful absence from duty on the part of the petitioner at least after the date on which he had gone to join his duties. Thus the conclusion which emerges after these discussion is that the respondent-department has failed to establish the charge of wilful absence from duty at the behest of the petitioner.

8. The petitioner had also retired from service during pendency of the proceeding and it does not stand to reason as to why the extreme penalty of dismissal of service that too with retrospective effect was passed against the petitioner so as to snatch away his right to avail even pensionary benefits. Under the facts and circumstances of the case, the case of imposition of extreme penalty of dismissal

from service on the petitioner also appears to be disproportionate to the charge in my considered opinion specially when the enquiry officer has failed to assign any reason for disbelieving the medical certificate. The consequence of all these reasons is that the order of dismissal dated 23.10.91 passed against the petitioner with retrospective effect from 27.10.87 is fit to be quashed and hence the same is quashed and set aside. However, the petitioner having retired from service, no order for his reinstatement is possible and hence the consequence of setting aside the order of dismissal would be that the petitioner would be paid all his pensionary benefits counting the period of his service up till 31.5.91-the date on which the petitioner would have retired in normal course. The pension of the petitioner be computed within a period of three months and thereafter the payment be made to him. The writ petition accordingly stands allowed but without any order as to costs.