

THE HON'BLE SMT JUSTICE JUVVADI SRIDEVI

WRIT PETITION No. 12932 of 2011

ORDER :

Petitioner is seeking to declare the action of respondents in not permitting him to discharge his duties as Badli Filler in pursuance of office order dated 05.06.1992 in spite of his reporting for duty, as arbitrary and illegal and sought for consequential direction directing the respondents to empanel him as Badli filler with consequential benefits.

2. Heard both sides and perused the record.

3. Petitioner was empanelled as Badli Filler on compassionate appointment, vide order dated 11.09.1989. He had continuously discharged his duties without any break from the date of his initial empanelment. He was also allotted 'D' type quarter vide proceedings dated 26.05.1990. Thereafter, vide order dated 05.06.1992, the petitioner was transferred to Ramakrishnapur area, however, no posting orders were issued to him by the General Manager, Ramakrishnapur area, as directed in the proceedings dated 05.06.1992. In the meanwhile, the petitioner was implicated in a criminal case and he was confined in Warangal Central Jail, and later, vide judgment dated 11.03.1996, he was acquitted from the criminal case. It is his case that he was mentally affected due to the said criminal case and underwent prolonged medical treatment for the period from 15.03.1996 to 30.04.1999 and after recovering from illness he reported for duty. As he was not permitted to discharge his duties in spite

of there being no disciplinary proceedings initiated against him, he made a representation dated 17.08.1999 through Workers' Union by enclosing all relevant records. As he was not allotted duty, he again made a representation dated 14.11.2009 requesting the respondents to allow him to discharge his duties. In spite of the same, the respondents are not allowing the petitioner to joint duty. Hence, this writ petition.

4. Respondents have filed counter affidavit admitting the empanelment of petitioner as Badli Filler vide letter dated 11.09.1989 on compassionate appointment, as his father had expired while in service. It is also admitted that the residential quarter allotted to his father, was again allotted to the petitioner after his appointment. It is stated that after his empanelment during September, 1989, the petitioner was on unauthorized absence, and hence, he was dis-empanelled and subsequently on his assurance to be regular to his duties, he was re-empanelled as Badli Filler on 14.12.1991. Subsequently, vide order dated 05.06.1992, the petitioner was transferred to Ramakrishnapur area after duty hours of 08.06.1992 with an advice to report to the General Manager, Ramakrishnapur area on 09.06.1992. In spite of such orders, the petitioner did not report for duty at Ramakrishnapur area and the employees who had reported to the duty, were issued posting orders. Accordingly, they denied the contention of petitioner that he was not issued with posting orders as directed in the

proceedings dated 05.06.1992. The respondents have denied the contention of petitioner that he made representations on 17.08.1999 and 14.11.2009 to permit him to join duty. Since the petitioner has failed to obey the transfer orders and did not report for duty at the office of General Manager of Ramakrishnapur area and was on unauthorized absence, he is not entitled to be allowed to join duty and the writ petition is accordingly liable to be dismissed.

5. In this case, it is not in dispute that the petitioner was appointed on compassionate grounds and he was allotted the residential quarter which has been allotted to his father. The contention of petitioner is that on his transfer to Ramakrishnapur area, though he reported there, he was not issued any posting orders, whereas, the respondents contend that the petitioner did not report to duty as directed in the transfer order dated 05.06.1992 and was on unauthorized absence. The involvement of petitioner in criminal case and his subsequent treatment in private hospitals is the ground taken by the petitioner for his not approaching the respondents till 1999. Thus, the contention of petitioner is that had he been given posting orders immediately after his transfer to Ramakrishnapur area, he would have joined duty at that time itself, however, as the respondents did not join him, unfortunately, he was implicated in a false criminal case and suffered mental agony. In this

factual background, it is to be noted that the respondents, while contending that the petitioner did not report to duty after his transfer, have failed to initiate any disciplinary proceedings against him for his unauthorized absence. The respondents, for the reasons best known to them, have kept quiet in spite of the petitioner not reporting to duty. It would have been otherwise, if the respondents had initiated disciplinary proceedings and taken action by enquiring into the unauthorized absence of petitioner. Without doing so, the respondents have allowed the dilemma to continue and kept the petitioner out of service.

6. In support of his contentions, learned counsel for the petitioner has relied on the judgment of Hon'ble Supreme Court in *Gamon India Limited v. Niranjan Dass*¹, wherein, the Hon'ble Supreme Court has ordered for payment of all arrears when an employee was un-lawfully kept out of service.

7. Counsel for petitioner has also relied on another judgment of Hon'ble Supreme Court in *Delhi Transport Corporation v. D.T.C. Mazdoor Congress and Others*², wherein, it is held in paragraph Nos.231, 232 and 233 as under :

“231. The employment under the public undertakings is a public employment and a public property. It is not

¹ (1984) 1 SCC 509

² (1991) 1 SCC 600

only the undertakings but also the society which has a stake in their proper and efficient working. Both discipline and devotion are necessary for efficiency. To ensure both, the service conditions of those who work for them must be encouraging, certain and secured, and not vague and whimsical. With capricious service conditions, both discipline and devotion are endangered, and efficiency is impaired.

232. The right to life includes right to livelihood. The right to livelihood therefore cannot hang on to the fancies of individuals in authority. The employment is not a bounty from them nor can its survival be at their mercy. Income is the foundation of many fundamental rights and when work is the sole source of income, the right to work becomes as much fundamental. Fundamental rights can ill-afford to be consigned to the limbo of undefined premises and uncertain applications. That will be a mockery of them.

233. Both the society and the individual employees, therefore, have an anxious interest in service conditions being well defined and explicit to the extent possible. The arbitrary rules, such as the one under discussion, which are also sometimes described as Henry VIII Rules, can have no place in any service conditions.”

8. The aforesaid judgments relied on by the learned counsel for the petitioner support his case, as in this case also, the petitioner was kept out of service as he was neither issued any posting orders after his transfer to Ramakrishnapur area nor any disciplinary proceedings were initiated for his alleged un-authorized absence. Therefore, the petitioner is entitled for re-instatement with all consequential benefits.

9. Accordingly, this writ petition is allowed directing the respondents to permit the petitioner to discharge his duties as a Badli Filler and pay him all consequential benefits within a period of three months from the date of receipt of a copy of this order. The petitioner is also entitled to promotions, if any, in accordance with rules. No costs.

Pending miscellaneous applications, if any, shall stand closed.

JUVVADI SRIDEVI, J

Date: 08.01.2024

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