

(2019) 04 DEL CK 0301

In the Delhi High Court

Case No : Civil Writ Petition No. 104 Of 2008

Bhuvanesh Vyas

APPELLANT

Vs

I.G.N.O.U.

RESPONDENT

Date of Decision : 23-04-2019

Acts Referred:

Constitution Of India, 1950 — Article 311, 311(2)

Central Civil Services (Classification, Control & Appeal) Rules, 1965 — Rule 14, 14(1)

Citation : (2019) 4 AD(Delhi) 614

Hon'ble Judges : Suresh Kumar Kait, J

Bench : Single Bench

Advocate : A.P. Nagrath

Judgement

Suresh Kumar Kait, J

1. Vide the present petition, the petitioner seeks direction thereby to set aside office order no.488 dated 07.04.1993 communicated vide letter dated 11.06.1993. Further seeks direction thereby directing the respondents to take the petitioner back on duty with all consequential benefits.

2. The brief facts of the case are the petitioner was appointed as Senior Software Engineer in IGNOU in the pay scale of 3700-6700 vide letter dated 02.06.1989 and joined on 11.07.1989 at Delhi. Thereafter the petitioner was confirmed w.e.f. 11.07.1990 vide letter dated 6/7.02.1991.

3. The petitioner applied for leave for 90 days to visit USA vide application dated 04.09.1992 and 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.

4. On 15.02.1993, the petitioner received a telegraphic message that his Earned Leave and Extra Ordinary Leave had not been sanctioned and he was asked to report for duty within a period of 30 days failing which his services shall stand terminated w.e.f. 22.09.1992 retrospectively. The Petitioner, not being physically

fit, sent an application dated 23.02.1993 along with 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 petitioner resumed duty on 01.06.1993 along with sickness certificate and medical fitness certificate. The petitioner was allowed to join duty and mark his attendance. On 03.06.1993, the petitioner submitted a representation requesting for regularisation of his leave period. On 11.06.1993, the petitioner was informed that his services had been terminated w.e.f. 22.09.1992 vide order dated 07.04.1993, which was sent to him under registered post on 08.04.1993 on the address of USA. Thereafter the petitioner 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.

5. Learned counsel appearing on behalf of the petitioner submits that on 17.06.1993, the petitioner sent a representation indicating that his termination was illegal and should be reconsidered. The said representation was rejected and thereafter the petitioner 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 on territorial jurisdiction on 16.08.2005. Being aggrieved, the petitioner 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.

6. It is pertinent to mention that in order dated 16.08.2005 passed in W.P.(C) No. 5023/1993, the learned single Judge of High Court of Judicature for Rajasthan at Jodhpur given liberty to the petitioner to agitate his cause before the court having jurisdiction to entertain and adjudicate.

7. The present petition came up for hearing on 22.04.2019 and since none appeared on behalf of the respondents, it was directed that if the respondent would not be represented by anyone on the next date of hearing, this court would proceed in the matter in the absence of the respondent.

8. Today none appeared on behalf of the respondent.

9. In counter affidavit filed to the petition, it is stated that as per the relevant leave rules, earned leave of duration of more than 30 days can be granted only by the Vice Chancellor upon an application forwarded by the concerned Director under whom the employee is working. The correct factual position is that the earned leave was never granted by the competent authority, however, the petitioner showing scant regard to the interest of the University and the discipline to be maintained in the university. The petitioner proceeded to abroad without due sanction or proper intimation by him to the same.

10. It is denied in the counter affidavit that leave application of the petitioner was approved on 07.09.1992 based on the signature of Director The so-called

signatures of the Director under whom the petitioner was working is of no consequence as he was not the appropriate authority to sanction the earned leave. As the earned leave was not sanctioned in the first place, no question of the same being extended upto 12.07.1993 upon an alleged a telephonic conversation with the Director, Computer Division. In any event, the said extension of leave of 203 days was asked in continuation of the earlier earned leave. Both the earlier earned leave and the extension were never granted to the petitioner.

11. It is also stated in the counter affidavit that the petitioner submitted a purported medical certificate dated 19.02.1993 but no explanation was given by the petitioner for his unauthorised absence starting from 22.09.1992. Therefore, it was felt that the petitioner was not interested to render services with the respondent university as even after issuance of notice of termination, he did not resume his duty. Subsequent to the receipt of reply by the petitioner and after expiry of one month period as stipulated in the telegram dated 15.02.1993, the respondent university was constrained to issue order dated 07.04.1993 whereby the services of the petitioner has been terminated. The said order was communicated to the petitioner to his last known address in US vide registered post.

12. In the counter affidavit, it is also denied that the initial leave of 90 days was ever sanctioned in favour of the petitioner. Leave beyond the limit of 30 days for Group A Officers such as the petitioner, is to be sanctioned by the Vice Chancellor. Accordingly, the petitioner had moved an application for grant of leave on 04.09.1992. However, the same was never sanctioned by the Vice Chancellor. The signatures of Professor A.A. Shamim, Director, Computer Division were only for the purpose of forwarding the same to the competent authority for grant of sanctioned leave of 90 days to the petitioner. The signatures by itself do not mean that leave has been sanctioned.

13. It is not in dispute that vide order dated 06.02.1991, the services of the petitioner was confirmed as Senior Software Engineer in the pay scale of Rs.3700-125-4950-150-5700 w.e.f. 11.07.1990. It is also not in dispute that the post of the petitioner is Group A post. As per appointment letter, services of the petitioner is to be dealt with CCS (CCA) Rules, 1965. Rule 14(1) of the Rules provides as under:

"14. Procedure for imposing major penalties:

No order imposing any of the penalties specified in Clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this Rule and Rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850, (37 of 1850), where such inquiry is held under that Act."

14. There is a mandate that none of the major penalties can be imposed unless an inquiry has been held in the manner provided in the rules. This is also the

mandate of Article 311 of the Constitution and this protection is available to the employees to whom CCS(CCA) Rules apply. Article 311(2) of the Constitution is reproduced as under:

"No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry, in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

(Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed :)"

15. In view of above, it seems that the respondent has completely violated these provisions in the Constitution and also in the Rules. The impugned order, on the very face of it, being violative of the Rule of natural justice and against the specific provisions made in the rules which is legally not sustainable in law.

16. Apart from the impugned order being illegal and violative of Article 311 (2) of the Constitution and Rule 14 of CCS (CCA) Rules, it suffers from glaring infirmities as enumerated as under:

i. The order of termination can never be retrospective. It can only take effect from the date the appropriate disciplinary authority passes such an order. In the present case, the impugned order is dated 07.04.1993 but has been made effective from 22.09.1992. Thus, the respondent has betrayed his ignorance of the provisions of the Indira Gandhi National Open University (IGNOU) Act, 1985 wherein Statute 19(5) relating to removal of employees of the University, it has been clearly stipulated that the removal shall take effect from the date on which the order of removal is made.

ii. The contention of the respondent that leave was not sanctioned is belied from the records of the respondent department. As per the relevant rules, earned leave of more than 30 days duration can be granted only by the Vice Chancellor. This statement is apparently false which is clearly established by Annexure R-1 which shows that the powers have been delegated for grant of leave, Item no.3 relates to earned leave. Registrar (Admn.) has been delegated full powers in respect of Group 'A' and 'B' officers except Directors of Schools and Heads of Divisions.

17. It is seen from Annexure P-16 that earned leave for the period from 22.09.1992 to 21.12.1992 has been sanctioned. Thus, it is clear from the said Annexure that based on this sanction, office note No.AD/2/NA/1216/17 dated 28.01.1993 had been issued. This also includes sanction of EOL for 203 days from 22.12.1992 to 12.07.1993. It is apparent that on recommendation from the Registrar, leave upto 12.07.1993 had been sanctioned by the Vice Chancellor. The petitioner has also been paid salary upto January 1993.

18. An extract of PBR pertaining to the year 1992-93 clearly establishes that salary was paid upto January 1993. The impugned order ignores all these aspects, as it appears that some senior functionaries of the respondent department approached the entire issue with pre-made-up mind just to get rid of the petitioner, the reasons for which are best known to them.

19. As per Annexure P-16 collected under provisions of RTI act reveals that Assistant Registrar (Admn.) had mentioned that the Director (Computer Division) has already sanctioned leave for 91 days i.e. from 22.09.1992 to 21.12.1992 and forwarded the extension of EOL for consideration. It has been proposed that the leave may be sanctioned by the Registrar as powers for such sanction have been delegated to him and for that further sanction of EOL for 203 days, i.e. 22.12.1992 to 12.07.1993, the Vice Chancellor may be requested to sanction. On this note, Registrar has made a noting:

"Submitted for kind consideration and for sanction of EOL from 22.12.1992 to 12.07.1993."

20. Apparently, he had sanctioned the leave from 22.09.1992 to 21.12.1992 and for sanction of further extension, he submitted the proposal to the Vice Chancellor through PVC(G).

21. It is not in dispute that the petitioner being Group A Officer and his service conditions are under the CCS(CCA) Rules which has not been taken care while terminating the services of the petitioner in the present case.

22. In view of above discussion, I hereby set aside the order dated 07.04.1993 which was communicated vide letter dated 11.06.1993. Since the petitioner has attained the age of superannuation and has already been retired, therefore, the petitioner has not worked, the petitioner is entitled for 50% back wages till the age of superannuation.

23. Needless to state that if the petitioner is entitled for pensionary benefits, order to that effect shall be passed as per the rules.

24. The order passed by this court shall be complied with within six weeks from the receipt of this order.