

(2013) 09 KAR CK 0270

In the Karnataka High Court

Case No : Writ Petition No. 37841 of 2011 (S-KAT)

Dr. R.D. Pennathur

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 16-09-2013

Acts Referred:

Citation : (2013) 6 KarLJ 537

Hon'ble Judges : Vegi Suri Appa Rao, J;N. Kumar, J

Bench : Division Bench

Advocate : M. Subramanya Bhat, for the Appellant; S. Susheela, Additional Government Advocate, for the Respondent

Judgement

N. Kumar, J.—This writ petition is filed challenging the order passed by the Karnataka Administrative Tribunal, declining to entertain the application filed by the petitioner challenging the order of dismissal. The petitioner was working as Assistant Dental Surgeon in Government Hospital, Shiddlaghatta during 1989-1990. On 17-3-1992 he was served with a charge-sheet charging him that he had drawn salary without working and for unauthorisedly absence for four years. He contested the matter. The Enquiry Authority submitted a report holding that the charges leveled against him are proved. A second show-cause notice came to be issued enclosing a copy of the said report. Thereafter, the Disciplinary Authority accepting the said report, passed an order of dismissal on 8-8-1995. The said order of dismissal was challenged four years thereafter on 10-3-1999 before the Tribunal with an application for condonation of delay. Though the Tribunal held the cause shown for condoning the delay do not constitute sufficient cause and the application is liable to be dismissed, still it condoned the delay, entertained the application, heard the petition on merits.

2. After appreciating the entire evidence on record it held, the evidence on record shows that the petitioner has drawn salary for the month he has not worked, he has remained unauthorisedly absent for four long years and therefore, the order of dismissal passed is appropriate order for his misconduct.

Therefore, he declined to interfere with the order of dismissal. Aggrieved by the said order, present writ petition is filed.

3. Learned Counsel for the petitioner assailing the impugned order contends the petitioner submitted his application for voluntary retirement on 2-2-1989. Three months period prescribed for the authorities either accepting the said request or rejecting the said request. Admittedly, the authorities did nothing. Therefore, he remained absent after the three months period, it cannot be the said the case of unauthorised absence. Therefore, he submits that a case for interference is made out.

4. Rule 285(2)(xi) of the Karnataka Civil Services Rules, 1958 provides that "voluntary retirement shall not become effective merely on the ground that a notice to that effect has been given by the Government servant unless it is duly accepted by the appointing authority". It is not in dispute that the application was not accepted. In fact, it was rejected. But after giving application for voluntary retirement, he did not go back to the service. Therefore, there is no justification for his unauthorised absence and if a person remains unauthorisedly absent for more than four months, KCSRs provides for dismissal of a person from service. That apart, in this case he has drawn salary for the month for which he has not worked. This is not what is expected of an Assistant Dental Surgeon who has put in 20 years of service in a Government. In that view of the matter, we do not see any justification to interfere with the well-considered order passed by the Tribunal.

No merits, dismissed.