
(1992) 08 RAJ CK 0028
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1534 of 1982

K.C. Shukla

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 26-08-1992

Acts Referred:

Citation : (1992) WLN 149

Hon'ble Judges : A.K. Mathur, J

Bench : Single Bench

Judgement

A.K. Mathur, J.—The petitioner by this writ petition was prayed that the order dated 20.7.1982 (Annex.8) as well as the order of removal from service dated 13.8.1981 (Annex.6) may be declared illegal and the respondents may be directed to put back the petitioner in service as if he was never removed from service. It is also prayed that he may be given all consequential benefits flowing therefrom.

2. The brief facts, which are necessary for the disposal of this writ petition are that the petitioner was appointed in the service of the Government of Rajasthan as Assistant Teacher on 11.1.1949. The petitioner was eventually promoted as Senior Teacher vide order dated 9.9.1961. This was after due selection by the Rajasthan Public Service Commission for the post of Senior Teacher in Economics. While the petitioner was working as Senior Teacher, he sought one year's extraordinary leave and permission to avail appointment as Lecturer in the Vidya Bhawan. Teachers Training College. He sent one telegram dated 26.7.1965, which was followed by letter dated 26.7.1965 and application dated 16.8.1965 made to the Director Primary and Secondary Education, Bikaner. This request was acceded to when Additional Director of Education by his letter dated 13.9.1965 addressed to the Inspector of Schools, Udaipur with reference to letter of Inspector of Schools dated 27.8.1965 directed to relieve the petitioner who has applied for one year's extraordinary leave as proposed by him. The petitioner was doubtful whether the petitioner was allowed to avail appointment

in Vidya Bhawan, therefore, the petitioner addressed a letter dated 18.9.1965 to the Additional Director of Education, Bikaner with reference to the letter dated 13.9.1965 endorsed to the Inspector of Schools expressing his doubt whether he will be able to join at Vidya Bhawan as the last date of joining there has passed. This letter was sent by registered post. However, the petitioner was relieved by the Headmaster on 24.9.1965 vide letter/order dated 24.9.1965 wherein it was clearly stated that as directed by the Inspector of Schools, Udaipur vide his communication dated 17.9.1965 in reference to the Additional Director, Primary and Secondary Education, Rajasthan, Bikaner dated 13.9.1965 the petitioner who has applied for one year's extraordinary leave is relieved to proceed on this leave w.e.f. 24.9.1965. This letter has been placed on record as Annex. 1. Before expiry of the period of one year, the petitioner by letter dated 22.9.1965 wrote to the Additional Director Bikaner that he had been relieved on 24.9.1965 in pursuance of the letter dated 13.9.1965 of the Directorate and his leave may be extended further by one year. This letter was sent by registered post on 22.9.1966. Thereafter the petitioner gave a telegram dated 5.7.1967 that since his extraordinary leave is expiring therefore his posting order may be issued. Nothing was heard in pursuance of the aforesaid telegram and the letter dated 3.8.1967 sent under certificate of posting therefore, the petitioner gave a reply paid telegram on 19.8.1967 but that too without any result. In the absence of posting order the petitioner continued to work at the Vidya Bhawan. It is alleged that a letter dated 13.10.1965 was received by the petitioner as late as on 13.4.1968 whereby it was informed that if the petitioner wants to Join at Vidya Bhawan Teachers Training College, he should resign from service, but before this order dated 17.8.1967 was issued by the Additional Director, Primary and Secondary Education informing the petitioner that since the Headmaster of the Government School was informed that in case you leave this department to Join a private institution you will have to resign from the post and since you have left this department in pursuance of the above order your services have been terminated from the date you left the department. Therefore, it is not possible to take you back in service, i.e. on the post of Senior Teacher. This letter was received by the petitioner and he has placed it on the record as Annexure. 2. The petitioner applied for grant of extraordinary leave from 25.9.1965 to 24.9.1968, but by virtue of the order passed on 17.8.1967 his lien stood terminated so he could not apply for leave in the prescribed form. The petitioner protested against the termination of his lien to the Government of Rajasthan by way of appeal. Then, on 11.4.1978 a memorandum was served on the petitioner that it is proposed to hold an enquiry against him on the charges detailed in the statement of charges as per Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (referred to hereinafter as "the Rules of 1958"). The charges related to the period wherein the petitioner was serving in the Vidya Bhawan and his absence from service. The petitioner submitted his reply to the charges. The enquiry was conducted and no witness was produced on the side of the department against the petitioner therefore the petitioner also did not produce any witness in his defence. The statement of the

petitioner was recorded by the Presenting Officer and the statement of the Presenting Officer was recorded by the Inquiry Officer. Thereafter, a show-cause notice dated 13.5.1981 purporting to be under Rule-16 (10)(i)(b) of the Rules of 1958 was issued to the petitioner to show cause why he should not be removed from service. A copy of the same has been produced on the record as Annex.4. On the basis of the Enquiry Officer's report the petitioner was found guilty of the charge that he did not apply in the prescribed form before taking service in a private institution and did not inform the Department inspite of having been confirmed as Lecturer in the Vidya Bhawan Teachers Training College. The report of the Enquiry Officer was accepted and the petitioner was removed from service by the order dated 13.8.1981. Aggrieved against this order dated 13.8.1981 the petitioner preferred an appeal to the Government of Rajasthan and the same was also dismissed by the order dated 20.7.1982, which has been placed on the record as Annex. 8. Aggrieved against this order, the petitioner preferred this writ petition.

3. Mr. Mridul and Mr. Singhvi, learned Counsel for the petitioner submitted that the petitioner's lien cannot be terminated. Likewise, it is submitted that the Disciplinary Authority has not recorded any reason for finding the petitioner guilty, Like wise, learned Counsel submitted that the appellate order is not a speaking order. As such it is contended that both the orders i.e. the order passed by the Disciplinary Authority dated 13.8.1981 removing the petitioner from service as well as the order passed by the appellate authority confirming the order of the disciplinary authority may be quashed.

4. I have gone through the writ petition and heard both the learned Counsel at length.

5. This is a fact that the petitioner joined the services of Vidya Bhawan and he was confirmed there and by now he must have retired also. The first and foremost question before me is that whether there is any letter by which the Government permitted the petitioner to join the services of other institution. The petitioner did apply for leave but no leave application has been placed on the record to show that whether he applied for leave and sought permission to join the service of Vidya Bhawan or not. Annex. 1 is an office order produced by the petitioner and it reads as under:-

Office Order

As directed by the Inspector of School Udaipur vide his telegram No. Dated 17.9.65 in reference to the Add/. Director, Primary & Secondary Education Rajasthan Bikaner No. EDB/Estt/B/B-1/D/1565 Dated 13.9.1965 Shri Krishna Chandra Shukla, S.T. in Economics of this school who has applied for one year's extra ordinary leave is relieved to produced on this leave today the 24th Sept. 65 after noon.

Head Master

Govt. Higher Secondary School

Vallabhnagar.

6. It only says that the petitioner applied for extraordinary leave and the same is allowed to him. It does not disclose that any permission was granted for joining the service in the Vidya Bhawan or not. The petitioner was relieved from that place and subsequently he joined the service of another institution i.e. Vidya Bhawan Teacher Training College and continued there to serve and thereafter he sought extension of leave. He was informed by the order dated 17.8.1967 in pursuance of his telegram dated 5.7.1967 in respect of posting orders that since the Head Master of the School was already informed by the communication dated 13.9.1965 that in case you leave this department to join private institution you will have to resign from the post of Senior Teacher and since you have left the department in pursuance of above order your services have since been terminated from the date you left the institution. Therefore, it is not possible to take you back in service. The petitioner now contends that it was never informed to him that in case he joined the Vidya Bhawan he will have to resign. Therefore, in this light the submission of the learned Counsel is that by this communication since the services of the petitioner stood terminated and as such he continued to serve in the Vidya Bhawan and got confirmation there also but at the same time the enquiry which has been held subsequent to this communication, in that enquiry, full material was not placed before the Enquiry Officer as will be evident from the report of the Enquiry Officer and likewise the order of disciplinary authority based on the report of the Enquiry Officer is not sustainable and likewise the appellate order. Be that as it may, the fact remains that the petitioner had joined the Vidya Bhawan a private institution and no specific permission was given by the Government of Rajasthan except grant of extraordinary leave. Therefore, once the incumbent joins the new institution then his relation with the parent institution automatically stands severed. It is contended by both the learned Counsel that he was never informed by the Head Master of the Higher Secondary School Vallabhnagar that in the communication dated 13.9.1965 it was mentioned that in case he wants to join the services of Vidya Bhawan he will have to resign. This fact was never made known to him but he came to know when he insisted for posting orders for the first time that any such communication was addressed and simultaneously an order dated 17.8.1967 was passed that his services will be deemed to have been terminated. Therefore, he continued to serve in the Vidya Bhawan.

7. The report of the Enquiry Officer is not though very articulate but it does find mention that the petitioner was not given any permission to join the new institution. The report is of course detailed one and it conveys the fact that the petitioner did not apply for leave in a prescribed manner. Likewise he was not given any permission to join a new institution and on that basis the Disciplinary Authority has passed the order of removal of the petitioner from service. Therefore, it cannot be said that there was no material before the authorities

for terminating the services of the petitioner on account of his joining a new institution. But on account of subsequent events it becomes clear that the petitioner has joined the services of Vidya Bhawan and continued to serve this institution. This is an admitted fact and his explanation that he did not know that he will have to resign for joining a new institution is nothing but an after thought. A Senior Teacher who is in the service of the Government of Rajasthan since 1949 and seeks appointment in Vidya Bhawan without seeking specific permission of the Government cannot be permitted to plead ignorance that he did not know about this requirement. Therefore, I am not prepared to accept this post facto explanation of the petitioner. More so, on the basis of the admitted and undeniable facts that he has joined the services of the Vidya Bhawan and continued to serve there, no relief whatsoever can be given to the petitioner on that count. In this connection, reference may be made to the decision of their Lordships of the Supreme Court in *Shahoodul Haque Vs. The Registrar, Co-operative Societies, Bihar and Another*, wherein the incumbent left the service for more than a period of 3 years and no enquiry was conducted. Their Lordships have taken the view that on the basis of the facts that the man remained absent from service, on the basis of the undeniable facts their Lordship declined to interfere in the matter.

8. Mr. Mridul, learned Counsel for the petitioner submitted that simply because of joining another institution the lien of the incumbent cannot be terminated and he cannot be deemed to be removed from service. In this connection he has invited my attention to *Jai Shanker Vs. State of Rajasthan*,

9. In the present case, the facts are so eloquent and it is an admitted fact that the petitioner has joined the service of Vidya Bhawan and was confirmed there and continued to serve. Therefore, in these admitted facts the petitioner cannot be granted any relief as he cannot stand benefitted from both the institutions i.e. State as well as from the Vidya Bhawan. Once the petitioner has joined the service of Vidya Bhawan and is confirmed there that automatically shows that his lien stood terminated as a Government servant and he cannot have lien at both the places.

10. However, the petitioner has put in service in the Government of Rajasthan from 1949 till he was relieved by the Head Master, Government Higher Secondary School, Vallabh Nagar on 24.9.1965. If the petitioner is entitled to any benefit under the Rules for the past services rendered by him i.e. from 1949 to 24.9.1965 then the same may be given to him if not already given to him as the man has served the Government of Rajasthan upto 1965 and may be for one reason or the other he was not vigilant enough to have properly sought permission for leaving the service and joining the new service still as a matter of grace the petitioner may be given the benefit of the past services rendered by him if permissible under the Rules. Whatever gratuity or other benefits which have accrued to the petitioner under the Rules upto 24.9.1965 may be paid to him if not already paid.

11. The writ petition is accordingly disposed off.