
(2008) 07 RAJ CK 0099
In the Rajasthan High Court
Case No : Civil Writ Petition No. 248 of 2005

Manju Bhatnagar (Smt.)	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 03-07-2008

Acts Referred:

CCA Rules, 1958 — Rule 16

Citation : (2008) 3 WLN 368

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Judgement

Gopal Krishan Vyas, J.—In this petition, petitioner has prayed for directions to the respondents to take her back in service with such consequential benefits as this Court may consider proper and further it is prayed that respondents may be directed to proceed with the inquiry against the petitioner.

2. Brief facts of the case are that petitioner after acquiring B.A, B.S.T.C. Training was appointed as Teacher Gr.III on 22.08.1985. According to petitioner she married with one Shri Narottam Lal Golcha in the year 1989 and she went Kolkatta but her late husband ill treated her and she was mentally harassed, therefore, she had to take treatment which is evident from medical certificates. In the 1997 when she become normal she filed an application for joining duties before the respondent department but she was not taken on duty, therefore, joining report was sent through registered letter dt. 07.07.1997. The case of petitioner is that she is continuously met the respondents authorities and filed representation for taking her on duty but she was not taken on duty and a charge sheet vide charge memo dt. 17.10.1997 was served upon her.

3. In pursuance of said charge sheet given to petitioner on 17.10.1997 she submitted her reply vide letter dt. 24.10.1997. Thereafter since 1997, three inquiry officers were appointed but inquiry is not concluded by any inquiry officer and till filing of writ petition the inquiry initiated against petitioner was pending. The case of petitioner is that neither she was placed under suspension nor

removed from service but respondents were taking her on duty, therefore, in compelling circumstances she preferred the present writ petition in the month of January, 2005.

4. In this writ petition notices were issued to the respondents and respondents have filed reply. In reply it is accepted by the respondents that petitioner was initially appointed as Teacher Gr.III and she continued till July, 1989 but thereafter, she remained absent from duty and for the first time she filed an application for joining on 19.07.1997, therefore, charge sheet under Rule 16 of the CCA Rules, 1958 was issued and said inquiry is still pending. The ground of respondents for not taking petitioner on duty is that she remained absent from duty and departmental proceeding is pending against her, therefore, in view of long absence from duty she is not entitled for relief, hence she was rightly not allowed to join duties and proceedings under 16 of CCA Rules 1958 for taking disciplinary action has been initiated, therefore, no relief can be granted in this writ petition.

5. I have considered the rival submissions made by the parties and perused the record of the case. It is admitted position of both the parties that petitioner was initially appointed in the year 1985 as Teacher Gr.III and she continued till 1989 and thereafter she remained absent from duty. It is also admitted position that in the year 1997 she filed application for joining but she was not allowed to join duties and she was served with charge sheet Annex.4 under Rule 16 of the CCA Rules, 1958 and said charge sheet is still pending so also inquiry is still pending, therefore, in my opinion, when petitioner was served with charge sheet and disciplinary action is pending against her then there was no reason to deny joining duties by the petitioner. The only option available with the respondents was either to place the petitioner under suspension or to allow her to join duties because in the absence of appropriate order passed as a result of inquiry the relationship of master and servant does come to an end and person is entitled to remain in service until his services are terminated in accordance with law and employee can join any time as his service continues till such termination order is passed. The case of petitioner is squarely covered by the judgment of this Court in case of Ashok Kriplani v. State of Rajasthan and Ors. reported in WLR 1992 (5) Raj. 359 in which learned Single Judge of this Court in similar set of facts held that relationship of master and servant does not come to an end if disciplinary inquiry is initiated against a Government Servant for willful absence from duty. Para 5 of the said judgment is as follows:

5. Thus, it is apparent that even where Regulations provide for automatic cessation of employment, their Lordships were of the view that after advent of Constitution, removal must conform to the conditions of Article 311 and in the absence of a proper order passed as result of inquiry, the relationship of master and servant does not come to an end. It was specifically observed by the Apex Court that over-staying one's leave may be one circumstance deserving removal but a person is entitled to continue in service if he wants, until his service is

terminated in accordance with law. Therefore, unless the petitioner's services are terminated in accordance with law, he is entitled to continue in service as long as he wishes to continue. The petitioner by joining the duty only expressed his intention to continue in service. The joining to the petitioner cannot be denied for want of an order from competent officer to permit him to join, because that would amount to refusing permission to join without passing an order of removal; which will amount to removing petitioner from services, violating the provisions of Article 311 of the Constitution. Same is not permissible. In this view of the matter, the respondents are not entitled to refuse the petitioner from joining duty when he presents himself on duty. No doubt they can take recourse to all provision of the rules under which inquiry against him can be conducted and pass necessary orders in aid of that inquiry from time to time but until that is done, the petitioner is entitled to continue in service and to all consequential benefits including the benefit of emoluments as a result of joining his duty.

6. In this view of the matter, it is obvious that in this case also the inquiry under Rule 16 of CCA Rules 1958 is pending for absence of petitioner from duty from 1989 on 01.07.1997 and department has proceeded to initiate inquiry under Rule 16 of the CCA Rules, 1958 against petitioner, therefore, at the time of issuing charge sheet it was the duty of respondents to follow disciplinary rules and pass appropriate order either for placing petitioner under suspension or to take on duty because till completion of departmental inquiry the relationship of master and servant remained in existence.

7. In this case till today, the inquiry is not finalised and in compelling circumstance petitioner has approached this Court in the year 2005 for seeking direction to respondents to allow her to join duties. Therefore, in my opinion action on the part of respondents not to allow petitioner to join duties is totally illegally and contrary to Service rules.

8. In view of above, this writ petition is allowed. Respondents are directed to take petitioner back in service forthwith and complete the inquiry within a period of six months from today and take final decision with regard to disciplinary proceedings initiated against the petitioner vide Charge sheet Annex.4. Petitioner is also further entitled to back wages from the date of filing writ petition because she was not allowed to join duties without assigning reasons in the garb of departmental proceeding which is said to be initiated in 1997. The arrears of payment of salary shall be paid to petitioner w.e.f. 13.01.2005, the date on which petitioner preferred writ petition before this Court. Petitioner will not be entitled to back wages from 1989 to 13.01.2005 because for her absence from duty she is facing departmental inquiry. It is also made clear that petitioner will be entitled to minimum of pay scale along with admissible allowances w.e.f. 13.01.2005, the date on which this petition was filed.

9. No order as to costs.