
(2013) 05 AHC CK 0157

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 10144 of 2006

Smt. Evon Carter @ Charan

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-05-2013

Acts Referred:

Citation : (2013) 6 ADJ 706

Hon'ble Judges : Shabihul Hasnain, J

Bench : Single Bench

Advocate : Manish Mehrotra and Vijay Kumar Yadav, for the Appellant;

Final Decision : Allowed

Judgement

Shabihul Hasnain, J.—Heard Sri Manish Mehrotra learned counsel for the petitioner and learned Standing Counsel for the opposite parties.

The petitioner was appointed on ad hoc basis against the temporary post of Junior Clerk by the Deputy Labour Commissioner, Lucknow Zone, Lucknow on 31.12.1983. Petitioner worked on the post continuously and her services were regularised on 3.1.1994 on the regular and permanent post of Assistant Senior Clerk by the competent authority. Petitioner was promoted on the post of Senior Clerk on 11.9.1989. Petitioner's work and conduct was found satisfactory throughout, her record was unblemished. She was never punished or placed under suspension for any misconduct. A "Performance Report" dated 19.2.2000 given to the petitioner by her superiors has been annexed. A tragic incident happened on 10.6.2000 in the life of petitioner through her husband. She was beaten up at her own house at D-524, Sector D, L.D.A. Colony, Kanpur Road, Police Station Krishna Nagar, Lucknow. He also turned her out of the house with the help of "Gunda" elements. Although the petitioner was owner of the said house she became without roof on her head. This trauma left her mentally sick and in a state of shock. She was medically treated and advised bed rest. As such she could not attend the office or send proper information about her condition

and reasons for her absence. She started living at different places because her husband was gunning for her. In such a situation it was very difficult for her to approach her place of employment. She filed a divorce petition No. 141 of 2001 in Family Court, Lucknow on the ground of physical and mental cruelty. The divorce petition was finally allowed on 8.12.2006. Unfortunately, on the other hand the services of the petitioner were also dispensed with due to her continued absence and non-information.

2. Petitioner challenged the termination order by the instant writ petition. A counter-affidavit has been filed to this petition. In the counter-affidavit it has been mentioned that the services of the petitioner were terminated on 29.6.2004 after getting an opinion from the D.G.C. (Civil) in view of the Government orders and the rules.

3. The case of the opposite parties is that the petitioner neither submitted medical report nor presented herself personally. Repeated letters sent by the office returned back because the petitioner was not available on the address given by her in her service record. It has been further submitted that the notices regarding her illegal absence were published on 13.12.2000, 28.6.2002 and 16.4.2004 respectively in the local newspapers. The petitioner send an application for extension of medical leave but since it was not accompanied with the medical prescriptions or medical certificates, the department had not taken any note of the same.

4. Finally the termination/dismissal order was passed which was sent to her last known address. In para No. 10 it has been mentioned that an inquiry officer was appointed and on the basis of report, submitted by the Inquiry Officer, the petitioner was found guilty under the provisions of U.P. Government Servants (Punishment and Appeal) Rules and her services were terminated.

5. The total case of the opposite parties is to the effect that petitioner was absent without proper sanction of leave. She was not available on the address given to the department. She did not respond to the notices and she did not sent the medical certificates alongwith application for extension of time for grant of medical leave.

6. Learned counsel for the petitioner has filed a rejoinder-affidavit wherein he has submitted that it was under the compelling situation beyond her control when she could not appear in the office. She was not in a position to give any proper address because she was not residing at her permanent address. Her husband had physically tortured her with the help of "Gunda" elements. In such a situation the petitioner, who is a lady had been put to stand alone to save herself. She was put to make a choice between her life and job. At that point of time the petitioner chose to save her life first and for this reason she remained in hiding and did not give correct address to the department lest the address could have travelled in the hands of the petitioner's husband and she could have been traced and brutally beaten up.

7. Learned counsel for the petitioner has placed reliance upon a judgment in *Krushnakant B. Parmar Vs. Union of India (UOI) and Another*, , decided on February 15, 2012. In this landmark judgment the Hon"ble Supreme Court in para Nos. 16, 17, 18, 19 and 20 has held, as follows:

16. in the case of the appellant referring to unauthorised absence the disciplinary authority alleged that he failed to maintain devotion to duty and his behavior was unbecoming of a Government servant. The question whether "unauthorised absence from duty" amounts to failure of devotion to duty or behavior unbecoming of a Government servant cannot be decided without deciding the question whether absence is willful or because of compelling circumstances.

17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be willful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean willful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant.

18. In a departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is willful, in the absence of such finding, the absence will not amount to misconduct.

19. In the present case the inquiry officer on appreciation of evidence though held that the appellant was unauthorisedly absent from duty but failed to hold that the absence was willful; the disciplinary authority as also the appellate authority, failed to appreciate the same and wrongly held the appellant guilty.

20. The question relating to jurisdiction of the Court in judicial review in a departmental proceeding fell for consideration before the fell for consideration before this Court in *M.V. Bijlani v. Union of India*, wherein this Court held : (SCC p. 95, para 25).

8. In the present case we have to see whether the judgment is applicable to the present case or not?

Learned counsel for the petitioner Sri Manish Malhotra has filed a supplementary affidavit wherein he has annexed the decree passed by the family Court. A perusal of the decree shows that the divorce has been granted though ex parte but the grounds for divorce are cruelty physical and mental both. The finding of physical assault has been proved in the Court. When there is a finding of a competent Court wherein physical assault against a female member of the society has been proved, definitely it is a case of compelling circumstances.

9. The Court feels that a woman who has been physically assaulted and turned out from her own house is the most helpless creature.

Under the circumstances, she cannot be held guilty for absence from duty when her life was in danger. She could not have attended the office while carrying the risk of being assaulted midway by a cruel husband.

The Court is in complete and respectful agreement to the observations of the Hon"ble Supreme Court in the aforesaid writ petition and feels that the inquiry which has been held against the petitioner though has been able to prove unauthorised absence but definitely fails to prove any misconduct in view of the aforesaid judgment and lack of devotion to duty in general. Her record has been unblemished till the unfortunate incident happened as mentioned above. Under the circumstances, the Court feels that the writ petition deserves to be allowed.

Accordingly, the writ petition is allowed.

The opposite parties are directed to reinstate the petitioner to the post she was working on the date of dismissal. Since she has not worked during the period she remained absent and was under dismissal, she will not be entitled for the wages for the same. However, the said period will not be taken as a break in service and continuity of service shall be provided to the petitioner for all consequential benefits after retirement.