
(2013) 07 KAR CK 0283

In the Karnataka High Court

Case No : Writ Petition No's. 1620-1621 of 2013 S-KAT

Sri P. Eshanna

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

Karnataka Civil Services Rules, 1958 — Section 106-A

Citation : (2014) 1 AKR 34 : (2013) 5 KarLJ 363

Hon'ble Judges : D.V. Shylendra Kumar, J;B.S. Indrakala, J

Bench : Division Bench

Advocate : M.R. Shailendra, for the Appellant; S. Susheela, AGA, for the Respondent

Final Decision : Dismissed

Judgement

1. Though these petitions have come up for preliminary hearing, with the consent of counsel appearing for the parties, the matter is taken up for disposal. These writ petitions by a former employee of the State Government against the order dated 11.1.2012 passed by the Karnataka Administrative Tribunal at Bangalore in Application Nos. 356/2000 and 1176/2000, partly allowing Application No. 1176/2000 and dismissing Application No. 356/2000 in toto.

2. The subject matter before the Tribunal in Application No. 356/2000 was office memorandum dated 25.8.1999 treating the absence of the applicant - petitioner from 21.01.1998 to 12.02.1998 as unauthorized absence under Rule 106-A of the Karnataka Civil Services Rules, 1958 and making it as leave without allowance. In application No. 1176/2000, the writ petitioner had questioned two other similar office memorandums both dated 22.10.1999 issued relating to the absence of the applicant from duty for the period from 25.5.1998 to 26.8.1998 for the period of 94 days and another also in respect of the absence of the applicant from duty for the period from 22.10.1998 to 4.11.1998.

3. The application which had been filed originally had come to be dismissed by

the Tribunal as per order dated 29.06.2004. However, that order having been challenged before this court by filing a writ petition and this court noticing the order having been passed by the single Member of the Tribunal, remanded the matter to the Tribunal for consideration by the Bench and it is on such remand, the impugned order has come to be passed.

4. The Tribunal examined the case of the applicant on its merits and found that there was some justification for the applicant's absence during the period 22.10.1998 up to 4.11.1998 as it was the stand of the applicant that he was undergoing training at the Administrative Staff Training institute, Nainital during this period and this was not disputed and to this extent, the office memorandum treating unauthorized absence was set aside. However, the explanation of the applicant for his absence from 21.1.1998 to 12.2.1998 saying that he had applied for leave, but the leave application was not ordered was not accepted and likewise absence of the applicant for the period from 25.5.1998 to 26.8.1998 for a period of about 94 days as due to sickness on medical grounds and that the applicant having submitted medical certificate dated 29.5.1998 issued by the Senior Specialist, General Hospital, Jayanagar, for the period from 25.5.1998 to 29.5.1998 as suffering from Lumbar Spondylosis, another medical certificate dated 21.7.1998 by the Medical Officer, Victoria Hospital, Bangalore for the period from 21.7.1998 to 4.8.1998 as suffering from viral fever and another medical certificate dated 5.8.1998 by the Casualty Medical Officer, Victoria Hospital, Bangalore, for the period from 5.8.1998 to 31.8.1998 as suffering from typhoid fever treated as out patient, were all not accepted by the Tribunal as they had been produced subsequently etc.

5. It is rejection of the applicant's challenge to the office memorandum to this extent as per order passed by the Tribunal, the present writ petitions by the applicant.

6. Sri. M.R. Shailendra, learned counsel for petitioners has vehemently urged that if the petitioner should have been given an opportunity to explain about his absence, perhaps he could have explained, but not giving opportunity, but passing the order as per the office memorandum under challenge is in violation of principles of natural justice and it cannot be sustained.

7. On the other hand, stand of the respondent as submitted by Smt. S. Susheela, learned Additional Government Advocate is that the writ petitioner had been given ample opportunity before passing the order; that he had been made known of the unauthorized absence during the relevant period; that he did not respond, but medical certificates have been produced only after the period was over etc.

8. We find that the Tribunal in its detailed order has examined all facts and found that the explanation now offered was an after thought by the applicant and that different reasons had been given at different points of time. Even assuming that the applicant had applied for leave, it had not been sanctioned and therefore in the absence of sanction of leave, absence was unauthorized absence only.

9. The Tribunal also disbelieved the medical certificates expressing doubts about its acceptability as while it did not cover the entire period of absence, but sought to explain only for the period of 47 days. The kind of illness mentioned therein also did not inspire the confidence of the Tribunal to accept them as one illness following the other and all different types etc. Under such circumstances, the Tribunal found no occasion to interfere with the order.

10. We find that the fact remains that applicant had not been granted leave for the period in question and petitioner has also retired in the year 2005. Except for the fact that the petitioner did not earn salary for the unauthorized absence, no other consequences followed. We find in a matter of this nature, on some technicality, it is not for this court to interfere at this point of time to upset the order of the Tribunal which has gone into the entire details and found there is no need to interfere and granting the relief should be confined to the period of petitioner's training at Nainital. We find there is no need to interfere with the order of the Tribunal. Writ petitions are dismissed.