
(2002) 11 AP CK 0029
In the Andhra Pradesh High Court
Case No : W.A. No. 697 of 2000

The Indira Gandhi National Open University and Another	APPELLANT
Vs	
V. Vijayabhaskar Reddy	RESPONDENT

Date of Decision : 28-11-2002

Acts Referred:

Citation : (2003) 1 ALD 54 : (2003) 2 ALT 441

Hon'ble Judges : S.R. Nayak, J; Dubagunta Subrahmanyam, J

Bench : Division Bench

Advocate : A. Chaya Devi, for the Appellant; M. Rama Rao, for the Respondent

Final Decision : Allowed

Judgement

Dubagunta Subrahmanyam, J.—This appeal is filed by the respondents in W.P. No. 4285 of 1997 questioning the order dated 11.4.2000 passed by a learned Single Judge of this Court.

2. The respondent - writ petitioner was working as a Junior Assistant-cum-Typist in the Regional Centre, Indira Gandhi National Open University at Hyderabad. By proceedings dated 13.3.1995 he was transferred from the Regional Centre at Hyderabad to the headquarters of the University at New Delhi. On the date of the said transfer order, the respondent was attending a departmental test at New Delhi. By proceedings dated 16.3.1995 the respondent was relieved of his post in the Regional Centre at Hyderabad. The respondent filed W.P. No. 5254 of 1995 questioning the proceedings dated 13.3.1995 transferring him to the headquarters at New Delhi. In the said writ petition he filed WPMP. No. 6487 of 1995 seeking suspension of the proceedings dated 13.3.1995. The Standing Counsel for the University informed the Court that the respondent was already relieved. On 21.3.1995 an interim order was passed by this court to the effect that the status quo as on 13.3.1995 with regard to proceedings dated 13.3.1995 shall be continued until further orders on the said petition. The University filed stay vacate petition in WVMP. No. 605 of 1995 to vacate the interim order passed

by this court on 21.3.1995. The stay vacation petition and the stay petition were heard together and on 3.4.1995 another interim order was passed by this court directing that the status quo obtaining as on today (3.4.1995) shall continue. Subsequently both the petitions came up for hearing and on 24.4.1995 the order dated 3.4.1995 directing the parties to maintain status quo as obtaining on 3.4.1995 was made absolute. The respondent herein was directed to file a representation before the University requesting the University to retain him at Hyderabad in view of the fact that no other candidate has been posted in his place. A direction was given to the University to pass appropriate orders within one week from the date of receipt of the said representation from the respondent herein. The representation made by the respondent herein for his retention at Hyderabad was not accepted by the University. Later, the main writ petition itself was disposed of by this court on 29.12.1995. The transfer proceedings dated 13.3.1995 was not set aside by this court. A direction was given to the University to reconsider the claim of the respondent herein for his retention in the cadre of Junior Assistant-cum-Typist at Hyderabad. This court also further directed that the petitioner shall not suffer from any disciplinary action if he did not join at transferred place at Delhi for the reason that the proceedings in this writ petition are pending before this court. Subsequently the respondent reported for duty at New Delhi. Later, the respondent filed a contempt case in CC. No. 272 of 1996 alleging that the direction given in the writ petition was willfully disobeyed by the authorities of the University as his case was not reconsidered by the University. The University contended that there was no existing vacancy at Regional Centre, Hyderabad and therefore retransfer of the respondent could not be considered by the University. An assurance was given to this court that the respondent herein will be brought back to Hyderabad whenever a vacancy in the cadre of Junior Assistant-cum-Typist arises at Hyderabad. The contempt case was closed by this Court.

3. The respondent was relieved of his post at Hyderabad on 16.3.1995. He reported for duty at the headquarters at New Delhi on 9.9.1996. Undisputedly he remained absent for duties from 16.3.1995 to 8.9.1996. Regarding the said period of absence, the University passed Office Order No. 3253 dated 20.12.1996. The University treated the said period as extraordinary leave (without Medical Certificate) which will not be counted for qualifying service for the purpose of increments and pension, etc. Challenging the said Office Order, the respondent preferred the writ petition requesting this court to issue a direction, writ or order, particularly one in the nature of Mandamus (a) declaring the action of the respondents in issuing the impugned orders dated 20.12.1996 bearing office Order No. 3253 of F. No. AD/2/N A/0716/88/4622 treating the period from 16.3.1995 to 8.9.1996 i.e., for a period of one year, 5 months, 25 days as not qualifying service for all purposes including increments, pension, etc., is arbitrary, illegal and against the principles of natural justice; (b) directing the respondents to pay the arrears of salary to him from 1.3.1995 to 8.9.1996; and (c) granting all consequential benefits to him. It is the plea of the

respondent herein that as orders of status quo were issued by this court from time to time, he could not join at New Delhi and at no point of time this court directed him to join at New Delhi. It is also pleaded that the impugned order issued by the University amounts to punishment for no fault of his and the said proceedings are contrary to the orders of this court in the earlier writ petition. The writ petition was opposed by the University. One of the pleas taken in the counter by the University is to the effect that the respondent did not report for duty either at the Regional Centre at Hyderabad or at the headquarters New Delhi. They also pleaded that the respondent did not give any application seeking leave for the said period. The learned Single Judge in the impugned order noticing that an interim order was passed previously by this court directing the respondent herein to make a representation to the University and a further direction to the University to dispose of the representation within a week, stated in his order that in the rejection order dated 14.6.1995 there is no reference as to the reasons why the petitioner could not be accommodated at the Regional Centre. The learned Single Judge was of the opinion that the University authorities are not justified in treating the period from 16.3.1995 to 8.9.1996 as unauthorised absence from duties and consequently the denial of that period either for increments or for terminal benefits is clearly illegal and unsustainable. Accordingly he set aside the impugned proceedings and directed the University authorities to treat the said period as on duty both for increments as well as for terminal benefits. In the impugned order the learned Single Judge noticed that the respondent did not render any service for that period. According to the learned Single Judge it was due to the illegal action of the respondents in not allowing the petitioner from assuming duties at the Regional Centre in pursuance of the interim orders of this court. We are of the considered opinion that the approach of the learned Single Judge is not proper and correct.

4. The previous writ petition was filed to quash the proceedings transferring the respondent from Hyderabad Regional Centre to the headquarters at New Delhi. The said relief was not granted to the writ petitioner. It tantamounts that the transfer proceedings were upheld by this court. Therefore, the respondent was bound to report at New Delhi after availing joining time alone. He did not report for duty at the headquarters within the stipulated time. Regarding the interim orders of status quo passed by this court from time to time, as already pointed out, a direction was given to the respondent on 24.4.1995 itself to make a representation to the University authorities for his retention at Hyderabad. That direction does not amount to directing the University authorities to continue the respondent in his post at Regional Centre, Hyderabad. If the tenor of the interim orders of this court in the previous writ petition is to the effect that the respondent shall be continued in his place of posting at Hyderabad only pending disposal of the writ petition, there would have been no necessity for this court to give a direction to the respondent to make a representation to the University authorities for his retention at Hyderabad and a further direction to the University to dispose of the representation within a period of one month. There is

no denial by the respondent that his representation for his retention at Hyderabad was not accepted by the University authorities. It was rejected by the authorities of the University. Therefore, it is not open for the respondent now to contend that in view of the statutes quo orders passed by this court in the previous writ petition, he could not report for duty at New Delhi. Therefore, the entire period of absence nearly for a period of 1 1/2 years is nothing but unauthorised absence. During such period, the respondent is not entitled to claim either salary or increments inasmuch as he did not admittedly work even for a single day during the relevant period.

5. It is contended that the impugned proceedings are passed without notice to the respondent and it is in the nature of a disciplinary proceedings. It is the contention that punishment was imposed on the respondent without holding a regular disciplinary enquiry and therefore the impugned order is liable to be quashed. The attention of this court was also drawn to this fact that withholding of increments of pay is one of the minor penalties contemplated under Rule 11(iv) of C.C.S.(C.C.A.) Rules and therefore it is a punishment inflicted upon the respondent without any enquiry and without any prior notice to the respondent. We find no force in the said contention in view of the circumstances of this case.

6. Any of the increments lawfully due to the respondent was not withheld or postponed by the University authorities as a measure of punishment for abstaining from duty from 16.3.1995 to 8.9.1996. An employee will be entitled for increments if he was on duty during the relevant period. During the said period admittedly he did not attend and discharge any of his official duties anywhere. Regarding the contention that it is a punishment in a disciplinary proceedings, the learned counsel for the University represented that during the pendency of the previous writ petition disciplinary enquiry was initiated against the respondent for not joining duty at New Delhi and the said disciplinary proceedings were dropped in view of the directions given at the time of passing final orders in the previous writ petition. This fact is not disputed by the respondent. Therefore, it is very clear that the impugned proceedings was not issued as a measure of punishment. When a person is unauthorisedly absent, as per the Fundamental Rules that period is to be regulated by the competent authority by issuing necessary proceedings. In the impugned proceedings the said period was treated as extraordinary leave. There can be no dispute that period covered by extraordinary leave will not be counted as qualifying service for the purpose of increments and pension, etc. As the impugned proceedings are not disciplinary proceedings and as it is issued only for the purpose of regulating the admitted period of absence from 16.3.1995 to 8.9.1996, in our opinion, the said order is perfectly legal and valid and is not liable to be quashed. Therefore, we are unable to uphold the impugned order passed by the learned Single Judge in the writ petition. We find no merits in the writ petition.

7. In the result, the appeal is allowed. The impugned order dated 11.4.2000 in W.P. No. 4285 of 1997 passed by the learned Single Judge is set aside. The said

writ petition is dismissed. No order as to costs in the writ appeal as well as in the writ petition.