



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 7954/2024

Smt. Suman Lata Kapur W/o Shri Pratap Kapur, Aged About 58 Years, R/o 51/7, Sant Nagar Near Railway Station Road Karnal, Haryana.

----Petitioner

Versus

1. The State Of Rajasthan, Through Secretary, Department Of Education, Government Of Rajasthan, Jaipur.
2. The Director, Elementary Education, Rajasthan, Bikaner
3. The Chief Executive Officer, Zila Parishad Barmer.
4. The Chief District Education Officer, Elementary Education, Barmer. Rajasthan.
5. The Block Development Officer, Panchayat Samiti Balotra, District Barmer.
6. The Head Master, Government Primary School, Jasol (Now Upgraded As Government Secondary School), Barmer.

----Respondents

For Petitioner(s) : Mr. P.R. Singh Jodha
Mr. H.S. Bhati

For Respondent(s) : Mr. Deepak Chandak, Asstt. to AAG
for Mr. B.L. Bhati, AAG

HON'BLE MR. JUSTICE FARJAND ALI

Order

Reserved on : 18/10/2024

Pronounced on : 04/11/2024

REPORTABLE

GRIEVANCE/PRAYER :-

1. The instant writ petition under Article 226 of the Constitution of India has been filed by the petitioner ventilating her grief over the termination of her services by the respondent authorities vide order dated 18.07.2000 (Annexure-7) and has



sought benevolence of this Court to quash and set aside the said termination order as well as to reinstate her in service, or alternatively, to treat her as being in service up to passing of the impugned order and release her post-retirement/termination benefits.

FACTS OF THE CASE :-

2. Bereft of elaborate details, the brief facts necessary for disposal of the instant writ petition are as under :-

2.1. The petitioner was appointed as Teacher Grade-III (earlier nomenclature was Assistant Teacher) in the year 1984 and joined her duties at Government Primary School, Pachpadra, Barmer on 03.01.1984. She was subsequently transferred to various schools over the time and lastly transferred to Government Primary School, Jasol, Barmer.

2.2. On 06.07.1995, she applied for seven days' leave with permission to leave headquarter for investigation, diagnosis and medical treatment of her son, who was suffering from Congenital Osteogenesis Imperfecta which caused him to sustain nearly 360 fractures in his lifetime. Not only this, her mother-in-law was suffering from paralysis attack following a brain hemorrhage, which left her in a coma as well as her father-in-law was also suffering from kidney failure and as such they were in critical health condition. As her son and in-laws required constant medical consultation and special nursing attention, she was unable to resume her duties and, thus, sent several applications for extension of her leave period to the respondent authorities



through registered post from time to time and lastly on 25.03.1999.

2.3. During her leave period from 1995 to 1999, she suffered a lot : (i) her mother-in-law passed away in the year 1995, followed by her father-in-law on 23.03.1996 due to their respective ailments mentioned herein above; (ii) she became pregnant in the year 1997 and as she was worried that her second child might also suffer from the same disease as her first child, she had to remain under medical observation and take complete bed rest during the prenatal period and as a result of which, she gave birth to a son on 31.01.998; and (iii) on 26.01.1999, her elder son also died at a very young age due to his health complications mentioned herein above.

2.4. The sudden and tragic demise of her elder son at a very young age profoundly disturbed her mental equilibrium, which deeply affected her physical health, necessitating medical treatment and preventing her from resuming her duties.

2.5. On 06.04.1999, when her mental and physical health condition improved, though she reported at Government Primary School, Jasol, Barmer for resuming her duties, but the respondent authorities refused to accept her joining and paid no heed to her repeated representations made with the same request.

2.6. Eventually, the respondent authorities vide order dated 18.07.2000 (Annexure-7) terminated her services with immediate effect on the ground of willful absence since 06.07.1995 in accordance with the Rule 86 of the Rajasthan Service Rules¹.

¹ For brevity hereinafter to be referred as 'RSR'.





2.7. Being aggrieved by the order of termination dated 18.07.2000 (Annexure-7), the petitioner preferred an appeal bearing Appeal No.1213/2000 before the Rajasthan Civil Services Appellate Tribunal, Jaipur². However, the tribunal vide order dated 30.01.2015 (Annexure-R/1) dismissed the said appeal as not maintainable because the order under assail was passed as a punishment, which could not be challenged before it.

2.8. In these circumstances, the petitioner again moved a detailed representation requesting to the respondent authorities to at least release her post-retirement/termination benefits but no heed was paid by them. Hence, the instant writ petition.

PETITIONER'S CONTENTIONS :-

3. In continuation of the above facts as averred in the writ petition, the contentions of learned counsel for the petitioner are as under :-

3.1. It is contended that the respondent authorities have erred in terminating the services of the petitioner without affording her an opportunity of hearing as well as without considering her representations submitted by her from time to time. The actions of the respondent authorities of treating the petitioner as willfully absent from services as well as refusing to accept her joining are arbitrary, illegal and in violation of Articles 14 and 16 of the Constitution of India.

3.2. It is also submitted that the respondent authorities have failed to consider the factual aspect of the matter that the petitioner was not absent willfully; rather, she was on leave due to

² For brevity hereinafter to be referred as 'tribunal'.



requirement of regular medical consultations and nursing care for her son, mother-in-law and father-in-law as well as her own ailment resulting from the mental trauma caused by the sudden demise of her elder son at a very young age. Thus, it is not a case of willful abstention from the services; rather, it is a case of prolonged leave taken by her, for which she had sent leave applications through registered post from time to time.

3.3. Learned counsel for the petitioner has drawn my attention towards the Rule 86 of the RSR and stated that the respondent authorities have illegally passed the impugned termination order without adhering the due process of law, as the said rule does not provide for termination of service on account of absence; instead, provides that (i) a government servant, who remains absent from duty without leave, may face service interruption, forfeiture of past service and deprivation of pay and allowance; and (ii) the disciplinary authority may initiate departmental proceedings under Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958³ against a Government servant, who willfully remains absent from duty for a period exceeding one month and if the charge of willful absence from duty is proved against him, he may be removed from service. However, the respondent authorities have violated the Article 311 of the Constitution of India by terminating the services of the petitioner without issuing a show cause notice, initiating departmental proceedings or adhering the principal of natural justice. Thus, the writ petition deserves to be allowed with all the post-retiral/termination benefits.

3 For brevity hereinafter to be referred as 'CCA Rules'.





3.4. It is, therefore, prayed that the impugned termination order dated 18.07.2000 (Annexure-7) passed by the respondent authorities may kindly be quashed and set aside as well as the petitioner may kindly be reinstated in service, or alternatively, she may be treated as being in service up to passing of the impugned order and be released her post-retirement/termination benefits.

RESPONDENTS' CONTENTIONS :-

4. Per contra, learned Asstt. to AAG appearing on behalf of respondent authorities has submitted following arguments :-

4.1. It is contended that the instant writ petition has been filed by the petitioner with the delay of 24 years without providing an explanation for the said delay. Not even this, against the impugned order, the petitioner has an alternate remedy to file an appeal as per the provisions of CCA Rules; however, without availing the said remedy, the petitioner has filed instant writ petition directly before this Court. In these circumstances, the writ petition does not require any interference and, therefore, the same is liable to be dismissed.

4.2. It is submitted that the petitioner had previously challenged the termination order dated 18.07.2000 (Annexure-7) before the learned tribunal by way of filing an appeal, which came to be dismissed by it vide order dated 30.01.2015 (Annexure-R/1); however, without challenging the termination order before the competent authority as provided under CCA Rules, the petitioner has directly challenged the order of termination before this Court, failing to explaining the delay of



over 9 years since the decision of the learned tribunal. Thus, the writ petition deserves to be dismissed.

4.3. It is stated that the termination order was passed in accordance with the Rule 86 of the RSR as the petitioner failed to approach the respondent authorities to resume her duties after being absent from the services for more than five years and, thus, considering it a case of abandonment of service, her services were terminated and as a result of which, the vacant post was filled up way back in the year 2000.

4.4. It is also contended that the despite sending several notices to the petitioner through registered post by the respondent authorities, she failed to report for resuming her duties. Subsequently, a final notice No.4269 dated 19.07.1996 was sent to the petitioner through registered post and published in a newspaper i.e. 'Rajasthan Patrika' on 02.08.1996, instructing her to report for joining her duties; however, she didn't report and remained absent for a prolonged period of 5 years and 12 days, from 06.07.1995 to 18.07.2000.

4.5. It is argue that the documents annexed with the writ petition are not official/certified documents and the same are concocted and fabricated by the petitioner. Hence, no interference of this Court is called for.

4.6. It is further argued that the petitioner remained absent from duties for more then 5 years from 06.07.1995 to 18.07.2000 and as per the provisions of RSR, an employee who remains absent from duty for more than 5 years is deemed to have



automatically resigned from services, thus, the termination order is well within the relevant governed rules.

4.7. In continuation of the above, it is prayed that the writ petition filed by the petitioner may kindly be dismissed.

OBSERVATIONS :-

5. After hearing learned counsel for the parties and after perusing the material available on record, this Court observes as follows :-

5.1. Before elaborating on the main controversy, this Court would like to discuss on the objections raised on behalf of the respondent authorities regarding maintainability of the writ petition on the grounds of delay of 24 years in its filing as well as inclusion of fabricated/concocted documents therein.

5.2. The documents annexed with the writ petition by the petitioner are supported by an affidavit and are not contradicted by the respondent authorities, clearly suggesting that the documents are neither fabricated nor concocted. Whereas the respondent authorities have not provided any documents in support of their contention regarding issuance of final notice and publication in the newspaper, upon which they are playing strong reliance. Thus, it cannot be concluded that the annexed documents are fabricated and concocted.

5.3. So far as delay of 24 years in filing the writ petition against the impugned termination order is concerned, the said order was initially challenged through an appeal before the learned tribunal in the year 2000, however, the said appeal was dismissed in the year 2015, which explains the belated approach





of the petitioner to this Court. Furthermore, the petitioner has not challenged the order of learned tribunal before this Court under Article 227 of the Constitution of India; instead, she has contested the impugned termination order by filing a writ petition under Article 226 of the Constitution of India, essentially with a prayer to grant her post-retirement/termination benefits while treating her being in service up to passing of the impugned termination order. Thus, it cannot be said that the writ petition is time barred.

5.4. Now, addressing the main controversy : whether due process of law was followed in the termination of the service of the petitioner.

5.5. Although, the respondent authorities claim that the impugned termination order was issued in accordance with Rule 86 of the RSR, but a close perusal of the said rule reveals that it has not been fully adhered to.

5.6. For ready reference, the Rule 86 of RSR is reproduced hereunder :-

“Rule 86. Absence after expiry of leave:— (1) A Government servant who is absent from duty without leave or before leave applied for has been sanctioned by the competent authority shall be treated to have remained willfully absent from duty and such absence shall amount to interruption in service involving forfeiture of past service unless, on satisfactory reasons being furnished, the absence is regularized by grant of leave due or is commuted into extra-ordinary leave by the authority competent to sanction leave.

(2) (a) A Government servant who remains absent from duty after the expiry of the sanctioned leave or after communication of refusal of extension of leave is not entitled to any pay and allowances for the period of such absence and the period of such absence shall be commuted into extra



ordinary leave unless on satisfactory reasons being furnished, the period of absence is regularized by grant of leave due by the authority to grant leave.

(b) Willful absence from duty after the expiry of leave renders a Government servant liable to disciplinary action.

(3) Notwithstanding the provisions contained in sub-rules (1) and (2) above the disciplinary authority may initiate departmental proceeding under Rajasthan Civil Services (Classification, Control & Appeal) Rules against a Government servant who willfully remains absent from duty for a period exceeding one month and if the charge of willful absence from duty is proved against him, he may be removed from service.

(4) No Government servant shall be granted leave of any kind for a continuous period exceeding five years.

A Government Servant shall be deemed to have resigned from the service if he,-

(a) is absent without authorization for a period exceeding one year from the date to expiry of sanctioned leave or permission, or

(b) is absent from duty for a continuous period exceeding given years even if the period of unauthorized absence is for less than a year, or

(c) continues on foreign service beyond the period approved by the State Government :

Provided that a reasonable opportunity to explain the reasons for such absence of continuation of foreign service shall be given to the Government Service before the provisions of this sub-rule are invoked.

Government of Rajasthan's Decision

(i) *Treatment of wilful absence from duty not recognised:*

Wilful absence from duty, even though not covered by grant of leave does not entail loss of lien. The period of absence not covered by grant of leave shall have to be treated as 'dies non,' for all purposes, viz. Increment, leave and pension. Such absence without leave where it stands singly and not in continuation of any authorised leave of absence will constitute an interruption of service for the purpose of pension and the entire past service will stand forfeited.

(ii) *Action for over stayal of leave:*

Doubts were raised in certain quarters as to how the cases in which an official over stays the prescribed quantum of





extraordinary leave should be dealt with. The matter has been considered and it is clarified that the aforesaid rule does not take away the power of disciplinary authority to take appropriate disciplinary action for any misconduct and impose one of the penalties under Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958. Action can, therefore, be taken under these rules for unauthorised absence from duty or overstayal of leave even for one day, treating it is misconduct, if the facts and circumstances of the case warrant such an action."

5.7. As per the proviso contains under Rule 86(1) of RSR, the respondent authorities have power to interrupt in service involving forfeiture of the past service of the petitioner due to willful absence from services for prolonged period; however, they have no power to terminate the services of the petitioner on the aforementioned reason.

5.8. It is pertinent to mention here that the 'FORFEITURE' refers to the loss of past service or benefits due to certain actions, such as willful absence and when service is forfeited, it typically means that the employee loses the accumulated benefits and service credit but may not necessarily lose their job outright. Whereas the 'TERMINATION' involves the end of employment and when an employee's service is terminated, it means that the employer has formally ended the employee's contract, usually due to misconduct or failure to comply with regulations.

5.9. As per the proviso contained under Rule 86(2)(a) of RSR, the petitioner is not entitled to any pay and allowances for the period of willful absence after the expiry of the sanctioned leave or after communication of refusal of extension of leave; however, the respondent authorities have not provided any documents to



demonstrate that they communicated/informed the petitioner about the rejection of first leave application or refusal of extension of leave applications. Even if it is assumed for a moment that the communication/information was provided to the petitioner, the impugned termination order remains contrary to the rule, as it provides for withholding of pay and allowances of the petitioner due to her willful absence and not for termination of her services.

5.10. According to the proviso specified under Rule 86(2)(b) of RSR, willful absence from duty after the expiry of leave renders the petitioner liable to disciplinary action; contrary to this, the respondent authority terminated the services of the petitioner without taking any disciplinary action.

5.11. As stated in the proviso of Rule 86(3) of RSR, the respondent authorities could have initiated departmental proceeding under CCA Rules against the petitioner for willful absence from the duty for a period exceeding one month and if the charge of willful absence from duty was proven against her, she could have been removed from the service; nevertheless, the respondent authority did not initiate any disciplinary proceeding under CCA Rules.

5.12. Further, in accordance with the proviso contained in Rule 86(4) of RSR, the petitioner shall be deemed to have resigned from services after remaining absent from duty for a continuous period exceeding five years without sanctioned leave or permission; although, the respondent authorities did not consider the absence of the petitioner as a resignation and her services was terminated.



5.13. It is very important to note here that the aforementioned rule provides that a reasonable opportunity to explain the reasons for willful absence shall be given to the employee before the provisions of this sub-rule are invoked; however, the respondent authority have overlooked the said rule and passed an order of termination of services of the petitioner without holding an inquiry.

5.14. In my considered view, the action of the respondent authorities in terminating the services of the petitioner without holding inquiry as envisaged is *per-se* illegal and arbitrary, therefore, the said order is not sustainable in the eye of law.

5.15. This Court holds that an order under Rule 86(1) of RSR regarding removal from services can only be passed after giving opportunity of hearing to the employee and conducting a departmental inquiry as envisaged under Sub-rule (3) of Rule 86 of the RSR. Any order of removal from services without holding departmental proceeding is against the mandate of law. In this case, such an order of removal from services has been passed, therefore, this Court declares the said order of removal from services a patently illegal order and, thus, the same cannot be approved; rather, deserves to be quashed.

5.16. In this view of the above discussions, it is observed that the case in hand does not fall within the purview of forfeiture or termination of services; rather, it pertains to resignation of services and as such the respondent authorities did not adhere to the procedure established by law.

5.17. As observed above, the case of the petitioner pertains to resignation of services and Rule 25 of the Rajasthan Civil Services



(Pension) Rules, 1996⁴ speaks about the forfeiture of service on resignation, which reads as under :-

“Rule 25. Forfeiture of service on resignation

(1) Resignation from a service or a post, entails forfeiture of past service.

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

(3) Interruption in service in a case falling under sub-rule (2), due to the two appointments being at different stations, not exceeding the joining time admissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to him.”

5.18. A bare perusal of the above rules reveals that the case of the petitioner does not fall under Rule 25 of the Pension Rules 1996; therefore, there was no legal requirement of forfeiting the services of the petitioner.

5.19. Now the question is whether the case of the petitioner falls within the scope of entitlement of pension and any post-retiral/resignation benefits.

5.20. As per Rule 12 of the Pension Rules 1996, the qualifying service required for pension is 18 years; whereas the petitioner has rendered 11 years, 6 months and 3 days of regular services from 03.01.1984 to 06.07.1995 and remained absent for 5 years and 12 days from 06.07.1995 till passing of her termination order dated 18.07.2000 (Annexure-7) and, thus, her total service tenure comes to around 16 years, 6 months and 15 days, however, she is not entitled for grant of regular pension.

⁴ For brevity hereinafter to be referred as ‘Pension Rules 1996’.



**CONCLUSION/OPINION :-**

5.21. In view of the above discussions, though, nothing has been shown by the respondent authorities, but there is hardly any justification in not paying post-retiral/resignation benefit such as Provident Fund, Gratuity, State Insurance etc. to the petitioner as she has rendered 11 years, 6 months and 3 days of services with utmost dedication, zeal and with unblemished services and has never faced any departmental proceedings for any kind of misconduct related to her official duties, which has not been countered by the respondent authorities. Moreover, the fact of disturbance of mental equilibrium of the petitioner due to sudden and tragic demise of her son in a very young age, mother-in-law and father-in-law, cannot be ignored.

5.22. The post-retiral/resignation benefits such as Provident Fund, Gratuity, State Insurance etc. are the earnings of the petitioner for the services rendered by her with the respondents and the same cannot be taken away by them. Taking away or withholding such benefits, after retirement/resignation, amounts to depriving her from the right to life because such benefits are the sources by which she and her family arrange for their bread and other necessities.

5.23. The basic object behind crediting the benefits of post-retiral/resignation benefits, such as Provident Fund, Gratuity, State Insurance etc., is that after retirement/resignation from services when an employee is of an old age, may not face any financial problem for his/her livelihood or necessities.



5.24. It is emanating from the facts of the case that the petitioner has served with the respondents for about 11 years, 6 months and 3 days and by making contribution from her salary and other contributions aided by the State employer, the Provident Fund, Gratuity, State Insurance etc. and other retiral/resignation benefits have been credited to her.

5.25. In such circumstances, this Court deems it appropriate to grant alternate relief prayed by the petitioner for releasing her post-retiral benefits.

VERDICT :-

6. With these observations, the instant writ petition, stay petition as well as all the pending applications, if any, are disposed of with the following directions :-

- (a)** The services of the petitioner shall be treated as resigned instead of termination.
- (b)** The respondent authorities are directed to allow the post-retiral/resignation benefits such as Provident Fund, Gratuity, State Insurance etc. to the petitioner within a period of two months from the date of submitting a copy of this order, failing which, she would be entitled to get interest @ 9% per annum on the due benefits from the date of passing of this order.

7. No order as to cost.

(FARJAND ALI),J

Abhishek Kumar
S.No.394