

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 2794/2017

Smt. Neelam Gehlot Wife Of Shri Kamlesh Kumar Garg, aged about 54 years, resident of 1st Lane, Subhas Nagar, Shiv Ganj, District Sirohi, Rajasthan

-----Petitioner

Versus

1. Director, Women And Child Development Department, Government Of Rajasthan, Gandhi Nagar, Jaipur, Rajasthan
2. Deputy Director (ICDS) And Officiating Project Director, District Women Development Authority, Pali, Rajasthan
3. Deputy Director Admn. Women And Child Development Department, Government Of Rajasthan, Gandhi Nagar, Jaipur, Rajasthan
4. Project Officer, Women And Child Development Department, Ahore, Jalore, Rajasthan

-----Respondents

For Petitioner(s)	:	Mr. Punit Sighvi Ms. Suhani Singh
For Respondent(s)	:	Mr. Akash Guar, Dy. GC with Mr. Aditya Sharma

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

27/02/2026

Reportable

1. The instant writ petition is filed by the petitioner with following prayer:-

"i) by an appropriate writ, order or directions the entire record pertaining to the case of petitioner may be called for the perusal of the Hon'ble Court.

ii) by an appropriate writ, order directions the impugned action of the respondents of passing the impugned order without appreciating the

relevant facts and circumstances of the case may kindly be declared as arbitrary, illegal and bad in law.

iii) by an appropriate writ, order or directions the impugned order dated 25.03.2015 of declaring the services of the petitioner for the period from 04.08.1990 to 29.08.2011 as dies non for all service benefits like annual pay Increment, leave benefit, pension etc. may kindly be quashed and set aside. Further, the respondents may be directed to give notional benefits to the petitioner for the said period.

iv) by an appropriate writ, order directions the, action of the respondents of not allowing her to join services despite several communication, legal notices and even after filing of the writ petition till interim order was granted may kindly be deprecated in strongest terms. Further, the respondents may be saddled with heavy cost for causing harassment.

v) Any other appropriate order, which may be found just and proper in the facts and circumstances of the case, be passed in favour of the petitioner; and

vi) Cost of the writ petition may also be awarded in favour of the petitioner."

2. Learned counsel for the petitioner submitted that the petitioner was appointed as Lady Supervisor Grade-III on 26.06.1986 in the Office of Project Officer, Jaitaran, District Pali. He further submitted that the petitioner fell seriously ill and was unable to attend the duties, and she has sent an application for medical leave. He further submitted that the petitioner remained continuously ill up to 27.08.1992 and when the petitioner approached the office of the Project Officer to resume her duties, then she was not allowed to join. He further submitted that the petitioner has submitted several representations and letters but she was not allowed to join. He further submitted that a disciplinary proceeding was instituted against her and was forced

to file a writ petition before this Hon'ble Court, wherein after intervention of this Hon'ble Court, the respondents have permitted the petitioner to join on duty. He also referred the order passed by a Co-ordinate bench of this Hon'ble court on 23.09.2013 and submitted that after disposal of the writ petition, the disciplinary proceedings were concluded, but the period from 04.08.1990 to 29.08.2011 was treated as dies-non, which is contrary to the facts of the case. He also submitted that after a legal notice, the petitioner has filed a writ petition in the year 2006 and there was no negligence on the part of the petitioner, but still the period from 2003 onwards, in particular, from 2006 to 2011, cannot be treated as dies-non.

3. Learned counsel submitted that declaration of the period as dies non will affect her entitlement for annual increment, leave and pension benefits. He also submitted that the disciplinary authority has violated the basic principles of administrative law and also of natural justice before arriving at a conclusion to declare the entire period as dies-non. He also referred the material and submitted that from 04.08.1990 the petitioner was severely ill and medical leave can be sanctioned, but thereafter, she was not permitted to join on 28.08.1992, though, she was transferred on 12.08.1992 to Alore. At last, he submitted that the order is itself without any basis and against all norms, therefore, same be quashed and set aside.

4. Aforesaid contentions were opposed by the learned counsel appearing on behalf of the respondents and submitted that earlier writ petition filed by petitioner was disposed on 23.09.2013 and the petitioner has filed a DB Special Appeal (Writ), but same was

also dismissed. He further submitted that the petitioner approached the Hon'ble Supreme Court by filing a SLP but same was withdrawn by the petitioner. He also referred the disciplinary proceedings and submitted that not a single document is filed by the petitioner to show that she remained ill from the period as claimed by the petitioner. He further submitted that the petitioner has not filed any document to show that she remained present to join duty in the office anytime prior to year 2011 (on date as directed by this Hon'ble Court).

5. Heard learned counsel for the parties and perused the material placed on record.

6. The brief facts of the case are that the petitioner was appointed on post of Lady Supervisor Grade-III in the Office of Project Officer, Jaitaran, District Pali and from 04.08.1990, she did not attended her duties. The reason assigned by the petitioner is sudden illness and continued illness. The petitioner has claimed to be informed about illness on 13.08.1990. The petitioner transferred vide order dated 12.08.1992 from Jaitaran to Ahore. The transfer was made on request of the petitioner herself. The order dated 18.09.2001 (Annexure-10) also indicate that the petitioner was made permanent by the Department with effect from date 22.12.1993. The petitioner has filed S.B. Civil Writ Petition No. 5812/2006 with the prayers to quash the charge sheet dated 09.03.2004 and denial of joining of service. This writ petition was disposed on 23.09.2013 with following directions:-

"(i) the respondent/s may continue the petitioner in service subject to the enquiry and final decision by the disciplinary authority.

(ii) The enquiry may be concluded within a period of four months from the date of receipt of copy of this order.

(iii) The intervening period of absence/medical leave will remain subject to final outcome of the enquiry.

(iv) The petitioner did not challenge the action of respondents in not permitting him to join the services till 2006, thus he would not be entitled for any benefit till the aforesaid date even if enquiry is

concluded favourable to him other than the period of medical leave, if exists and found proper.

(v) So far as other benefits of intervening period of 2006 are concerned, it would again remain subject to final outcome of enquiry.

(vi) The respondents are directed to pay salary to the petitioner for the period he has actual worked with them after interim order of this Court."

7. Dissatisfied from the order, the petitioner has filed a DB Special Appeal Writ No.1202/2013 and same was decided on 28.01.2015 and the order passed in writ petition was affirmed. The petitioner has further filed SLP (C) No...../2016, (CC No.20301/2016) before Hon'ble Supreme Court and same was dismissed as withdrawn on 28.10.2016.

8. The material on record clearly indicates that while disposing the Writ Petition No. 5812/2006, a Coordinate Bench has permitted the petitioner to join duty as an interim order, but the disciplinary proceedings were permitted to be continued against the petitioner. The discretion to decide about further action was left to the controlling or the disciplinary authority.

9. After the disposal of the litigation, the inquiry was conducted and concluded against the petitioner, wherein the petitioner was found guilty and the charges were found proved against the

petitioner. Considering non-sincere approach of the petitioner, the disciplinary authority after considering point of the petitioner, has directed that period from 04.08.1990 to 29.08.2011 shall be considered as dies-non for all purposes, which includes annual increment, leave and pension benefits.

10. On earlier occasion, the petitioner has approached this Court and agitated up to Hon'ble Supreme Court but failed in getting desired result in her favour. Now, it is second round of litigation after the disciplinary proceedings. A Coordinate Bench while disposing the writ petition has permitted disciplinary proceedings against the petitioner and directed to conclude within a period of four months. The intervening period of absent / medical leave was kept subject to final outcome of the inquiry. The petitioner was given a liberty to defend herself in the inquiry proceedings. The medical certificate from 01.06.1991 to 05.11.1992 were not issued by a competent Medical Officer. Thereafter, the petitioner has filed an application to resume her duties. The negligence as discussed by the disciplinary authority clearly indicate that the absent was voluntarily and there is no justification on record.

11. It is a settled proposition that the Court should refrain from unnecessary interference in the disciplinary matters. In case of **State of Andhra Pradesh Vs. S. Sree Rama Rao (1963 INSC 97; Civil Appeal No.626 of 1961)**, Hon'ble Supreme Court has held that constitutional Courts should not act as an Appellate Authorities in departmental proceedings unless there is a clear violation of principles of natural justice or lack of evidence. Again, in the case of **State of Andhra Pradesh Vs. Chitra Venkata Rao (Civil Appeal No.2040 of 1974)**, Hon'ble Supreme Court

has held that writ Courts have supervisory jurisdiction and should not re-appreciate evidence or replace disciplinary findings unless there is an error of law. Again, in case of **State of Rajasthan Vs. Heem Singh (2020 INSC 621; Civil Appeal No.3340/2020)**, Hon'ble Supreme Court has reiterated the spectrum of judicial review and emphasized restraint and deference to disciplinary authority while dealing circumstances warranting interference.

12. The principle of interference is that the disciplinary authorities have primary responsibility and acceptance to adjudicate misconduct within their domain. The Court should refrain from interrogating the factual finding as recorded by the Inquiry Officer and relied by the disciplinary authority unless there is a manifest violation of legal principles or procedural fairness.

13. Here in this case, admittedly, the petitioner did not attend her duties from 04.08.1990 and she has submitted medical certificates from 04.08.1990 to 31.05.1991 and, thereafter, 01.06.1991 to 05.11.1992. No medical certificate is placed on record to show that she remained absent due to illness. The petitioner was transferred vide order dated 12.08.1992 Jaitaran to Ahore, but she has not joined her duties. In this intervening period, the services of the petitioner were made permanent vide order dated 18.09.2001, but still the petitioner has not joined her duties.

14. The material as submitted to justify absence to the disciplinary authority and also on record indicated that first time, a notice was served on 13.10.2003. Thereafter, a writ petition is filed in year 2006 which was disposed on 23.09.2013, but as an interim measure, on 24.08.2011, the Court has directed the

respondent-Department to allow the petitioner to join her duties. There is no justification on record to show that why the petitioner remained absent till 30.08.2011.

15. Rule 59 of the Rajasthan Service Rules, 1951, (hereinafter referred as 'RSR'), provides that a leave cannot be claimed as a matter of right and discretion as reserved to the authority empowered to grant leave. Rule 76 of the RSR provides for leave on medical certificate to non-gazetted Government servant. The procedure as prescribed in Rule 83 provides that a certificate of fitness has to be produced before resuming the duty.

16. In the instant case, no material is placed on record to show the medical leave was submitted in accordance with the provision as mentioned in RSR.

17. Rule 86 of RSR provides that 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 of service involving forfeiture of past service unless, on satisfactory reasons being furnished and the absence is regularized by grant of leave due or is commuted into extra-ordinary leave by the authority competent to sanction leave.

18. Here in this case, the material on record indicate that the petitioner has not shown sufficient reason to satisfy the disciplinary authority about willful absence for the period till directed by this Court on 24.08.2011. The petitioner has ultimately joined on 30.08.2011, thus there is no justification of absence before 30.08.2011.

19. The disciplinary authority after considering the material as submitted during disciplinary proceedings and further in accordance with the provision of RSR, has passed an order treating period from 04.08.1990 to 29.08.2011 as dies-non. The petitioner was given an opportunity to explain her conduct, as she has participated in the disciplinary proceedings. Thus, there is neither violation of any provision of Rule nor of principle of natural justice. The petitioner has voluntarily remained absent and she has no right to claim that said period, in particular after 2006 (filing of writ petition) be treated in length of service and provide her notional benefits.

20. This court is also conscious of the fact that undue leniency or misplaced sympathy towards such person will give a wrong message. The court having taken note of judgment in case of **U.P. State Road Transport Corporation Vs. Vinod Kumar : 2007 INSC 1234** wherein judgment in case of **Divisional Controller, NEKRTC Vs. H. Amaresh : (2006) 6 SCC 187**, was referred and held that the sympathy or generosity cannot be a factor which is permissible in law. There is no place for generosity or misplaced sympathy on the part of the judicial forum. Reliance is also placed in case of **Karnataka State Road Transport Corporation Vs. B.S. Hullikatti : (2001) 2 SCC 574**.

21. Therefore, considering the conclusion as drawn by the disciplinary authority, we are of the considered view that no case is made out for interference on any of the reason as mentioned by the learned counsel for the petitioner. Thus, the writ petition is devoid of merit and liable to be dismissed.



22. In view of the discussion made herein above, the writ petition under Article 226 of the Constitution of India is hereby dismissed with pending application, if any.

23. No order as to costs.

(ASHOK KUMAR JAIN),J

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