

IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 22ND DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE T.M.NADAF

WRIT PETITION NO.107082 OF 2024 (S-DIS)

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BETWEEN:

SRI SUBHASH SANGAPPA HIRAL S/O. SANGAPPA,
AGED ABOUT 37 YEARS,
RESIDING OF GULEDGUDD POST,
GULEDGUDDA HOBLI, BADAMI TALUK,
BAGALKOT DIST-587203.

...PETITIONER

(BY SRI. MADANGOUDA N.PATIL, ADVOCATE)

AND:

1. THE KARNATAKA LEGISLATIVE ASSEMBLY,
REPRESENTED BY THE SECRETARY,
VIDHAN SOUDHA, BENGALURU-560001.
2. THE KARNATAKA LEGISLATIVE ASSEMBLY
REPRESENTED BY ITS JOINT SECRETARY OF
VIDHAN SOUDHA, BENGALURU-560001.

...RESPONDENTS

(BY SMT. NANDINI SOMAPUR, AGA FOR R1 TO R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO (A) TO ISSUE A WRIT OR ORDER IN THE NATURE OF WRIT OF CERTIORARI FOR QUASHING THE IMPUGNED ORDER NO.KVSASA/AA-3/20/TE.HA/2023 BENGALURU DATED 05.07.2023 PASSED BY THE RESPONDENT NO.2 VIDE "ANNEXURE-"G". (B) TO ISSUE WRIT OF MANDAMUS DIRECTING THE RESPONDENT NO.02 TO REINSTATE THE PETITIONER TO HIS ORIGINAL POST WHICH HE HELD BY TREATING THE PERIOD OF DISMISSAL AS DUTY AND TO GRANT ALL CONSEQUENTIAL BENEFITS INCLUDING THE



ARREARS OF SALARY, ALL OTHER EMOLUMENTS, PROMOTIONS IF ANY DUE TO HIM, AND (C) TO GRANT SUCH OTHER RELIEF OR RELIEFS AS THIS HON'BLE COURT DEEMS FIT IN THE FACTS AND CIRCUMSTANCES OF THE CASE BY ALLOWING THE ABOVE WRIT PETITION IN THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 17.09.2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE T.M.NADAF

ORAL ORDER

This petition by the petitioner seeking following reliefs:

- [a] To issue a Writ or order in the nature of Writ of Certiorari for quashing the impugned Order No.KVSaSa/AA-3/20/Te.Ha/2023 Bengaluru dated 05.07.2023 passed by respondent No.2 vide Annexure-G.*
- [b] To issue Writ of Mandamus directing respondent No.2 to reinstate the petitioner to his original post which he held by treating the period of dismissal as DUTY and to grant all consequential benefits*

including the arrears of salary, all other emoluments, promotions if any due to him, and

[c] To grant such other relief or reliefs as this Hon'ble Court deems fit in the facts and circumstances of the case.

2. Facts germane to file the present petition are as under:

2.1 In response to the Notification issued by the Government, calling application for the post of Dalayat under Rule 6(ii) of Karnataka Legislative Assembly (Selection and Service Condition) Rules, 2003, the petitioner applied and was appointed as Dalayat on 18.11.2009.

2.2 The petitioner completed his probationary period without any blemish on 08.12.2011 and his probation was declared on the said date.

2.3 On 19.05.2020, the second respondent issued a recall notice to the petitioner stating that, he has obtained Casual Leave on 04.03.2020 and 05.03.2020, however remained absent till

24.03.2020 and there was no intimation to the Department for having obtained leave for this period and it was also stated that on earlier occasion also, the petitioner remained unauthorized absent without intimation to the higher authorities. In the impugned notice dated 19.05.2020, the petitioner was asked to explain as to why necessary action should not be taken against him.

- 2.4 The petitioner made a representation on 26.07.2021, explaining the absence from 03.10.2019 to 29.01.2020 i.e., for a period of 119 days and from 06.03.2020 to 14.03.2021 i.e., for a period of 374 days, in total 493 days. The petitioner admitted that he was unauthorizedly absent from duty without obtaining prior permission from the office. He further explained the reason for unauthorized absence, stating that his entire family was residing at Guledgudda Village, Bagalkot District and he come alone to Bengaluru pursuant to his appointment to the post of Dalayat. As he was entirely depending on the outside food, his health deteriorated and he was

suffering from various medical ailments. Consequently, he was admitted to a Hospital at Bengaluru for a period of one week and underwent treatment. Due to financial difficulties, he was unable to bear the expenses of his hospitalization and on advise of the doctor to take long rest, he returned to his native place. He further stated that the letters issued calling upon him to report back duty had not been served on him and were returned unserved. In that view of the matter, the absence is not willful and there was no deliberate intention on his part to refuse or avoid service of notice. Accordingly, sought permission to rejoin to the Post of Dalayat and he would not repeat the same in the future.

2.5 The second respondent, without considering the explanation submitted by the petitioner and without conducting any enquiry as contemplated under Law, as the petitioner was a permanent employee under the State, dismissed him from service on the allegation of absenteeism. In the order of dismissal, though the explanation offered by the petitioner has

been notified, however the same was not accepted on the ground that, the medical documents produced were not in accordance with law and the petitioner has not explained the nature of illness with which he was suffering, which made him to absent for an inordinate period.

2.6 The order dismissing the petitioner from service is governed under Rule 11 of Karnataka Civil Service (Classification, Control and Appeal) Rules, 1957¹, which contemplates holding of a departmental enquiry, and though a notice in that regard was issued, the second respondent, without holding any such enquiry, only on the basis of petitioner's admissions that he had remained absent from duty without prior permission, passed the impugned order, stating that in view of the admission, no enquiry as per Rule 11 of CCA Rules was necessary and treated the period of absence as unauthorized absence. Aggrieved by the order of dismissal, the petitioner is before this Court.

¹ Hereinafter referred to as 'CCA Rules'

3. Heard, Sri.Madangouda N.Patil, learned counsel appearing for the petitioner and Smt.Nandini Somapur, learned Addl. Government Advocate appearing for the respondents.

4. Mr.Patil, referring to the documents produced along with the Writ Petition, so also the explanation dated 26.07.2021 and the photograph of the petitioner produced at Annexure-E, submits that, the reason for absenteeism is not willful but for the illness from which the petitioner was suffering. Though the petitioner in his explanation has stated that the notice sent to him calling upon him to rejoin duty requested to be served on his family members, however the same were not served on them and returned unserved. In that view of the matter, there is no notice served on him and the notices were not returned intentionally. The petitioner has explained that the reason for his absence is ill-health. As none of his family members were residing with him at Bengaluru to take care of him and since he was not in a position to bear the expenses of medical treatment, he returned to his native. In that view of the matter, though he remained absent from duty,

there is no willful intention to remain absent. To buttress his argument, learned counsel placed reliance on the following Judgments.

- (i) ***KRUSHNAKANT B.PARMAR VS. UNION OF INDIA (UOI) AND ANOTHER²*** –
Paragraphs 16 to 20.
- (ii) ***REENA RANI VS. STATE OF HARYANA AND OTHERS³*** – *Paragraphs 8 to 11.*

4.1 Mr.Patil, further submits that in the absence of willful absenteeism, and having regard to the reasons for the absence explained by the petitioner with supported documents, the punishment imposed is very harsh and disproportionate to the misconduct alleged by the second respondent. The petitioner *bonafide* admitted that he had remained absent from duty, however, he explained that such absence was because of his ill-health, which would not be termed as willful absenteeism, which is an element to prove

² (2012) 3 SCC 178

³ (2012) 10 SCC 215

the gross misconduct and reason contemplated under the provisions of law to dismiss him from service.

5. In contrast, Smt.Nandini Somapur, submits that though a departmental enquiry was contemplated under Rule 11 of CCA Rules, and notice was also issued, however in view of the self-explanatory admissions by the petitioner in his representation about absenteeism, no enquiry was conducted. She further submits that, the documents produced by the petitioner were neither in accordance with law nor satisfactory to support his claim of ill-health. She submits that the order of dismissal categorically records that the petitioner has not stated the nature of illness from which he was suffering and the medical documents produced by him did not disclose any serious or hazardous illness. In that view of the matter, the order passed stating that the absenteeism is willful, which attracts the punishment for grave misconduct as per Rule 108 of Karnataka Civil Services Rules and Rule 8(vii) of Karnataka Civil Service (Classification, Control and Appeal) Rules 1957 and the second respondent, exercising power under Rule 9 of Karnataka Legislative Assembly

(Selection and Service Condition) Rules, 2003, dismissed the petitioner from service. In that view of the matter, the order passed by the second respondent does not call for any interference at the hands of this Court.

6. Having considered the rival submissions, this Court perused the entire Writ Petition paper, so also the Judgments relied on in support of the claim of the petitioner.

7. The Hon'ble Supreme Court, in catena of cases, made it clear that, mere absenteeism without prior permission may be unauthorized absence, but not necessarily willful. Where compelling circumstances like illness or accident preventing the concerned employee reporting for duty, the absence is not willful or unauthorized absence. Absence must be proved as willful and any order passed without holding departmental enquiry as contemplated under Rule 11 of CCA Rules, is against the procedure contemplated and the punishment of dismissal imposed for unauthorized absent but not willful, is very harsh and not proportionate.

8. In the case of **KRUSHNAKANT** (*supra*), the Hon'ble Supreme Court at Paragraph Nos.16 to 20, held as under:

"16. The question whether 'unauthorised absence from duty' amounts to failure of devotion to duty or behaviour unbecoming of a Government servant cannot be decided without deciding the question whether absence is wilful 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 wilful.

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

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

20. 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 the absence is wilful; the disciplinary authority as also the Appellate Authority, failed to appreciate the same and wrongly held the appellant guilty."

9. In the case of **REENA RANI** (*supra*), the Hon'ble Supreme Court at Paragraph Nos.8 to 11, held as under:

"8. In the order of dismissal, the Superintendent of Police has not disclosed any reason as to why it was not reasonably practicable to hold regular departmental enquiry. The learned Additional Advocate General fairly stated that the order of dismissal does not contain the reasons as to why it was not reasonably practicable to hold regular departmental enquiry against the appellant. He also admitted that no other record has been made available to him which would have revealed that the Superintendent of Police had recorded reasons for forming an opinion that it was not reasonably practicable to hold regular departmental enquiry for proving the particular charge(s) against the appellant.

9. In view of the above, we hold that the learned Single Judge and the Division Bench of the High Court committed serious error by negating the appellant's challenge to her dismissal from service without enquiry. The Division Bench of the High Court did not examine the issue in the correct perspective and made general observations that each case is required to be decided on its own facts and no straight jacket formula can be adopted to decide whether it is reasonable and

practicable to hold regular enquiry for imposing major penalty of dismissal from service. Such general observations could not have been made basis for approving her dismissal from service without enquiry.

10. *In Union of India v. Tulsiram Patel (supra) the Constitution Bench considered the scope of clauses (a), (b) and (c) of the second proviso to Article 311. While dealing with clause (b), Madon, J., who spoke for the majority of the Constitution Bench observed.*

130. The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that 'it is not reasonably practicable to hold' the inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are "not reasonably practicable" and not "impracticable". According to Oxford English Dictionary "practicable" means "capable of being put into practice, carried out in action, effected, accomplished, or done; feasible". Webster's Third New International Dictionary defines the word "practicable" inter alia as meaning 'possible to practice or perform: capable of being put into practice, done or accomplished: feasible'. Further, the words used are not "not practicable" but "not reasonably practicable". Webster's Third New International Dictionary defines the word "reasonably" as "in a reasonable manner: to a fairly sufficient extent". Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry, but some instances by way of illustration may, however, be given. It would not be reasonably practicable to hold an inquiry where the government servant, particularly through or together with his associates, so terrorizes, threatens or intimidates witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so or where the government servant by himself or together with or through others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his family so that he is afraid to hold

the inquiry or direct it to be held. It would also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails, and it is immaterial whether the government servant concerned is or is not a party to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final. A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail. The finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty.

133. The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311(2). This is a constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional.

134. It is obvious that the recording in writing of the reason for dispensing with the inquiry must precede the order imposing the penalty. The reason for dispensing with the inquiry need not, therefore, find a place in the final order. It would be usual to record the reason separately and then consider the question of the penalty to be imposed and pass the order imposing the penalty. It would, however, be better to record the reason in the final order in order to avoid the allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated. The reason for dispensing with the inquiry need not contain detailed particulars, but the reason must not be vague or just a repetition of the language of clause (b) of the second proviso. For instance, it would be no compliance with the requirement of clause (b) for the disciplinary authority simply to state that he was

satisfied that it was not reasonably practicable to hold any inquiry. Sometimes a situation may be such that it is not reasonably practicable to give detailed reasons for dispensing with the inquiry. This would not, however, per se invalidate the order. Each case must be judged on its own merits and in the light of its own facts and circumstances.

135. It was vehemently contended that if reasons are not recorded in the final order, they must be communicated to the government servant concerned to enable him to challenge the validity of the reasons in a departmental appeal or before a court of law and that failure to communicate the reasons would invalidate the order. This contention too cannot be accepted. The constitutional requirement in clause (b) is that the reason for dispensing with the inquiry should be recorded in writing. There is no obligation to communicate the reason to the government servant. As clause (3) of Article 311 makes the decision of the disciplinary authority on this point final, the question cannot be agitated in a departmental appeal, revision or review. The obligation to record the reason in writing is provided in clause (b) so that the superiors of the disciplinary authority may be able to judge whether such authority had exercised its power under clause (b) properly or not with a view to judge the performance and capacity of that officer for the purposes of promotion, etc. It would, however, be better for the disciplinary authority to communicate to the government servant its reason for dispensing with the inquiry because such communication would eliminate the possibility of an allegation being made that the reasons have been subsequently fabricated. It would also enable the government servant to approach the High Court under Article 226 or, in a fit case, this Court under Article 32. If the reasons are not communicated to the government servant and the matter comes to the court, the court can direct the reasons to be produced and furnished to the government servant, and if still not produced, a presumption should be drawn that the reasons were not recorded in writing and the impugned order would then stand invalidated. Such presumption can, however, be rebutted by a satisfactory explanation for the non-production of the written reasons.

11. *In Jaswant Singh v. State of Punjab (supra) the two-Judge Bench referred to the ratio of Union of India v. Tulsiram Patel (supra) and observed:*

The decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the

ipse dixit of the authority concerned. When the satisfaction of the authority concerned is questioned in a court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer."

10. Coming to the case on hand, though it was contemplated to hold an enquiry under Rule 11 of CCA Rules, against the petitioner and a show cause notice having been issued in that regard, merely on the explanation given by the petitioner wherein he has admitted regarding his absence from duty, the least expected from the respondent is to hold an enquiry in order to ascertain whether the absenteeism is willful or not. The document produced which are part of Writ Petition along with photograph depicting the condition of the petitioner shows that, the reason for petitioner's absence is not willful, but for the serious illness with which he was suffering.

11. It is well established principle that the admission must be categorical and unequivocal with reference to the absenteeism, in order to bring the same within the purview of willful absenteeism. The explanation

offered by the petitioner to the absenteeism, shows that it is not willful absence from the duty.

12. It is trite law in view of catena of Judgment by the Hon'ble Supreme Court that, if the punishment imposed by the disciplinary authority is so disproportionate to the misconduct, 'shocks the conscience', the Constitutional Court can intervene by exercising the power under judicial review.

13. The documents produced with the Writ Petition clearly show that the explanation offered by the employee to the absenteeism are supported by the medical documents and at no stretch of imagination, it can be said that the absenteeism is willful. In that view of the matter, the order passed by the disciplinary authority without holding an enquiry is not only contrary to the well established principles of service law, but in gross violation of principles of natural justice and *audi alteram partem*. The reason being, the observation/ finding of the disciplinary authority that the admission of unauthorized absence in the representation amounts to willful

absenteeism requires enquiry, even with the touchstone of preponderance of probabilities.

14. The principle behind fairness of affording reasonable opportunity can be emphasized with the principle *audi alteram partem*, that lies at the heart of procedural fairness, ensuring that no person is condemned or adversely affected without being given a fair opportunity of hearing.

15. It is also trite law that, mere absence from duty does not automatically amounts to misconduct. The disciplinary authority must establish that the absence was deliberate, intentional or as a result of negligence.

16. No doubt, the burden is on the employee who admits or is shown to have stayed away without sanction, the burden shifts to the employee to justify the absence with documentary evidence, such as medical records for severe illness.

17. In the case on hand, the documents produced clearly points out that the reason for absence is illness with which the employee was suffering at the relevant

point of time. However, an employee is expected to inform the employer and obtain permission prior to taking leave and in all probabilities, must conduct himself with devotion to his duty.

18. No doubt, there is some misconduct on the part of the petitioner absenting himself from duty. However, considering the nature of the petitioner's work, the misconduct is not so grave that in all probabilities must result in dismissal from service. In that view of the matter, the order of dismissal is harsh and disproportionate. To ensure discipline, control and command over the employee, he must still be visited with a punishment, but certainly not dismissal, rather any other punishment, such as withholding of increments or reducing salary, etc.

19. Rule 11 of the Karnataka Civil Service (Classification, Control and Appeal) Rules, 1957, reads as under:

"11. PROCEDURE FOR IMPOSING MAJOR PENALTIES.-

(1) No order imposing any of the penalties specified in clauses (v) to (viii) of Rule 8 shall be made except after

an inquiry held, as far as may be, in the manner provided in this rule and Rule 11A.

(2) Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint an authority under this rule or under the Karnataka Public Inquiries Act, 1972, to inquire into the truth thereof.

Explanation.- Where the Disciplinary Authority itself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) to the Inquiring Authority shall be construed as a reference to the Disciplinary Authority.

(3) Where it is proposed to hold an inquiry against a Government servant under this rule and Rule 11A, the Disciplinary Authority shall draw up or cause to be drawn up-

- (i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;
- (ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-
 - (a) a statement of all relevant facts including any admission or confession made by the Government servant;
 - (b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(4) The Disciplinary Authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is sustained

and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

(5)(a) On receipt of the written statement of defence, the Disciplinary Authority may itself inquire into such of the articles of charge as are not admitted, or, if it considers it necessary so to do, appoint under sub-rule (2), an Inquiring Authority for the purpose, and where all the articles of charge have been admitted by the Government servant in his written statement of defence, the Disciplinary Authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in Rule 11A.

(b) If no written statement of defence is submitted by the Government servant within the specified time, the Disciplinary Authority may itself inquire into the articles of charge or may appoint an Inquiring Authority for the purpose.

(c) Where the Disciplinary Authority itself inquires into any article of charge or appoints an Inquiring Authority for inquiring into the truth thereof, it may, by an order, appoint a Government servant or a legal practitioner, to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.

(6) The Disciplinary Authority shall, where it is not itself the Inquiring Authority, forward to the Inquiring Authority-

- (i) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;
- (ii) a copy of the written statement of defence, if any, submitted by the Government servant;

(iii) a copy of the statements of witnesses, if any, referred to in sub-rule (3);

(iv) evidence proving the delivery of the documents referred to in sub-rule (3) to the Government servant; and

(v) a copy of the order appointing the "Presenting Officer".

(7) The Government servant shall appear in person before the Inquiring Authority on such day and at such time within ten working days from the date of receipt by him of the articles of charge and the statement of the imputations of misconduct or misbehaviour, as the Inquiring Authority may, by a notice in writing, specify in this behalf, or within such further time not exceeding ten days, as the Inquiring Authority may allow.

(8) The Government servant may take the assistance of any other Government servant (or a retired Government servant) to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the Presenting Officer nominated by the Disciplinary Authority is a legal practitioner, or the Disciplinary Authority, having regard to the circumstances of the case, so permits.

Provided that if the retired Government servant is also a legal practitioner, the Government servant shall not engage such person unless the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner or the Disciplinary Authority having regard to the Circumstances of the case, so permits.

(9) If the Government servant who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of defence appears before the Inquiring Authority, such authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the Inquiring Authority shall record

the plea, sign the record and obtain the signature of the Government servant thereon.

(10) The Inquiring Authority shall return a finding of guilt in respect of those articles of charge to which the Government servant pleads guilty.

(11) The Inquiring Authority shall, if the Government servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government servant may, for the purpose of preparing his defence-

(i) inspect within five days of the order or within such further time not exceeding five days as the Inquiring Authority may allow, the documents specified in the list referred to in sub-rule (3);

(ii) submit a list of witnesses to be examined on his behalf;

(iii) apply orally or in writing to inspect and take extracts of the statements, if any, of witnesses mentioned in the list referred to in sub rule (3) and the Inquiring Authority shall permit him to take such extracts as early as possible and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the Disciplinary Authority.

(iv) give a notice within ten days of the order or within such further time not exceeding ten days as the Inquiring Authority may allow, for the discovery or production of any documents which are in the possession of Government but not mentioned in the list referred to in sub-rule (3).

Provided that the Inquiring Authority may, for reasons to be recorded by it in writing refuse to requisition such of the documents as are, in its opinion, not relevant to the case.

(12) The Inquiring Authority shall, on receipt of the notice for the discovery or production of documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept, with a requisition for the production of the documents by such date as may be specified in such requisition:

Provided that the Inquiring Authority may, for reasons to be recorded by it in writing refuse to requisition such of the documents as are, in its opinion, not relevant to the case.

(13) On receipt of the requisition referred to in sub-rule (12), every authority having the custody or possession of the requisitioned documents shall produce the same before the Inquiring Authority:-

Provided that if the authority having the custody or possession of the requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of all or any of such documents would be against the public interest or security of the State, it shall inform the Inquiring Authority accordingly and the Inquiring Authority shall, on being so informed, communicate the information to the Government servant and withdraw the requisition made by it for the production or discovery of such documents.

(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the Disciplinary Authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the Inquiring Authority. The Inquiring Authority may also put such questions to the witnesses as it thinks fit.

(15) If it shall appear necessary before the close of the case on behalf of the Disciplinary Authority, the Inquiring Authority may, in its discretion, allow the Presenting

Officer to produce evidence not included in the list given to the Government servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and day to which the inquiry is adjourned. The Inquiring Authority shall give the Government servant an opportunity of inspecting such documents before they are taken on the record. The Inquiring Authority may also allow the Government servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interests of justice.

Note, - New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called to only when there is an inherent lacuna or defect in the evidence which has been produced originally.

(16) When the case for the Disciplinary Authority is closed, the Government servant shall be required to state his defence, orally or in writing as he may prefer. If the defence is made orally, it shall be recorded and the Government servant shall be required to sign the record. In either case a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(17) The evidence on behalf of the Government servant shall then be produced. The Government servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government servant shall then be examined and shall be liable to cross-examination re-examination and examination by the

Inquiring Authority according to the provisions applicable to the witnesses for the Disciplinary Authority.

(18) The Inquiring Authority may, after the Government servant closes his case and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.

(19) The Inquiring Authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed and the Government servant or permit them to file written briefs of their respective case, if they so desire.

(20) If the Government servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the Inquiring Authority or otherwise fails or refuses to comply with the provisions of this rule at any stage of the enquiry the Inquiring Authority may hold the inquiry ex-parte.

(21) (a) Where a Disciplinary Authority competent to impose any of the penalties specified in clauses (i) to (iv-a) of rule 8 but not competent to impose any of the penalties specified in clauses (v) to (viii) of rule 8, has itself inquired into or caused to be inquired into the articles of any charge and that authority having regard to its own findings or having regard to its decision on any of the findings of any Inquiring Authority appointed by it, is of the opinion that the penalties specified in clauses (v) to (viii) of rule 8 should be imposed on the

Government servant, that authority shall forward the records of the inquiry to such Disciplinary Authority as is competent to impose the last mentioned penalties.

(b) The Disciplinary Authority to which the records are so forwarded may act on the evidence on the record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interest of justice, recall the witness and examine, cross-examine and re-examine the witness and may impose on the Government servant such penalty as it may deem fit in accordance with these rules.

(22) Whenever any Inquiring Authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein and is succeeded by another Inquiring Authority which has and which exercises, such jurisdiction, the Inquiring Authority so succeeding may act on the evidence so recorded by its predecessor or partly recorded by its predecessor and partly recorded by itself;

Provided that if the succeeding Inquiring Authority is of the opinion that further examination of any witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross examine and re-examine any such witnesses as herein before provided.

(22A) Notwithstanding anything contained in these rules, where a Government servant facing a disciplinary proceeding is transferred, deputed or otherwise posted out of jurisdiction of the disciplinary authority which initiated such disciplinary proceeding, the same authority shall continue and conclude or cause to be continued and concluded the inquiry into the articles of charges against such Government servant in accordance with these rules

and forward the entire record of the proceedings to the disciplinary authority within whose jurisdiction the Government servant is presently working and the latter Disciplinary Authority may on the evidence on record or if it is of the opinion that further examination of any of the witnesses is necessary in the interest of justice, recall the witness, examine, cross examine or reexamine the witness and pass such order as it deems fit, in accordance with these rules.

(23)(i) After the conclusion of the inquiry, a report shall be prepared and it shall contain-

- a) the articles of charge and the statement of the imputations of misconduct or misbehavior;
- b) the defence of the Government servant in respect of each articles of charge;
- c) an assessment of the evidence in respect of each article of charge;
- d) the findings on each article of charge and the reasons therefor.

Explanation, - If in the opinion of the Inquiring Authority the proceeding of the inquiry establish any article of charge different from the original articles of the charge, it may record its findings on such article of charge:

Provided that the findings on such article of charge shall not be recorded unless the Government servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(ii) The Inquiring Authority, where it is not itself the Disciplinary Authority shall forward to the Disciplinary Authority the record of inquiry which shall include-

- a) the report prepared by it under clause (i);
- b) the written statement of defence, if any submitted by the Government servant;

- c) the oral and documentary evidence produced in the course of the inquiry;
- d) written briefs, if any, filed by the Presenting Officer or the Government servant or both during the course of the inquiry; and
- e) the orders, if any made by the Disciplinary Authority and the Inquiring Authority in regard to the inquiry."

20. The haste in which the second respondent has proceeded to dismiss the petitioner from service is opposed to the well established procedure under Rule 11 of CCA Rules, as well as service jurisprudence and the law laid down by the Hon'ble Supreme Court in the cases **KRUSHNAKANT** and **REENA RANI** (*supra*). In that view of the matter, the order of dismissal from service without holding an enquiry, that too, when the absence as per the records *prima facie* shows that it was not willful, is very harsh and disproportionate to the misconduct. That apart, since the order came to be passed without holding an enquiry, the same amounts to denial of principle of natural justice and *audi alteram partem* to the petitioner for which he is entitled under the Karnataka Legislative Assembly (Selection and Service Condition) Rules, 2003 and CCA Rules, 1957.

21. For the reasons afore, this Court proceeds to pass the following:

ORDER

- (i) The Writ Petition is ***allowed***.
- (ii) The order dated 05.07.2023, passed by the second respondent, dismissing the petitioner from service, is set-aside.
- (iii) The matter is remanded to the second respondent to hold an enquiry on the charge of absenteeism, after affording reasonable and proper opportunity to the petitioner and take a decision keeping in mind the observations made afore.
- (iv) The second respondent shall reinstate and permit the petitioner to join the duty till a decision is taken on the allegation of absenteeism against the petitioner, in view of notice issued on the earlier point of time.
- (v) The matter shall be considered from the date of issuance of notice and shall permit

the petitioner to file his response to the said notice and proceed thereafter, in accordance with Rule 11 of CCA Rules 1957.

- (vi) The entire exercise to be concluded as expeditiously as possible, within an outer limit of nine (09) months from today.

**Sd/-
(T.M.NADAF)
JUDGE**

TKN
CT: UMD
List No.: 1 Sl No.: 35