

**HIGH COURT OF TRIPURA  
AGARTALA**

**WP(C) 233 of 2023**

**Abhijit Dhar**  
S/o Sri Tapan Kr. Dhar,  
R/o- Indranagar, Satsangha Chowmuhan,   
PO: Kunjaban, Agartala, West Tripura, Agartala, Age-39 years.

**---Petitioner(s)**

**Versus**

- 1. The State of Tripura**  
To be represented by the Secretary, Department of Law Govt. of Tripura, New Secretariat Complex, Khejurbagan, PS: New Capital Complex, Agartala, District West Tripura, PIN: 799010
- 2. The Registrar General,** Hon’ble High Court of Tripura, Lichu Bagan, Agartala, West Tripura,
- 3. The Registrar Vigilance,** Hon’ble High Court of Tripura, Lichu Bagan, Agartala, West Tripura,
- 4. The District & Sessions Judge,** Gomati District, Udaipur, Gomati Tripura, PO-R.K. Pur, Gomati Tripura,
- 5. The District & Sessions Judge,** Unakoti Tripura Kailashahar (formerly North Tripura), PS: Kailashahar, Unakoti Tripura.

**---Respondent(s)**

For Petitioner(s)	: Mr. P Roy Barman, Sr. Advocate. Mr. S. Bhattacharjee, Advocate. Mr. K. Nath, Advocate.
For Respondent(s)	: Mr. D. Bhattacharjee, GA. Mr. BN Majumder, Sr. Advocate. Mr. P. Gautam, Advocate.
Date of hearing	: 29.08.2023
Date of pronouncement	: 30.08.2023
Whether fit for reporting	: Yes

**HON’BLE MR. JUSTICE T. AMARNATH GOUD**

**Judgment & Order**

This is a petition under Article 226 of the Constitution  
of India for seeking the following reliefs:

- (i) *Issue Rule upon the respondents to show cause as to why a writ in the nature of Mandamus and/or order/orders and/or direction/directions of*

*like nature shall not be issued whereby quashing and cancelling the impugned communication dated 09.01.2023 issued by the District & Sessions Judge, Udaipur, Gomati Tripura.*

- (ii) *Issue Rule upon the respondents to show cause as to why a writ in the nature of Mandamus and/or order/orders and/or direction/directions of like nature shall not be issued whereby quashing and cancelling the impugned letter, dated 23.03.2023 issued by the Registrar Vigilance, High Court of Tripura.*
- (iii) *Issue Rule upon the respondents to show cause as to why a writ in the nature of Mandamus and/or order/orders and/or direction/directions of like nature shall not be issued whereby directing the respondents to reinstate the petitioner with all back wages after regularizing his period of absence w.e.f. 05.01.2022 to 09.01.2023, i.e. till the date of impugned communication, in the post of LDC, Court of CJM-cum-Civil Judge (Sr. Div) Gomati Judicial District, Udaipur.*
- (iv) *Make the rules absolute.*
- (v) *Call for records*  
*Pass any further order/orders as this Hon'ble High Court considered fit and proper.*

**[2]** It is the case of the petitioner while serving as LDC, Court of CJM cum Civil Judge (Sr.Div.) Gomati Judicial District Udaipur served with an impugned communication, terminating his service on the ground of alleged unauthorised absence from duty w.e.f. 05.01.2022 to 09.01.2023 by deemed resignation, in terms of Rule 12(1) (a) of TSCS leave Rules, 1986. It is contended by the petitioner that he was unwell & under medication of different doctors, during the said period. The petitioner submitted medical documents before the respondents but without considering the same he has been removed from his service by violating the principles of natural justice. The petitioner was not given any opportunity to represent himself. The impugned order/communication dated 09.01.2023 issued by the District & Sessions Judge, Gomati District is a stigmatic order, not an order simpliciter. No departmental proceedings were initiated before such removal. The petitioner preferred an appeal against the said order dated 09.01.2023 before the Ld. Registrar, Hon'ble High Court of Tripura, which was rejected vide letter dated 23.03.2023 without

assigning any reason. Aggrieved by the said action of the respondents, the petitioner has approached this court by way of filing this writ petition.

**[3]** It is contended by Mr. P Roy Barman, learned senior counsel assisted by Mr. S. Bhattacharjee, for the petitioner that vide earlier order dated 07.12.2021, the petitioner was placed under suspension on being unauthorised absent during several occasions. Later all got closed and petitioner's suspension got revoked. Now again the said removal order dated 09.01.2023 is passed contrary to law relied upon Rule 12(1) as inserted by Tripura State Civil Services (Leave), 11<sup>th</sup> Amendment Rule, 2013 in Tripura State Civil Services (Leave) Rules, 1986. Learned counsel for the petitioner further relied on the judgments of apex court in (i) *Jai Shankar vs State of Rajasthan* reported in AIR 1966 SC 492, (ii) *Mafatlal Narandas Barot vs. JD. Rathod Divisional Controller, State Transport Mehsana and Another* reported in AIR 1966 of SC 1364, (iii) *V.C. Banaras Hindu University and Others vs. Shrikant* reported in (2006) 11 SCC 42, (iv) *Deokinandan Prasad vs. The State of Bihar and Others* reported in 1971 (2) SCC 330, and prayed to set aside the impugned order dated 09.01.2023.

**[4]** In ***Jai Shankar vs State of Rajasthan*** reported in **AIR 1966 SC 492**, the apex court, according to counsel for the petitioner, has dealt with an issue of similar nature. The relevant portion of which have been extracted herein under:

*4. The short question in this appeal is whether Jai Shanker was entitled to an opportunity to show cause against the proposed punishment as required Cl.(2) of Art. 311. It is admitted that no charge was framed against him. Nor was he given any opportunity of showing cause. The case for the State Government is that Government did not terminate Jai Shanker's service, and that it was Jai Shanker who gave up the employment by remaining*

absent. It is submitted that such a case is not covered by Art. 311. In support of this contention certain Regulations of the Jodhpur Service Regulations are relied upon and we shall now refer to them. Regulation 7 lays down that leave cannot be claimed as a right and that Government has discretion to refuse or revoke leave of any description. Regulation 11 lays down that an individual who has been granted leave on medical grounds for a period of one month or more may not return to duty without producing a certificate of fitness signed by an officer authorized by a general or special order to grant such certificate. Regulation 12 lays down that an individual who absents himself without permission or remains absent at the end of his leave is entitled to no salary for the period of such absence and that period will be debited against his leave account unless the leave is sanctioned or extended under the ordinary rules by competent authority. Regulation 13 is important because it forms the basis of the contention that Art. 311 does not apply to this case. That Regulation may be reproduced here :

"13. An individual who absents himself without permission or who remains absent without permission for one month or longer after the end of his leave should be considered to have sacrificed his appointment and may only be reinstated with the sanction of the competent authority.

Note.- The submission of an application for extension or leave already granted does not entitle an individual to absent himself without permission".

(5) It is contended that this Regulation operated automatically and no question of removal from service could arise because Jai Shanker must be considered to have sacrificed his appointment. Under the Regulation he could only be reinstated with the sanction of the competent authority. We have, therefore, to determine whether this Regulation is sufficient to enable the Government to remove a person from service without giving him an opportunity of showing cause against that punishment, if any.

(6) It is admitted on behalf of the State Government that discharge from service of an incumbent by way of punishment amounts to removal from service. It is, however, contended that under the Regulations all that Government does, is not to allow the person to be reinstated. Government does not order his removal because the incumbent himself gives up the employment. We do not think that the constitutional protection can be taken away in this manner by a side wind. While, on the one hand, there is no compulsion on the part of the Government to retain a person in service if he is unfit and deserves dismissal or removal, on the other a person is entitled to continue in service if he wants until his service is terminated in accordance with law. One circumstance deserving removal may be over-staying one's leave. This is a fault which may entitle Government in a suitable case to consider a man as unfit to continue in service. But even if a regulation is made, it is necessary that Government should give the person an opportunity of showing cause why he should not be removed. During the hearing of this case we questioned the Advocate General what would happen if a person owing to reasons wholly beyond his control or for which he was in no way responsible or blamable, was unable to return to duty for over a month, and if later on he wished to join as soon as the said reasons disappeared? Would in such a case Government remove him without any hearing, relying on the regulation? The learned Advocate General said that the question would not be one of removal but of reinstatement and Government might reinstate him. We cannot accept this as a sufficient answer. The Regulation, no doubt, speaks of reinstatement but it really comes to this that a person would not be reinstated if he is ordered to be discharged or removed from service. The question of reinstatement can only be considered if it is first considered whether the person should be removed or discharged from service. Whichever way one looks at the matter, the order of the Government involves a termination of the service when the incumbent is willing to serve. The Regulation involves a punishment for overstaying one's leave and the burden

*is thrown on the incumbent to secure reinstatement by showing cause. It is true that the Government may visit the punishment of discharge or removal from service on a person who has absented himself by overstaying his leave, but we do not think that Government can order a person to be discharged from service without at least telling him that the propose to remove him and giving him an opportunity of showing cause why he should not be removed. If this is done the incumbent will be entitled to move against the punishment for, if his plea succeeds, he will not be removed and no question of reinstatement will arise. It may be convenient to describe him as seeking reinstatement but this is not tantamount to saying that because the person will only be reinstated by an appropriate authority, that the removal is automatic and outside the protection of Art. 311. A removal is removal and if it is punishment for overstaying one's leave an opportunity must be given to the person against whom such an order is proposed. No matter how the Regulation describes it. To give no opportunity is to go against Art. 311 and this is what has happened here.*

*(7) In our judgment, Jai Shanker was entitled to an opportunity to show cause against the proposed removal from service on his overstaying his leave and as no such opportunity was given to him his removal from service was illegal. He is entitled to this declaration. The order of the High Court must, therefore, be set aside and that of the District Judge, Jodhpur, restored. The question of what back salary is due to Jai Shanker must now be determined by the trial Judge in accordance with the rules applicable, for which purpose three shall a remit of this case to the civil judge, Jodhpur.*

**[5]** Another judgment of the apex court in ***Mafatlal Narandas Barot vs. JD. Rathod Divisional Controller, State Transport Mehsana and Another*** reported in ***AIR 1966 of SC 1364***, where the apex court has dealt in the following manner:

*It is true that the respondent may visit the punishment of discharge or removal from service on a person who has absented himself without leave and without reasonable cause, but this cannot entail automatic removal from service without giving such person reasonable opportunity to show cause why he be not removed. The appellant is entitled to a reasonable opportunity to show cause which includes an opportunity to deny his guilt and establish his innocence which he can do, only when he knows what the charges levelled against him are and the allegations on which such charges are based. In our judgment the appellant was entitled to an opportunity to show cause against the action proposed to be taken against him.*

**[6]** Learned counsel for the petitioner has also placed his reliance on another judgment of the apex court in ***Deokinandan Prasad vs. The State of Bihar and Others*** reported in ***1971 (2) SCC 330***, the relevant portion of which have been extracted herein under:

*21. From the narration of the above facts, it will be clear that from October 5, 1961, the date of temporary injunction granted by the*

Munsif, till April 3, 1962, when the order of temporary injunction was vacated by the Subordinate Judge, the Department did not allow the petitioner to join duty in the senior post, which he was entitled to occupy by virtue of the order of injunction. We have already referred to the fact that the petitioner sent letters dated October 5, 1961, October 13, 1961, October 20, 1961 and November 1, 1961 expressing his readiness and willingness to work in the senior post. The respondents did not permit him to join duty. Therefore, it cannot be said that the petitioner was absent from duty during this period. Again on April 11, 1963, the Munsif granted a decree in favour of the petitioner in the suit. The respondents did not obtain any stay order from the Appellate Court. So the decree of the trial court was in full force till it was set aside on appeal on June 24, 1964. During the period April 11, 1963, June 24, 1964, the petitioner wrote several letters and to which we have made a reference earlier, requesting the respondents to permit him to join duty in the senior grade. The respondents did not permit him to join duty in the senior grade; but, on the other hand, insisted on the petitioner's joining duty in the lower grade on threat of disciplinary action being taken. This attitude of the respondents, we have already pointed out, was in flagrant violation of the order of the Munsif. Therefore, during the period April 11, 1963 to June 24, 1963, it cannot be said that the petitioner was absent from duty. Hence it will be seen that the claim made by the respondents in the counter-affidavit that the petitioner, since March 11, 1960 till August 5, 1966 was continuously not in service for over five years is fallacious. There is no question of the petitioner not being in continuous service for over five years during the period referred to above. On the other hand, the period during which it could be said that the petitioner was absent was from March 11, 1960, the date on which he claims to have gone on leave till October 5, 1961 when the order of temporary injunction was passed by the Munsif. From October 5, 1961 to April 3, 1962, we have already pointed out, the petitioner cannot be considered to have been absent from duty. Therefore, the continuity of absence is broken during this period. The petitioner can again be considered to have been absent from duty from April 3, 1962, the date on which the order of temporary injunction was vacated by the Subordinate Judge, till April 11, 1963, the date on which a decree was granted by the Munsif in favour of the petitioner. During this period he was absent. But again the continuity of absence is broken during the period April 11, 1963 the date of the decree of the Munsif, till June 24, 1964, the date when the Subordinate Judge reversed the decree of the trial court. We have already referred to the various letters written during this period by the petitioner as well as the reply sent by the Director of Public Instruction on November 27, 1963. During this period he cannot be considered to be absent from duty. The third period from which he can be again considered to be absent from duty is June 24, 1964, the date of the decree of the Subordinate Judge till August 5, 1966, the date on which the order was passed purporting to be under r. 76 of the Service Code. The above circumstances clearly show that the petitioner cannot be considered to have been continuously absent from duty for over five years during the period March 11, 1960 to August 5, 1966. If that is so, the essential condition for the application of r. 76 of the Service Code is lacking and, therefore, it follows that the order dated August 5, 1966 is not supported by r. 76 of the Service Code. Therefore that order is illegal and has to be quashed.

22. A contention has been taken by the petitioner that the order dated August 5, 1966 is an order removing him from service and it has been passed in violation of Art. 311 of the Constitution. According to the respondents there is no violation of Art. 311. On the other hand, there is an automatic termination of the petitioner's employment under r. 76 of the Service Code. It may not be necessary to investigate this aspect further because on facts we have found that r. 76 of the Service Code has no application. Even if it is a question of automatic termination of service for being continuously absent for over a period of five years, Art. 311 applies to such cases as is laid down by this Court

*in Jai Shanker v. State of Rajasthan (1). In that decision this Court had to consider Regulation No. 13 of the Jodhpur Service Regulations, which is as follows:*

*"13. An individual who absents himself without permission or who remains absent without permission for one month or longer after the end of his leave should be considered to have sacrificed his appointment and may only be reinstated with the sanction of the competent authority."*

*23. It was contended on behalf of the State of Rajasthan that the above regulation operated automatically and there was no question of removal from service because the officer ceased to be in the service after the period mentioned in the regulation. This Court rejected the said contention and held that an opportunity must be given to a person against whom such an order was proposed to be passed, no matter how the regulation described it. It was further held "to give no opportunity is to go against Art. 311 and this is what has happened here".*

**[7]** The apex court in **V.C. Banaras Hindu University and Others vs. Shrikant** reported in **(2006) 11 SCC 42**, the relevant portion of which have been extracted herein under:

*43. We may notice a similar provision being clause 76 of the Bihar Services Code, which reads as under:*

*"76. Unless the State Government, in view of the special circumstances of the case, shall otherwise determine, a government servant, after five years' continuous absence from duty, elsewhere than on foreign service in India, whether with or without leave ceases to be in Government employ."*

**[8]** Mr. P. Gautam, learned counsel for the respondent No. 5 has submitted before this court that the petitioner was given enough opportunity to submit his reply but he did not submit. A letter vide No.F.2(625)-DJ/G/2017-22/1685, dated 03.03.2022 issued to the petitioner for furnishing leave application for the period w.e.f. 08.11.2021 to 26.11.2021 and again a reminder letter dated 29.09.2022 was issued through speed post whereby a last chance to submit the leave application by 12.10.2022 was given to him. But the petitioner did not submit any petition/leave application in this regard. It is also mentioned that a notice was issued to the petitioner through speed post to rejoin duties immediately & regularize unauthorized absence from duty vide communication No.F.2(625)-DJ/G/2017-22/4858 dated 29.09.2022.

**[9]** Mr. BN Majumder, learned counsel appearing for the respondent No.2 and 3 has submitted before this court that the petitioner has preferred an appeal under Rule 23 and 25 of CCS (CCA) Rules, 1965 before the respondent No.2 against the order dated 09.01.2023 of the District & Sessions Judge, Gomati. However, the said appeal is not maintainable as the petitioner ceases to continue in service under Rule 12(1) of the Tripura State Civil Services (Leave) (11<sup>th</sup> Amendment) Rules, 2013 and the same cannot be challenged by an appeal under Rule 23 and 25 of CCS(CCA) Rules, 1965. Since the same was not maintainable it was placed before High Court and the same was rejected. Therefore, it is denied that the impugned communication is against the mandate of Article 311 of the Constitution of India.

**[10]** He further contended that the respondent No.2 is not the appellate authority in this matter in terms of Rule 23 of CCS(CCA) Rules, 1965. The order of discharge of the petitioner was passed by the District & Sessions Judge, Gomati (Respondent No.4) under the provision of Rule 12(1)(a) of the Tripura State Civil Services (Leave) Rules, 1986 but the appeal was preferred under Rule 23 read with 25 of the CCS(CCA) Rule, 1965 and therefore the same was not maintainable.

**[11]** Heard both sides.

**[12]** To appreciate the facts of the case on legal position, it is relevant to extract the Rule 12 of the Tripura State Civil Services (Leave) Rule, 1986 and Rule 22, 23, 25 of the CCS CCA Rules, 1965 which are extracted herein under:

***Rule 12 Maximum amount of continuous leave***

Unless the Governor, in view of the exceptional circumstances of the case otherwise determines, no Government servant shall be granted leave of any kind of a continuous period exceeding five years.

[(1) : A government servant shall be deemed to have resigned from the service if he-

- (a) is absent without authorization for a period of one year; or
- (b) remains absent from duty for a continuous period of five years, with or without leave; or
- (c) continues on foreign service beyond the period approved by the Government;

Provided that a reasonable opportunity to explain the reason for such absence or continuation on foreign service shall be given to the servant before the provisions of this rules are invoked.]

**Rule 22. Orders against which no appeal lies**

Notwithstanding anything contained in this Part, no appeal shall lie against-

- (i) any order made by the President;
- (ii) any order of an interlocutory nature or of the nature of a step-in-aid of the final disposal of a disciplinary proceeding, other than an order of suspension;
- (iii) any order passed by an inquiring authority in the course of an inquiry under Rule 14.

**Rule 23. Orders against which appeal lies**

Subject to the provisions of rule 22, a Government servant may prefer an appeal against all or any of the following orders, namely:-

- (i) an order of suspension made or deemed to have been made under rule 10;
- (ii) an order imposing any of the penalties specified in rule 11, whether made by the disciplinary authority or by any appellate or revising authority;
- (iii) an order enhancing any penalty, imposed under rule 11;
- (iv) an order which-
  - (a) denies or varies to his disadvantage his pay, allowances, pension or other conditions of service as regulated by rules or by agreement; or
  - (b) interprets to his disadvantage the provisions of any such rule or agreement;
- (v) an order-
  - (a) stopping him at the efficiency bar in the time-scale of pay on the ground of his unfitness to cross the bar;
  - (b) reverting him while officiating in a higher service, grade or post, to a lower service, grade or post, otherwise than as a penalty;
  - (c) reducing or withholding the pension or denying the maximum pension admissible to him under the rules;
  - (d) determining the subsistence and other allowances to be paid to him for the period of suspension or for the period during which he is deemed to be under suspension or for any portion thereof;
  - (e) determining his pay and allowances-
    - (i) for the period of suspension, or
    - (ii) for the period from the date of his dismissal, removal or compulsory retirement from service, or from the date of his reduction to a lower service, grade, post, time-scale or stage in a time-scale of pay, to the date of his

*reinstatement or restoration to his service, grade or post; or*

*(f) determining whether or not the period from the date of his suspension or from the date of his dismissal, removal, compulsory retirement or reduction to a lower service, grade, post, time-scale of pay or stage in a time-scale of pay to the date of his reinstatement or restoration to his service, grade or post shall be treated as a period spent on duty for any purpose.*

**Rule 25. Period of Limitation of appeals**

*No appeal preferred under this part shall be entertained unless such appeal is preferred within a period of forty-five days from the date on which a copy of the order appealed against is delivered to the appellant :*

*Provided that the appellate authority may entertain the appeal after the expiry of the said period, if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time.*

**[13]** A bare reading of the Rule 12 Tripura State Civil Services (Leave) Rules, 1986 categorically provides to give an opportunity to the petitioner before his services are discharged. Under Rules 23 and 25 of CCS(CCA) Rules, 1965 there is no provision for filing appeal before Registrar General and accordingly the appeal preferred by the petitioner under the said Rules needs no consideration and the communication made by the Registrar General be treated as an intimation in this regard.

**[14]** It is relevant to extract the operative portion of the impugned proceeding dated 09.01.2023:

*"Now, THEREFORE, in terms of Rule 12(1)(a) of "The Tripura State Civil Services (Leave) Rules, 1986, the undersigned in the capacity of Head of Department & appointing authority is hereby pleaded to accept that Shri Abhijit Dhar, LDC, Court of the Chief Judicial Magistrate-Cum-Civil Judge (Sr.Div) Gomati Judicial District, Udaipur has deemed to have resigned from the Government Service w.e.f. 09<sup>th</sup> day of January, 2023 (Afternoon) & discharged from services with immediate effect."*

**[15]** Before appreciating the same a perusal of the record shows that the petitioner has unauthorisedly absent on several occasions and also he has admitted that he is guilty.

**[16]** In view of the above, this court is of the opinion that admittedly, the petitioner has not approached this court with clean hands. He has not placed on record and also before the concerned judicial officer any evidence or any request or representation from 05.01.2022 till 09.01.2023 till the impugned order is passed. Nothing prevented the petitioner from keeping informed the judicial officer concerned or the Registry of High Court of Tripura about the reasons for his unauthorised absence. It cannot be said that the burden of doctrine of *Audi Alteram Partem* falls only on the authority who has passed the order dated 09.01.2023 but it is the duty of the petitioner to act with responsibility in performing his job. It is evident from the records the petitioner was having in his hands all days from 05.01.2022 till 09.01.2023 to put forth his reasons for his unauthorised absence but the petitioner failed to do so. The one year as per Rule 12 of the Tripura State Civil Services (Leave) Rule, 1986 is from 05.01.2022 to 04.01.2022. The conduct of the petitioner also cannot be viewed in a casual manner and is not a case of any sympathy.

**[17]** Admittedly, the proceedings dated 09.01.2023 is the one which is issued without giving show cause notice as contemplated under Rule 12 the Tripura State Civil Services (Leave) Rule, 1986. Thus, the impugned order dated 09.01.2023 is modified as a show cause notice and since the petitioner is aware of entire litigation. The petitioner is directed to submit his explanation before the District & Sessions Judge, Gomati Judicial District, Udaipur within a period of fifteen days from today and on receipt of such explanation, the concerned District judge shall pass a

reasoned order with open mind without being influenced by observation made by this court.

**[18]** Moreover, the judgments of the Hon'ble apex court as relied upon by the counsel for the petitioner relate to the different set of facts where the employee therein was not on unauthorised absentee but was on an extended leave without permission or prior intimation.

**[19]** With the observation made above, this petition stands disposed of. As a sequel, stay, if any, stands vacated. Pending application(s), if any also stands closed.

**JUDGE**

*Dipak*

**DIPAK  
DAS**

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