

**Court No. - 36****Case :-** WRIT - A No. - 15103 of 2019**Petitioner :-** Sabhajeet Yadav**Respondent :-** State Of U.P. And 2 Others**Counsel for Petitioner :-** Jyoti Kumar Singh, Sharda Prasad Mishra**Counsel for Respondent :-** C.S.C., Amit Krishna**Hon'ble Mrs. Sunita Agarwal, J.**

Heard Sri Jyoti Kumar Singh and Sri Sharda Prasad Mishra learned counsels for the petitioner, Sri Amit Krishna for respondent no.2 and learned Standing Counsel for respondent nos.1 & 3.

The petitioner herein was engaged in Torrent Power Corporation Limited in the year 2014 on the post of Executive Engineer. While being in service he was diagnosed "HIV positive". The Immunology-Serology report showing the said fact is appended with the writ petition. While he was undergoing treatment in S.G.P.G.I Lucknow and on account of compromising immune system, he was bedridden for a long time and as such he could not approach his employer for about a period of one and a half month. Via E-mail dated 19.08.2017 he had informed about the reason for his absence but medical report with the prescription of the Doctor and the hospital details were sent by the petitioner via E-mail on 04.09.2017 and 06.09.2017.

It is contended that soon after receipt of the medical prescription showing illness of the petitioner, a show cause notice dated 10.09.2017 was served on him to state that he was unauthorizedly absent from duty and did not submit documentary proof of his alleged illness.

A charge sheet dated 15.12.2017 was given to the petitioner on the charges of being unauthorizedly absence w.e.f 02.07.2017 and for remaining absent on false pretext of illness. The petitioner could not attend the enquiry proceeding despite several informations given by the Management as is reflected from the order of termination. The enquiry officer had submitted his report on 12.02.2018. Thereafter, second show cause notices were issued on 16.02.2018 and 01.03.2018 but no explanation had been offered by the petitioner during the course of enquiry before the Disciplinary authority.

The order of termination dated 12.03.2018 was passed on the ground that the petitioner had misrepresented the cause of

unauthorized absence on false pretext on medical ground and he intentionally did not participate in the departmental enquiry despite repeated opportunity given by the management.

It is categorically pointed out by learned counsel for the petitioner that the petitioner was confined to bed and he was not in a position to participate in the enquiry. The details of illness was brought to the notice of the disciplinary authority while sending application through E-mail. The fact that the petitioner is suffering from AIDS was well within the knowledge of the disciplinary authority but no assistance or aid was provided to the petitioner rather his dreaded illness (AIDS) was treated as unauthorized absence. The petitioner has been terminated having been treated in an unfair manner by the employer. He is facing mental trauma and segregation on account of diagnosed with HIV positive and has no help. Further he was not in a mental condition to bring this fact to the knowledge of the employer for about the period of one and a half month. For the fear of segregation on account of stigma attached to the disease, it took a lot of courage for him to disclose the nature of his illness.

To seek help to lodge complaint and medical help, the petitioner had approached the District Magistrate, Agra by moving an application dated 26.02.2019 but nothing has been done.

It is known to all that the persons suffering from AIDS (HIV positive) are being discriminated both at the social level and also in employment. The Court cannot loose sight of the stigma attached to the disease and attitude of the society towards "HIV affected persons". From the order of the termination, it prima-facie appears that the employer had terminated the services of the petitioner treating the period of illness as unauthorized absence for the fact that he was diagnosed with HIV positive.

To protect and to remove discrimination of HIV affected persons, the "Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017" was enacted on 21st April' 2017. The said Act has been enacted to protect and secure the human rights of persons who are HIV positive, affected by Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome and vulnerable to the said virus and syndrome and also for providing them affective care, support and treatment. Section 2(d)(ii) of the Act' 2017 provides that the "discrimination" means any act or omission which directly or indirectly, expressly or by effect, denies or withholds any benefit, opportunity or advantage from any person based on one or more HIV related grounds. Explanation 1 to Section 2(d)(ii) states that HIV related grounds

include being an HIV positive person.

Section 2(k) provides that "HIV positive person" means a person whose HIV test has been confirmed positive. Section 3(a) provides that no person shall discriminate an HIV positive person or HIV affected person i.e. the protected person by denial or termination from employment or occupation, except on a written assessment of qualified and independent health care provider that such protected person poses a significant risk of transmission of HIV to other persons in the workplace, or is unfit to perform the duties of the job.

Section 2(b) protects an HIV positive person or HIV affected person from any unfair treatment in, or in relation to employment or occupation. Section 15 states that the Central Government and every State Government shall take measures to facilitate better access to welfare scheme to the persons infected or affected by HIV or AIDS. They shall frame scheme to address the needs of all protected persons.

Sections 23 & 24 further provides that the State Government shall appoint one or more Ombudsman for hearing of any complaint of any person in relation to acts of discrimination mentioned in Section 3 and providing of health care services by any persons, in such manner as prescribed by the State Government. Section 26 provides that on receipt of the complaint, the Ombudsman shall examine the matter and after giving due opportunity of hearing to the concerned parties, he shall decide the complaint within thirty days. Simultaneously, he shall also make necessary arrangement for providing medical health for treatment of such persons (HIV positive), in case of medical emergencies, by issuing necessary direction to the concerned authority within 24 hours of receipt of complaint.

Sri Amit Krishna learned counsel appearing for respondent No.2 submits that the petitioner was an employee of the private company and, therefore, the writ petition filed by him at an earlier point of time to challenge the termination order has been dismissed vide judgement and order dated 05.12.2018.

Noticing the submissions of the petitioner that he is in need of financial help to incur medical expenditures and further his relatives have disowned him, to enquire into the discrimination being faced by the petitioner and to seek help, it is provided that the petitioner shall approach the Ombudsman under Section 23 of the Act' 2017 by moving a complaint/application alongwith certified copy of this order.

Necessary help shall be provided to the petitioner by the State

Legal Services Authority in filing his complaint before the Ombudsman, who shall examine the matter in accordance with the above stated legal provisions.

Subject to the above observations and directions, the writ petition is **disposed of**.

**Order Date :- 27.9.2019**

Himanshu