

HIGH COURT OF ANDHRA PRADESH

WEDNESDAY ,THE TWENTY EIGHTH DAY OF JUNE
TWO THOUSAND AND TWENTY THREE

PRSENT

THE HONOURABLE SRI JUSTICE GANNAMANENI RAMAKRISHNA PRASAD

WRIT PETITION NO: 15455 OF 2023

Between:

1. A.B. VENKATESWARA RAO Sio Late Balaswamy, aged 59 years,
Rio D.No.58A-21/3-2, Plot No.68, 3rd Cross,
Vijaynagar Colony, Patamata,
Vijayawada 520007

...PETITIONER(S)

AND:

1. THE STATE OF ANDHRA PRADESH rep., by
its Prl. Secretary, General Administration Dept.(GAD), Secretariat,
Velagapudi, Amaravathi, Andhra Pradesh.
2. The State of Andhra Pradesh, rep., by its Chief Secretary to the
Government, Secretariat, Velagapudi, Amaravathi, Andhra Pradesh State.
3. The Director General of Police (HoPF), Government of Andhra Pradesh,
Mangalagiri, Guntur District, Andhra Pradesh State.
4. Union of India, rep., by its Secretary to Govt. of India,
M/o Home Affairs, New Delhi.

...RESPONDENTS

Counsel for the Petitioner(s): JAVVAJI SARATH CHANDRA

Counsel for the Respondents: GP FOR GENERAL ADMINISTRATION

The Court made the following: ORDER



IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI
(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY EIGHTH DAY OF JUNE
TWO THOUSAND AND TWENTY THREE

PRESENT
THE HONOURABLE SRI JUSTICE GANNAMANENI RAMAKRISHNA PRASAD

WRIT PETITION NO: 15455 OF 2023

Between:

A.B. Venkateswara Rao, S/o Late Balaswamy, aged 59 years, R/o D.No.58A-21/3-2,
Plot No.68, 3rd Cross, Vijaynagar Colony, Patamata, Vijayawada 520007

...Petitioner

AND

1. The State of Andhra Pradesh, rep., by its Prl. Secretary, General Administration Dept.(GAD), Secretariat, Velagapudi, Amaravathi, Andhra Pradesh.
2. The State of Andhra Pradesh, rep., by its Chief Secretary to the Government, Secretariat, Velagapudi, Amaravathi, Andhra Pradesh State.
3. The Director General of Police (HoPF), Government of Andhra Pradesh, Mangalagiri, Guntur District, Andhra Pradesh State.
4. Union of India, rep., by its Secretary to Govt. of India, M/o Home Affairs, New Delhi.

...Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to grant an order, direction or writ, more particularly a Writ of Mandamus, declaring the inaction of the Respondent authorities in not considering the requests/application dt. 05.06.2023 made by the petitioner herein for grant of permission for the private foreign visit and thereby for sanction of (41) Days EL to visit USA and UK on private affairs, is illegal, arbitrary, unjust and is contrary to the Office Memorandum vide F. No. 11013/8/2015-Estt.A-III of Government of India, Ministry of Personnel, Public Grievances and Pensions Department of Personnel and Training Establishment A-III Desk, dt. 27.07.2015 and is violative of fundamental rights under Art 14, 19 and 21 of the Constitution of India and Principles of Natural Justice and thereby seeking consequential direction to the respondent authorities to pass the necessary orders granting the earned leave sought by the Petitioner for the foreign visit for a period of 41 days from the date of availing the leave.

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondent authorities to expeditiously grant earned leave to the Petitioner for the foreign visit for a period of 41 days from the date of availing the leave.

**Counsel for the Petitioner: SRI B.ADINARAYANA RAO Sr. COUNSEL
APPERING FOR SRI JAVVAJI SARATH CHANDRA**

Counsel for the Respondent Nos.1 and 2: GP FOR ADMINISTRATION

Counsel for the Respondent No.3: GP FOR HOME

**Counsel for the Respondent No.4: SRI N.HARINATH,
DY. SOLICITOR GENERAL**

The Court made the following: order

HON'BLE Mr. JUSTICE GANNAMANENI RAMAKRISHNA PRASAD

WRIT PETITION No. 15455 OF 2023

ORAL ORDER:

Heard Sri B. Adinarayana Rao, learned Senior Counsel appearing on behalf of Sri Javvaji Sarath Chandra, learned Counsel for the Writ Petitioner and Sri V. Maheswara Reddy, learned Government Pleader for Home and General Administration Department appearing for the Respondent Nos.1 to 3.

2. The present Writ Petition has been filed seeking the following relief:

“For the aforesaid reasons and those reasons which may be adduced at the time of hearing, it is humbly prayed that this Hon'ble Court may be pleased to grant an order, direction or writ, more particularly a Writ of Mandamus, declaring the inaction of the Respondent authorities in not considering the requests/application dt. 05.06.2023 made by the petitioner herein for grant of permission for the private foreign visit and thereby for sanction of (41) Days EL to visit USA and UK on private affairs, is illegal, arbitrary, unjust and is contrary to the Office Memorandum vide F.No.11013/8/2015-Estt.A-III of Government of India, Ministry of Personnel, Public Grievances and Pensions Department of Personnel & Training Establishment A-III Desk, dt.27.07.2015 and is violative of fundamental rights under Art 14, 19 and 21 of the Constitution of India and Principles of Natural Justice and thereby seeking consequential direction to the respondent authorities to pass the necessary orders granting the earned leave sought by the Petitioner for the foreign visit for a period of 41 days from the date of availing the leave and pass such order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

3. It is averred in the Affidavit filed in support of the Writ Petition that the Writ Petitioner has received an 'Invite' on 08.05.2023 from the Telugu Association of North America (TANA) to attend a Conference as a special guest, to be held from 07.07.2023 to 09.07.2023 in United States of America. In pursuance of this 'Invite', the Writ Petitioner has made a request vide Letter No.2/2023 dated 05.06.2023 for sanction of 41 days of Earned Leave from 21.06.2023 to 31.07.2023 (both days inclusive) to the Respondent No.3 namely the Director General of Police (HoPF) and also an Application vide Letter No.3/2023 dated 05.06.2023 to the Respondent No.2 namely the State of Andhra Pradesh, represented by its Chief Secretary. He sought "for permission to visit U.S.A and U.K on private affairs". It is also stated in the Affidavit that the Writ Petitioner has submitted all the details regarding his foreign visit in the required proforma and FORM FC-2 along with 'declaration' dated 05.06.2023.

4. Since the Respondent Nos.2 and 3 have not communicated their decision within a reasonable time, the present Writ Petition has been filed seeking declaration that the inaction on the part of the Respondent Authorities in not considering the request/application dated 05.06.2023, as illegal, arbitrary, unjust and contrary to the Office Memorandum bearing F.No.11013/8/2015-Estt.III of

Government of India, Ministry of Personnel, Public Grievances and Pensions Department of Personnel & Training (Establishment Division) dated 27.07.2015 (Ex.P.4). A consequential direction is also sought to the Respondent Authorities to pass necessary Orders for granting the Earned Leave sought by the Writ Petitioner for the foreign visit for a period of 41 days from the date of availing of the leave.

5. Learned Senior Counsel submits that two permissions are required to be obtained for an Employee in the Government Service to travel abroad namely :

- a) Permission to travel abroad ; and
- b) For sanction of leave

6. Learned Senior Counsel would submit that insofar as the permission required for travelling abroad is concerned, it is governed by the Office Memorandum bearing F.No.11013/8/2015-Estt.III of Government of India, Ministry of Personnel, Public Grievances and Pensions Department of Personnel & Training (Establishment Division) dated 27.07.2015 (Ex.P.4). He submits that by virtue of the language employed therein, it shall be deemed that the permission has been granted in favour of the Writ Petitioner by default.

7. Learned Senior Counsel has drawn the attention of this Court to the Office Memorandum bearing F.No.11013/8/2015-Estt.III of Government of India, Ministry of Personnel, Public

Grievances and Pensions Department of Personnel & Training
(Establishment Division) dated 27.07.2015 (Ex.P.4). The entire
Office Memorandum is usefully reproduced hereunder:

"F.No.11013/8/2015-Estt.A-III
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel Training
(Establishment Division)

North Block, New Delhi – 110001
Dated July 27th, 2015

OFFICE MEMORANDUM

Subject: Requirement of taking prior permission for leaving
station/headquarters for going abroad while on leave.

1. No.11013/7/2004-
Estt.(A) dt the 1st
September, 2008
2. No.11013/7/2004-
Estt.(A) dt the 15th
December, 2004
3. No.11013/8/2000-
Estt.(A) dt the 7th
November, 2000
- 4.No.11013/7/94-
Estt.(A) dt the 18th
May, 1994

Undersigned is directed to refer to the Office Memorandum mentioned in the margin to say that as per the existing instructions, when Government servant applies for leave for going abroad on a private visit, separately prior permission of the Competent authority for such visit is also required. While granting such permission, many factors are required to be kept in view. For example, permission may be denied in the interest of security. Individuals facing investigation/inquiry on serious charges, who may try to evade apprehension by police authorities, or facing the inquiry, may also not be permitted to leave the country. On the other hand, it is also desirable that requests of Government Servants for such permission are dealt with expeditiously.

2. Keeping the above in view, it has been decided that requests for permission for private visits abroad may be processed in the attached formats. As clarified vide the OM dated 1st September, 2008, the competent authority for granting permission will be as per instructions issued by the Cadre Authority/administrative Ministry/Department. In the absence of any such instructions, it is the leave sanctioning authority. In case due to specific nature of work in a Department, administrative exigencies, or some adverse factors against the Government Servant etc., it is not expedite to grant permission to the Government Servant, such decision for refusal should not be taken below the level of Head of Department. It may be ensured that the decisions are conveyed to the Government servants within 21 days of receipt of complete application to the competent authority. Any lacunae in the application should be brought to the notice of the Government Servant within one week of the receipt of the application. In the event of failure on the part of the competent authority to communicate its decision to the Government employee concerned with 21 days of receipt of the application, the employee concerned shall be free to assume that permission has been granted to him.

3. If in case some modifications are considered necessary due to specialized nature of work handled by any organization, changes may be made with the approval of this Department.

[M P Rama Rao]
Under Secretary to the Government of India

To

The Secretaries of All Ministries/Departments
(as per the standard list)

No.11013/8/2015-Estt.A-III dated 27.07.2015"

8. Without dissecting the Office Memorandum (Ex.P.4) threadbare, suffice to state that under whatever condition it may be, that if the Authorities have not conveyed the decision within a period of 21 days, *"the employee concerned, shall be free to assume that permission has been granted to him"*.

9. Learned Senior Counsel would submit that by virtue of this deeming language as employed, the Writ Petitioner is deemed to have obtained permission to travel abroad. Insofar as the Earned Leave is concerned, the learned Senior Counsel would submit that the Writ Petitioner has applied for sanction of Earned Leave for a period of 41 days from 21.06.2023 to 31.07.2023 (both days inclusive) to the Respondent No.3 on 05.06.2023. He submits that the cause of action which has arisen in the present case, is on account of the inaction on the part of the Respondent No.3 in not communicating the decision, one way or the other till-date to the Writ Petitioner.

10. Sri V. Maheswara Reddy, learned Government Pleader for Home and General Administration Department appearing for

the Respondent Nos.1 to 3 would submit that though a request has been made by the Writ Petitioner to the Respondent No.3 seeking sanction of Earned Leave for a period of 41 days, the Authority which ultimately decides on such request is the Chief Secretary to the Government of Andhra Pradesh. He submits that the request/Application of the Writ Petitioner dated 05.06.2023 has been forwarded to the Chief Secretary, Government of Andhra Pradesh on 07.06.2023 and the same is pending with him. He further submits that the Writ Petitioner has been placed under suspension under Rule 3(3) of AIS (D&A) Rules, 1969 vide G.O.No.55 dated 28.06.2022 and further submits that the Respondents will have to take a decision on the entitlement of the leave of the Writ Petitioner keeping in mind the Order of suspension dated 28.06.2022 and also the other attendant factors.

11. The Affidavit filed in support of the Writ Petition would indicate that the Writ Petitioner was holding the rank of Director General of Police. The averments filed in support of the Writ Petition would indicate that the Suspension Order dated 08.02.2020 which was challenged in O.A.No.020/0149/2020 before the Central Administrative Tribunal, Hyderabad (for short 'CAT') was dismissed vide Order dated 17.03.2020 by the CAT.

12. It is also stated in the Affidavit that the Writ Petitioner filed W.P.No.8185 of 2020 for quashing the said Order dated

17.03.2020 and to further declare G.O.Ms.No.18 General Administrative (SC.D) Department dated 08.02.2020 issued by the Respondent No.2 as illegal and set aside the same. It is further averred that the said Writ Petition No.8185 of 2020 was allowed vide Order dated 22.05.2020. It is further averred that the Order passed in W.P.No.8185 of 2020 was assailed by the Government of Andhra Pradesh before the Hon'ble Supreme Court by way of SLP (C) No.8024 of 2020 and the same came to be dismissed by the Hon'ble Supreme Court on 22.04.2022 with a direction to reinstate the Writ Petitioner in service.

13. It is also averred that the Government has reinstated the Writ Petitioner and that in less than two weeks, the Government of Andhra Pradesh, has served another Suspension Order vide G.O.No.55 dated 28.06.2022. It is further averred that the said Suspension Order vide G.O.No.55 dated 28.06.2022 is assailed by the Writ Petitioner before the CAT, Hyderabad vide O.A.No.273 of 2023 and the same is pending.

14. Having heard the Counsel for the Writ Petitioner and the Respondents and while taking note of the earlier Proceedings and the events and also the subsequent suspension, this Court has to see whether the inaction on the part of the Respondents as canvassed by the Writ Petitioner suffers from illegality or not.

15. Insofar as the request of the Writ Petitioner for seeking the permission to travel abroad is concerned, this Court is not required to render any finding in view of the fact that, by virtue of Office Memorandum bearing F.No.11013/8/2015-Estt.III of Government of India, Ministry of Personnel, Public Grievances and Pensions Department of Personnel & Training (Establishment Division) dated 27.07.2015 (Ex.P.4), the Writ Petitioner shall be free to assume that permission has been granted to him. However, this deemed permission alone cannot enable him to travel abroad so long as his request for grant of Earned Leave for a period of 41 days is kept undecided.

16. It is a fact that the Writ Petitioner has received an 'Invite' from the TANA for attending a Conference as a Special guest to be held from 07.07.2023 to 09.07.2023 in the U.S.A. It is also a fact that the Writ Petitioner has made two requests/applications namely one for seeking permission to travel abroad and the other for sanction of Earned Leave. Therefore, it is not just a theoretical assumption but it is also a fact that in the present case, unless the Writ Petitioner is granted Earned Leave as sought, technically he would not be able to travel abroad, for any such travel sans the sanctioned leave would visit the Writ Petitioner with disciplinary consequences.

17. If this Court has to decide whether there is any law by which the citizen of this country can be prevented from exercising his personal liberty to travel abroad due to pending disciplinary proceedings, this Court has to answer the same in the negative. Therefore, this Court would not hesitate to hold that 'suspension' cannot be a reason for depriving an individual's liberty under Article 19(1)(d) read with Article 21 of Constitution of India.

18. It is well enshrined in law that when the Authorities are required to take a decision, they shall not only take the decision one way or the other, but such a decision shall also be taken within a reasonable time frame, lest, the decision may suffer from the vice of inaction; and, in some cases, such inaction may suffer from the vice of *malafides* as well. Decisions shall not only be rendered, but it shall also be rendered and conveyed in the right time to ensure that the request/application of a citizen does not become 'fiat accompli' by sheer afflux of time. If the Authority is sitting over the request of a Citizen, until such time that, despite the final grant of such request, the Citizen cannot make use of such grant, the inactions leading to such results, cannot be permitted by the Constitutional Courts.

19. If the Respondent No.2 is the final Authority to take a decision as submitted by the Ld. Counsel for the Respondents, then the facts indicate that the request/application made by the Writ Petitioner has reached the Respondent No.2 way back on 07.06.2023. The event for which the Writ Petitioner has to attend is between 07.07.2023 to 09.07.2023. The inactions on the part of the Respondent No.2 from 07.06.2023 till date has given a cause of action to the Writ Petitioner to approach this Court today, and it is rightly so. This is not the approach that is expected of an Officer of the Government especially who is of the Rank of a Chief Secretary.

20. There is also one other aspect of the matter which cannot be left out. The Writ Petitioner is under suspension from 28.06.2022 till-date. It is also submitted by the Ld. Senior Counsel for the Writ Petitioner that he is presently not holding any posting as such, and in that view of the matter, the Governmental business would not in any way be affected even if he is sanctioned 41 days of Earned Leave.

21. Taking into account, the Observations made herein above, and also the time schedule under which the Writ Petitioner desires to travel, this Court holds that the inaction on the part of the Respondent No.2 is bad in law and therefore unsustainable. Therefore, the Respondent No.2 is directed to

render a decision on the request/application vide Letter dated 05.06.2023 for sanction of Earned Leave for a period of 41 days on or before 5.00 P.M. on 30.06.2023.

22. Learned Government Pleader for Home and General Administration representing Respondent Nos.1 to 3 is also directed to communicate the above direction to dispose of the Application on or before 5.00 PM on 30.06.2023 to the Respondent No.2 namely the State of Andhra Pradesh, represented by its Chief Secretary. The Respondent No.2 shall also communicate the same to the Writ Petitioner forthwith.

23. With the above observations and directions, the Writ Petition stands allowed. There shall be no Order as to costs.

24. Interlocutory Applications, if any, stand disposed of in terms of this Order.

**Sd/- V.SAVITHRI GOWRI
ASSISTANT REGISTRAR**

//TRUE COPY//

SECTION OFFICER

To,

1. The Prl. Secretary, General Administration Dept.(GAD), State of Andhra Pradesh, Secretariat, Velagapudi, Amaravathi, Andhra Pradesh.
2. The Chief Secretary to the Government, State of Andhra Pradesh, Secretariat, Velagapudi, Amaravathi, Andhra Pradesh State.
3. The Director General of Police (HoPF), Government of Andhra Pradesh, Mangalagiri, Guntur District, Andhra Pradesh State.
4. The Secretary to Govt. of India, Union of India, M/o Home Affairs, New Delhi.
5. One CC to Sri Javvaji Sarath Chandra, Advocate [OPUC]
6. One CC to Sri N.Harinath, Deputy Solicitor General [OPUC]
7. Two CCs to GP for Home, High Court of Andhra Pradesh. [OUT]
8. Two CCs to GP for General Administration, High Court of Andhra Pradesh. [OUT]
9. Two CD Copies

RAM

NR

HIGH COURT

DATED:28/06/2023

ORDER

WP.No.15455 of 2023

12

10C

28/6



**ALLOWING THE WP
WITHOUT COSTS**