

APHC010123642024



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

[3331]

THURSDAY ,THE FIRST DAY OF AUGUST
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

WRIT PETITION NO: 6396/2024

Between:

S B T S Devi

...PETITIONER

AND

The State Of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.PAMARTHY RATHNAKAR

Counsel for the Respondent(S):

1.REVANURU SUDHA RANI (SC FOR SAMAGRA SHIKSHA)

2.GP FOR SCHOOL EDUCATION

The Court made the following ORDER:

Heard Sri Pamarthy Rathnakar, learned counsel for the petitioner, and Sri Nageswar Rao, learned counsel representing Smt.R.Sudha Rani, learned standing counsel appearing for respondents 2, 4, 6 to 8.

2. The writ petition is filed impugning the proceedings *vide* ESE13-KGBV/5/2024-SAI-SS-ANKP dated 06.03.2024 issued by the 6th respondent whereby terminating the petitioner's service with immediate effect and canceling the contract between the petitioner and the 7th respondent.

3. Learned counsel for the petitioner would submit that the petitioner has been working as a Contract Residential Teacher (CRT) (Telugu) since 23.04.2011 at Kasturba Gandhi Balika Vidyalaya, Devarapalli, Anakapalli District. The petitioner participated in selections and was appointed as CRT in the year 2011. The agreement entered between the petitioner and the 7th respondent, has been renewed year to year. Be that as it may, the petitioner's services were terminated on the ground that the petitioner sent What's App messages to other group members i.e., staff working in Kasturba Gandhi Balika Vidyalaya and demanded bribes of Rs.2,80,000/- for regularization of the salaries under the Minimum Time Scale. No inquiry was conducted before terminating the petitioner from service and canceling the contract. He would submit that the respondent authority violated the principles of natural justice and issued the proceedings and thus, the Proceedings impugned dated 06.03.2024 are liable to be set aside.

4. Sri Nageswar Rao, learned counsel on the other hand would contend that the petitioner by sending What's App messages demanded the amount

from staff working in Kasturba Gandhi Balika Vidyalaya for regularization of their salaries under minimum time scale. He would submit that a case in Crime No.105 of 2024 on the file of the Anakapalli Town police Station was registered against the petitioner. He would submit that the respondent authorities terminated her services in terms of a Clause contained in the contract. Eventually, prayed to dismiss the writ petition.

5. The point for consideration is whether the Proceedings dated 06.03.2024 issued by the 6th respondent terminating the petitioner from service as CRT and canceling the contract are sustainable.?

6. As seen from the material available on record, there is no dispute about the selection and appointment of the petitioner as a Teacher in 2011. There is also no dispute that the petitioner has been working on a contract and the contract has been renewed year to year. In the proceedings impugned it was stated as follows:

“3. That on scrutiny of the services of the individual, it is observed that the individual has provoked staff working in KGBVs through Whatsapp group and demanded bribe upto Rs.2.80 Lakhs from the staff working in each KGBV, for regularization of their salaries under Minimum Time Scale and to handover the collected money to the Officials concerned who helped in the item of work.”

The proceedings would further indicate that such a message was sent at 10.10 pm on 04.03.2024.

7. Thus, the petitioner's services were terminated on the grounds of misconduct and cheating of co-teachers.

8. If the allegation, as pointed out in the impugned proceedings is accepted, it would cause stigma on the petitioner. It would hamper the future prosperity of the petitioner. Even in the case of a contract employee, whenever service is terminated by stigmatizing the employee, the authority shall follow the principles of natural justice.

9. In **Director General of Police & Ors. Vs. Mrityunjoy Sarkar & Ors.**¹ the Apex Court observed as under:

"In the discharge order, it was stated that the respondents had exercised the power under Rule 34(b) of the West Bengal Service Regulations (Part I) and the instructions contained in Memo No.4145(2) dated November 22, 1985 of the Assistant Inspector General of Police, West Bengal. It is not in dispute that the Commissioner of Labour in his letter dated September 5/7, 1985 had informed the appellants that the list of the names forwarded by the Employment Exchange was fake one and their names were fabricated as they do not correspond to the entries in the Employment Exchange. Consequently, he directed the appellants to take action according to rules. It would thus be clear that the foundation for discharge is production of fake list of persons from employment

¹ (1996) 8 SCC 280

exchange for recruitment as Armed Reserved Constables. If that is accepted, then it would cause a stigma on the respondents for future recruitment as they have produced fictitious record to secure employment. Principles of natural justice require that they should be given reasonable opportunity of representation in the enquiry to be conducted and appropriate orders with reasons in support thereof need to be passed. It is settled legal position and the said procedure has not been followed. Under these circumstances, the High Court had not committed any error in dismissing the appeal. It would be open to the appellants to issue notice to all the respondents and consider their case and then pass appropriate orders with reasons, however brief they may be, in support thereof within a period of six weeks from the date of the receipt of this order. The said notice shall be given to the respondents stating the grounds on which they seek to discharge them and the respondents are directed to submit their objections, if any, and the material in support thereof within one month thereafter. After receipt of the objections, the appellants are directed to consider the objections and pass appropriate orders within six weeks thereafter and to communicate the same to all the respondents with acknowledgment due. The order, as stated earlier, should contain concise reasons in support of their conclusions.”

10. The same principle was reiterated In **K.C.Joshi vs. Union of India & Ors.**²,

11. In **Mangal Singh vs. chairman, National Research Development Corporation & Ors.**³ where the petitioner was appointed on contract and his

² (1985) 3 SCC 153

³ 2009 SCC OnLine Del 2345

services were terminated by what he alleged was a punitive and stigmatic order, without a departmental enquiry. It was observed as follows:

“19. No doubt, it has been urged by the Respondent-Corporation that the order of termination was owing to the coming to an end of the Petitioner’s fixed period of service under the contract, but it seems to me that when the Petitioner was terminated, the impugned order dated 4th June, 2004 clearly finds him guilty of misconduct, thereby casting a stigma on the petitioner, and in that sense must be held to be an order of dismissal and not a mere order of discharge. It further seems that anyone who reads the order in a reasonable way, would naturally conclude that the petitioner was found guilty of misconduct, and that must necessarily import an element of punishment which is the basis of the order and is its integral part.

20. It is trite to say, that when an authority wants to terminate the services of a temporary employee, it can pass a simple order of discharge without casting any aspersion against the temporary servant or attaching any stigma to his character. As soon as it is shown that the order purports to cast an aspersion on the temporary servant, it becomes idle to suggest that the order is a simple order of discharge. The test in such cases must be: does the order cast aspersion or attach stigma to the officer when it purports to discharge him? If the answer to this question is in the affirmative, then notwithstanding the form of the order, the termination of service must be held, in substance, to amount to dismissal.

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23. In India Literacy Board (supra) the Supreme Court was hearing an appeal against an interim order passed by the Allahabad High Court and issued an order to the Single Judge before whom the writ petition was posted to take up the matter on a priority basis and dispose of the

same in accordance with law. It was not a matter that related to termination of services of a temporary employee, but rather to the issue whether in the case of contractual employment for a fixed term, mandamus can be issued continuing the employees is service. Surendra Prasad Tewari's case (supra) was again a case relating to regularization of services in public employment and the Supreme Court followed the ratio of the earlier Constitution Bench decision in Secretary of State, Karnataka (supra) and held that it would be improper for the Courts to give directions for regularization of services of persons working as daily-wager, ad hoc employee, probationers, temporary or contract employee, appointed without following the procedure laid down under Articles 14, 16 and 309 of the Constitution.

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26. In the light of the discussion above, in my opinion, the Petitioner was dismissed without affording him the opportunity of presenting his case before the disciplinary authority, thereby violating the protection guaranteed to temporary servants under Article 311(2) of the Constitution of India. Further, the order of termination was not a discharge simplicitor but a dismissal, and was stigmatic and punitive in character. Also, the misconduct of the Petitioner was the foundation of the order of termination and not merely the motive. Resultantly, the impugned order of termination is held to be stigmatic and punitive and not sustainable. I, therefore, allow this petition and set aside the impugned orders dated 4th of June, 2004 and the consequent order in appeal dated the 1st of December, 2006 passed by the Respondent-Corporation. The Respondents are directed to reinstate the Petitioner, with all consequential benefits. This, however, will not prevent the Respondents from taking action in accordance with law."

12. In **Faheen vs. university of Kashmir & Ors.**⁴, it was observed as follows:

“that termination of temporary services on account of misconduct attaches a stigma and is punitive and cannot be done without holding a proper inquiry”.

13. Thus, as seen from the expressions of the Apex Court and different High Courts, if an order is founded on allegations, the order is stigmatic and punitive, the services of an employee cannot be dispensed with without affording him an opportunity of defending the accusations/allegations. Even an employee on a contract cannot be terminated without allowing a hearing.

14. Case at hand, as seen from the proceedings impugned, no opportunity of hearing is afforded to the petitioner and thus, the order suffers from a violation of principles of natural justice. On that ground alone, the order impugned is liable to be set aside.

15. Accordingly, the Writ Petition is allowed by setting aside the Proceedings *vide* ESE13-KGBV/5/2024-SAI-SS-ANKP dated 06.03.2024 issued by the 6th respondent. The 6th respondent shall issue notice to the petitioner within two weeks from receipt of the copy of the order. The petitioner shall submit an explanation within two weeks thereafter. The authority shall

⁴ 2003 (Supp) JKJ 235

conduct an inquiry and pass a reasoned order as expeditiously as possible. The 6th respondent shall complete the entire exercise within two months from the date of receipt of the copy of this order. The petitioner shall not cause any delay and cooperate for the inquiry. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

SUBBA REDDY SATTI, J

Dated 01.08.2024

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THE HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

WRIT PETITION NO: 6396/2024

Dated 01.08.2024

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