

HON'BLE Dr. JUSTICE K.G. SHANKAR

Writ Petition No.18671 of 2005

Date: 31.12.2013

Between:

P. Bala Raja Reddy,
S/o. late Sri P. Rayapa Reddy,
Occ: Junior Lecturer in Chemistry,
R/o.H.No.87/894,
Syndicate Bank Colony, Kurnool,
and another.

... Petitioners

AND

The Government of Andhra Pradesh,
rep.by its Principal Secretary,
Higher Education, IE-II, A.P. Secretariat,
Hyderabad,
and 3 others.

...

Respondents

HON'BLE Dr. JUSTICE K.G. SHANKAR

Writ Petition No.18671 of 2005

ORDER:

The petitioners were Junior Lecturers in the College run by the fourth respondent-society, having been appointed as Junior Lecturer in Chemistry in 1988 and Junior Lecturer in English in 1993 respectively. They challenge the order of the first respondent-Government dated 03.08.2005 dismissing the petitioners from service by allowing the appeal of the fourth respondent-society which questioned the orders of the third respondent dated

12.08.2004. As a consequential relief, they seek for reinstatement of the petitioners together with all service benefits with effect from 09.04.2002 on which date the dismissal of the petitioners came into force.

2. The petitioners claimed that they are the President and the Secretary of Catholic Association. They allegedly indulged in criminal activity leading to outraging the modesty of the Headmistress of St. Joseph's English Medium School by name Rev. Sister M.J. Theresamma on 21.06.1999 leading to criminal case against the petitioners. The ultimate dismissal of the petitioners by the management was challenged by the petitioners before the third respondent-Regional Joint Director of Intermediate Education, Kadapa region (RJD, for short). The RJD allowed the representation of the petitioners and set aside the orders of the fourth respondent dated 09.04.2002 dismissing the petitioners from service. He directed the management of the fourth respondent to reinstate the petitioners into service.

The fourth respondent in his turn preferred appeal to the first respondent-Government. The first respondent-Government set aside the orders of the RJD dated 12.08.2004 and restored the orders of the management of the fourth respondent in dismissing the petitioners from service.

3. The petitioners were Junior Lecturers in the

College run by the fourth respondent. The fourth respondent runs a high school also in the same premises where the junior college is maintained. The petitioners considered that the fourth respondent was collecting abnormal, unreasonable and exorbitant fee in the school wing. On 21.06.1999 the petitioners along with others agitated against the management demanding rationalization of the pay structure.

4. Sri G. Gopala Rao, learned counsel for the fourth respondent submitted that where the petitioners were employees of the fourth respondent-Society which also runs the junior college wherein the petitioners were working as well as St. Joseph's English Medium school where the alleged exorbitant collection of fee occurred, the petitioners could have discussed the problem with the Management instead of going to the school and behaved in an unruly manner.

5. As rightly submitted by Sri V. Venkateswarulu, learned counsel for the petitioners, there was no need for the petitioners to go and agitate unless the Management was paying no attention to the cause in question. It is not the case of anybody that the petitioners and the fourth respondent were otherwise inimically disposed towards each other and that the petitioners took advantage of the situation to create uncongenial atmosphere in the school.

It is common experience that merely because an employee makes a representation to the management, the management would not take serious note of the representation and tries to redress the grievance of the employee; lest they should not have been any incidence of strike. I, therefore, am not able to appreciate the contention of the learned counsel for the fourth respondent that the petitioners ought to have entered into a dialogue with the management for the redressal of their grievances and the grievances of various parents of the children going to the school.

6. The case of the fourth respondent, however, is that the conduct of the petitioners was so reprehensible that it is a fit case for dismissal of the petitioners from service.

7. St. Joseph's English Medium School is a recognized private educational institution. Rev. Sr. Theresamma is the Headmistress of the school.

On 21.06.1999 at about 9 a.m. while the Headmistress was coaching students of the 7th class, the petitioners and others went to the classroom where the Headmistress was teaching and called her to her office room. It is the case of the fourth respondent that when the Headmistress accordingly went into her office room and when she went out immediately as someone attempted to take her photograph, an outburst was lashed against the

Headmistress by the petitioners.

The claim of the fourth respondent as can be seen from the charge No.1 is that the petitioners trespassed into St. Joesph's English Medium School premises without prior permission of the Headmistress, used abusive, indecent and filthy language against the Headmistress and other staff members of the school in the presence of male and female persons, who gathered in the office room of the Headmistress and thus disturbed the peace and tranquility as well as discipline and decorum of the school. It is alleged that the conduct of the petitioners was tantamount to indiscipline, gross misconduct and behaviour against the moral turpitude.

8. The second charge is that the petitioners left the College without obtaining prior permission which is tantamount to violation of Rule 24 (2)(f) of the A.P. Private Educational Institutions Employees Conduct Rules, 1985. The petitioners were also charged for allegedly tampering with the attendance register to show as if they had obtained prior leave.

9. The learned counsel for the fourth respondent contended that the conduct of the petitioners covered by charge No.1 was reprehensive and that there was no need to behave in a unruly manner and in a fashion which caused apprehension in the mind of the Headmistress

thus exhibiting criminal behaviour, even if the Management was collecting high fee from the students.

Admittedly, Rev. Sr. Therasamma, Headmistress of the school lodged a complaint which was registered as F.I.R. under Sections 448, 506 and 509 read with Section 34 IPC. A case was instituted against the petitioners who are A.2 and A.1 and three others as C.C.No.310 of 1999. The learned Judicial First Class Magistrate, Kurnool found the petitioners and other accused guilty of the offences under Sections 448, 506 and 509 IPC. They were sentenced to simple imprisonment for a period of three months, apart from being sentenced to fine. In Crl. Appeal No.85 of 2000, the learned III Additional Sessions Judge, Kurnool confirmed the conviction, but set aside the imprisonment. However, this Court set aside the conviction also through judgment dated 21.02.2003 in Crl. Revision Case No.202 of 2001.

10. It is the case of the learned counsel for the respondents that the petitioners being Junior Lectures should have conducted themselves with dignity and were expected to set example to the students with their conduct and behaviour rather than behaving in an unruly manner. It is his contention that albeit notice was not needed to suspend the petitioners on account of their conviction in a criminal case, show cause notice was issued. Curiously, the plaintiffs approached the civil Court and laid

O.S.No.481 of 2000 on the file of the Principal Junior Civil Judge, Kurnool and obtained interim direction against the suspension orders by way of orders in I.A.No.746 of 2000. Consequently, the fourth respondent revoked the suspension orders through proceedings dated 29.07.2000. Subsequently, the very suit was dismissed. The petitioners were placed under suspension once again by the fourth respondent through orders dated 14.12.2001.

11. Subsequently, a charge memo was issued to the petitioners. By then, Crl.R.C.No.202 of 2001 was pending. The petitioners responded to the charge memo stating that the proceedings were sub-judice.

The petitioners deemed it appropriate not to give a detailed answer to the charge memo. The fourth respondent applied to the third respondent for extension of the suspension order for a period of two months in order to hold enquiry. The third respondent permitted the fourth respondent to conduct enquiry and extended the period of suspension for a period of two months through orders dated 12.02.2002. Be it noted that the charge memo was issued on 24.01.2002 itself. It is contended by the petitioners that the fourth respondent did not conduct any enquiry, but issued a provisional show cause notice for dismissal on 23.03.2002.

The petitioners submitted explanation on 05.04.2002.

The dismissal order, however, was passed by the fourth respondent on 09.04.2002.

12. The petitioners availed a statutory appeal under Section 80 of the Andhra Pradesh Education Act, 1982 (Education Act, for short) by preferring an appeal to the third respondent-RJD. As already noticed, the third respondent-RJD allowed the appeal on 12.08.2004 mainly on the ground that proper enquiry was not held. The fourth respondent filed appeal before the Government. The Government in its turn set aside the order of the third respondent and confirmed the order of dismissal passed by the fourth respondent. It is contended by the learned counsel for the petitioners that the first respondent passed orders without considering the ground on which the third respondent allowed the appeal of the petitioners. The learned counsel for the petitioners placed reliance upon Section 79 of the Education Act which envisages that the dismissal, removal, reduction or suspension of an employee of a private institution can be after an enquiry in which the employee had been informed all the charges levelled against him.

13. It is contended by the learned counsel for the petitioners that enquiry was not conducted by the fourth respondent in terms of Sec.79 of Education Act. The first contention of the learned counsel for the petitioners in this regard is that the fourth respondent did not appoint any

Enquiry Officer and that the Disciplinary Authority itself conducted the enquiry. The learned counsel for the petitioners further submitted that Sec.79 of Education Act did not permit the Disciplinary Authority to conduct the enquiry. A reading of Sec.79 of Education Act shows that it envisages that an enquiry is to be conducted after intimating due charges to the delinquent employee. There is no embargo that enquiry cannot be by the Disciplinary Authority itself.

14. The second ground of procedural attack by the learned counsel for the petitioners is that the fourth respondent did not obtain prior approval of the competent authority for the removal of the petitioners from service. Sec.79 (1) proviso adumbrates that orders of dismissal, removal or reduction of rank can be passed against an employee with the prior approval of the competent authority. However, the proviso contains an exception that it does not apply to minority educational institutions. It is the contention of the learned counsel for the fourth respondent that the fourth respondent is a minority educational institution and that the prior approval of the competent authority is not necessary. The orders of the Government repeatedly referred to the fourth respondent-society as a minority educational institution. I, therefore, consider that Sec.79 (1) proviso does not apply to the case of the petitioners.

The dismissal of the petitioners without prior approval of the competent authority, therefore, cannot be questioned as violative of Section 79 (1) proviso.

15. It is contended by the learned counsel for the petitioners that the proceedings of the third respondent dated 12.08.2004 clearly show that no enquiry was conducted before the removal of the petitioner. Evidently, charge sheet was issued against the petitioners framing three charges. Again, the order of the fourth respondent dated 09.04.2002 clearly shows that the fourth respondent wanted to hold a detailed enquiry and that the petitioners did not cooperate for the enquiry. The repeated stand of the petitioners is that the criminal case is pending against them, so much so, the petitioners cannot be forced to submit themselves to the enquiry. They later claimed that since they were acquitted in the revision before the High Court, the departmental enquiry is liable to be closed.

16. In *M. Paul Anthony v. Bharat Gold Mines Ltd.*^[1], it was held that when departmental proceedings and criminal case are based on identical set of facts and evidence in both the proceedings is common, the acquittal of the employee by the criminal court should automatically lead to closure of the departmental enquiry. However, the departmental enquiry in the present case and the criminal

case are quite distinct. The criminal case is for the trespass and criminal intimidation whereas the departmental enquiry is for the unruly behaviour constituting misconduct. I am afraid that acquittal of the criminal case cannot lead to automatic closure of the enquiry against the petitioners. The learned counsel for the petitioners also contended that there must be enough material to hold the petitioners guilty in a departmental enquiry.

17. In *Hardwari Lal v. State of U.P.*^[2], material witnesses were not examined in the departmental enquiry. The Supreme Court held that enquiry should be vitiated. It may be noticed that when the petitioners refused to submit themselves for a departmental enquiry, they cannot later turn round and claim that there was no enquiry and that their removal/dismissal from service, therefore, was illegal. In *Roop Singh Negi v. Punjab National Bank*^[3], the Supreme Court held that departmental proceedings are quasi judicial proceedings, so much so, the charges levelled against the delinquent must be proved by proper evidence. When charges were levelled against the petitioners and when the petitioners did not cooperate, the statements of the Headmistress and other staff members who are present at the time of the incident, I am afraid, are sufficient to find the petitioners guilty of the charge. The petitioners, consequently, cannot take shelter

in this case under the fact that there was no enquiry against the petitioners. The petitioners cannot approbate and reprobate at one time and at the same time refused to proceed with the enquiry on the one hand and claim that there was no enquiry on the other hand.

18. Regarding charges 2 & 3, there is no proper evidence that the petitioners did not apply for casual leave and that they tampered with the attendance register. So far as charge No.1 is concerned, in view of the nature of the imputations and the failure of the petitioners to respond to the imputations, I have no alternative but to hold that the charge has been made out.

19. Once it is found that the petitioners were guilty of unruly behaviour being belonging to teaching fraternity, the extreme penalty of dismissal from service certainly is appropriate. The finding of the first respondent-Government that the petitioners were guilty of charge No.1 and were liable to be dismissed from service, consequently, does not deserve to be interfered with. I see no merits in this writ petition.

20. The writ petition is accordingly dismissed.
No costs. Miscellaneous Petitions, if any, pending in this writ petition shall stand closed.

Dr. K.G. Shankar, J

Date: 31.12.2013

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[\[1\]](#) AIR 1999 SC 1416

[\[2\]](#) (1999) 8 SCC 582

[\[3\]](#) 2009 (1) Scale 284