

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

W.P.No.2386 of 2002

Order:

In this petition filed under Article 226 of the Constitution, the petitioner seeks to issue a writ of Mandamus to reinstate him into service by holding that impugned termination order No.SAAP/Estt-III/1193/7 dated 18.11.1997 of the 1st respondent and also the consequential order of the Government in their letter No.315/S1/2000 dated 16.08.2000 are illegal, unjust and violative of Article 311(2) of the Constitution and Rule 20 of the APCS (CCA) Rules, 1991 and violative of the judgments of Supreme Court and this High Court and consequently direct the respondents to reinstate the petitioner into service forthwith with all consequential benefits.

2) Few facts which are necessary for disposal of the writ petition are as under:

a) The petitioner was appointed as U.D.Steno in the 1st respondent office on 06.11.1979 and was continuing as such till 18.11.1997. While so, he fell sick and applied medical leave from 02.09.1997 to 30.11.1997 by enclosing medical certificate. The 1st respondent instead of granting medical leave by impugned proceedings No.SAAP/Estt-III/1193/7 dated 18.11.1997 terminated the services of petitioner with immediate effect by paying three months emoluments in lieu of notice. It is submitted that in the impugned proceedings it was alleged that petitioner was a habitual absconder, irregular in attending duties and for the same reasons he was suspended earlier, removed from service and reinstated on appeal.

b) The petitioner challenges the impugned order on the ground that before passing the impugned order, oral enquiry as contemplated under APCS (CCA) Rules, 1991 was not conducted by the 1st respondent. It is alleged that termination order which is a major punishment, cannot be passed without affording a reasonable

opportunity to the delinquent officer as required under Article 311(2) of the Constitution. It is settled law that past conduct of an employee cannot be taken into consideration while passing order on a fresh delinquency. In the present case, the 1st respondent has passed termination order taking into account the past conduct of the petitioner which is against the principles of natural justice.

c) It is submitted that aggrieved by the termination order the petitioner filed an appeal on 10.02.1998 before the 2nd respondent seeking a direction to reinstate him into service with immediate effect. The matter was referred to the Board for discussion which in turn directed the 1st respondent to reinstate the petitioner into service. It is submitted that in spite of the orders passed by the Board, the petitioner was not reinstated into service. So, the petitioner made a representation to the 1st respondent on 04.11.1999 to reinstate him into service. The 1st respondent by his letter dated 16.01.2000 informed that matter will be discussed in SAAP meeting held on 05.11.1999. So far, the Government has not passed any orders. Therefore, the petitioner addressed a letter to the 2nd respondent, but so far no action has been taken either by the 1st respondent or 2nd respondent.

d) It is submitted that earlier the petitioner filed W.P.No.26305 of 2001 seeking quashment of termination order. The High Court by its order dated 27.09.2001 disposed of the writ petition with a direction to the Government to dispose of the appeal within three months from the date of said order. In pursuance to the said order the Government by its letter dated 16.08.2000 informed that as the petitioner was absenting from duty frequently, his request cannot be considered. The order of the Government does not disclose any grounds and it is not a speaking order.

Hence, the present writ petition.

3) The 1st respondent filed counter stating that petitioner earlier filed

W.P.No.26305 of 2001 questioning the termination order dated 18.11.1997. The said writ petition was disposed of on 27.09.2001 directing the 2nd respondent to dispose of the appeal within a period of three months from the date of order. It is also stated that petitioner also filed another W.P.No.14245 of 2003 seeking a writ of Mandamus declaring the action of the 2nd respondent in sending a cheque towards three months emoluments in lieu of notice wherein interim order was passed on 29.08.2003 directing the 2nd respondent to consider and dispose of the appeal preferred by the petitioner on merits within a period of four weeks from the date of receipt of the order. Pursuant to the said interim order the 2nd respondent took up the appeal and disposed of the same on 11.09.2003 confirming the orders of the 1st respondent. Finally, the writ petition was dismissed as infructuous. It is further submitted that petitioner filed another W.P.No.25407 of 2003 seeking a writ of Mandamus declaring the order 11.09.2003 of the 2nd respondent in rejecting the appeal of the petitioner as illegal and to reinstate him as UD Steno which was also dismissed by an order dated 08.02.2011. The petitioner carried the matter in appeal—W.A.No.246 of 2011. A Division Bench of this Court dismissed the appeal on 29/11/2011 directing the 2nd respondent to pay three months salary within three working days. Accordingly, a cheque bearing No.746754 dt.04.03.2014 drawn on SBI, Gunfoundry, Hyderabad was issued in favour of the petitioner. In view of the same, the present writ petition has become infructuous and liable to be dismissed.

Heard Sri Gopala Rao Gandrakota, learned counsel for petitioner; learned G.P. for General Administration for respondents No.1 and Sri M.V.S.Prasad, learned counsel for respondent No.2.

4 a) Learned counsel for petitioner firstly argued that the termination order SAAP/Estt-III/1193/7 dated 18.11.1997 of the first respondent and also consequential order of the Government in appeal in their letter No.315/S1/2000 dated 16.08.2000 are illegal and violative of Article 311(2) of the Constitution and Rule 20 of APCS (CCA) Rules,

1991 since those orders were passed without following the principles of natural justice i.e. by conducting due enquiry and hence those orders shall have to be set aside.

b) Secondly, learned counsel argued that termination of the petitioner under Rule 24(2) of A.P. Sports Authorities Rules, 1993 is illegal since the said Rule does not contemplate conducting an enquiry before termination of service and as such Rule 24(2) is violative of Article 311 of the Constitution and since Rule 24 is only a subordinate legislation it cannot override the provisions of the Constitution and therefore, Rule 24 shall be deemed to be ultra virus to the Constitution. He argued that irrespective of the fact that previous writ petitions and writ appeals filed by petitioner were dismissed still he can question the constitutional validity of Rule 24 in the present writ petition. He thus prayed to allow the writ petition.

5 a) In Oppugnation, learned counsel for respondents argued that petitioner had already raised the issue of non-observation of principles of natural justice in W.P.No.25407 of 2003 but the High Court having satisfied that the appellate authority dismissed his appeal after considering his written statement, dismissed the said writ petition and the W.A.No.246 of 2011 filed by the petitioner was also dismissed holding that petitioner has no case and in view of it, the petitioner cannot proceed with the present second round of litigation.

b) Nextly, on the constitutional validity of Rule 24 of A.P. Sports Authorities Rules, 1993, learned counsel argued that in the previous round of litigation the petitioner never challenged the constitutional validity of Rule 24 and only when it was held that he has no case, now he is raising that issue. Learned counsel argued that as per Rule 24(2), service of a permanent employee like the petitioner can be terminated when the concerned post is abolished and the said Rule has nothing to do with Article 311(2) of the Constitution. Rule 24(2) cannot be said to be ultra virus and violative of Article 311(2) of the Constitution. He thus prayed to dismiss the writ petition.

6) I have gone through the record. As can be seen, the main plank of

argument of the writ petitioner is that the termination order SAAP/Estt-III/1193/7 dated 18.11.1997 of the 1st respondent and the consequential orders in appeal i.e. Letter No.315/S1/2000 dated 16.08.2000 and Memo No.89446/S1/2003-3 dated 11.09.2003 are violative of the Constitution and Rule 20 of APCS (CCA) Rules, 1991 since the termination proceedings were not preceded by due enquiry and therefore, the impugned orders are devoid of principles of natural justice. Admittedly, the petitioner was appointed as UD Steno in first respondent's office on 06.11.1979 and he was continuing as such till 18.11.1997 when he was terminated from service. According to the petitioner, he fell sick on 02.09.1997 and so he was undergoing treatment in Gandhi Hospital, Secunderabad and on the advice of the doctor to undergo treatment and rest, he sent a letter on 02.09.1997 to the first respondent enclosing medical certificate informing that he fell sick and sought for medical leave from 02.09.1997 to 30.11.1997. Whereas the termination proceedings No.SAAP/Estt-III/1193/7 dated 18.11.1997 would disclose as if the petitioner himself unauthorisedly absent from duty since 02.09.1997 without information. The first respondent took a drastic step of terminating him from service showing about seven grounds. Some of the grounds would disclose that the petitioner failed to account for the office amount entrusted to him on some occasions and some grounds would disclose that he unauthorizedly absented to duty on different occasions and once or twice he was removed from service and again reinstated. Off late, he was absent from duty for 21 days during April/May, 1997 and 22 days during June/July, 1997 and finally from 02.09.1997. The first respondent narrating all these grounds had come to the conclusion that the petitioner is a habitual absconder since his joining duty from 1979 and created a lot of inconvenience to the office work and his over all conduct proved that he was not serious or sincere to his duty and he set a bad example to the other employees.

7) Against the above termination proceedings the petitioner preferred an appeal to the Government. The Principal Secretary to Government

who is the appellate authority, in his Memo No.89446/S1/2003-3 dated 11.09.2003 agreed with the findings of the first respondent in terminating the petitioner from service. While dismissing the appeal the appellate authority observed as follows:

“5. Subsequently, Government in the reference 5th cited have issued a hearing notice to the individual directing him to appear before the Appellate Authority (i.e., Secretary, Youth Advancement, Tourism & Culture Department) on 28.06.2002 at 4.00 p.m. Accordingly the appellant appeared before the Appellate Authority on 28.6.2002 and a statement from him has been taken on 29.6.2002.

6. The Government heard the appellant's contentions and after perusal of the case history of the appellant found that he is a habitual absentee and his services were terminated by the disciplinary authority concerned earlier, in the year 1992 & 1994 and got reinstated then and there, on sympathetic grounds. It is also noticed that the said post of UD Steno stands abolished vide G.O.Ms.No.563, Finance (SMPC) Department dated 2.5.2002.

7 . The Government therefore see no reason to reverse the proceedings of the then Vice chairman & Managing Director, Sports Authority of Andhra Pradesh. Accordingly, the appeal is rejected.”

Thus, the appellate authority confirmed the termination of the petitioner on two grounds firstly that he was a habitual absentee as found by the first respondent in his termination order dated 18.11.1997 and secondly that the UD Steno post which was officiated by the petitioner, stood abolished vide G.O.Ms.No.563 Finance (SMPC) Department dated 02.05.2002.

8) It should be noted that aggrieved by the order of appellate authority, the petitioner filed W.P.No.25407 of 2003. In the said writ petition his main contention was that he cannot be terminated from service without conducting enquiry and thereby applying the principles of natural justice. In para-4 of the order in W.P.No.25407 of 2003 his contention was narrated as follows:

“4. The grievance of the petitioner is that without conducting enquiry by complying with the principles of natural justice, he cannot be terminated on the grounds of unauthorized absence and just because the post is abolished, the respondents have to show him an alternative employment. With these averments, he sought to set aside the

impugned order.”

Thus, as rightly argued by learned counsel for respondents, the writ petitioner has raised the issue of non-observation of principles of natural justice in earlier writ petition also. Now, it is pertinent to peruse the observation of the learned single Judge on the above points raised by the writ petitioner. The learned single Judge in his order held that there was no violation of principles of natural justice. He observed thus:

“7. From a reading of the above proceedings it is clear that as per the directions of this court, the petitioner was given notice and his statement was taken and based on the material on record, it was found that he is habitual absentee. The appellate authority, which is a quasi judicial authority, cannot be expected to comply strict rules of evidence and it has to be examined that before reaching the conclusion, whether principles of natural justice has been complied with and whether there is some evidence to reach such conclusion. The above proceedings show that the petitioner appeared before the appellate authority and gave his statement. Therefore, principles of natural justice has been complied with before finding that the petitioner was a habitual absentee.

8. Apart from the above, it is also to be noticed that the Government issued G.O.Ms.No.563, Finance (SMPC) Department dated 2.5.2002 abolishing the post of U.D. steno. In such type of contingency, Rule framed by the Governor of Andhra Pradesh under sub-section (i) of Section 23 of the Andhra Pradesh Sports Authorities Act, 1988 requires to be seen. Rule 24 of the said rules deals with Termination of Services and sub rule 2 of Rule 24 is as under:

24. Termination of service:

(1) xx xx

(2) The service of a permanent employee may be terminated by the appointing authority by giving a notice of three months or on payment of emoluments for such period as the notice falls short of three months or without notice on a payment of three months emoluments if the post to which he/she is appointed is abolished.”

9. The above provisions clearly stipulates that the services of a permanent employee can be terminated by the appointing authority if the post to which he/she is appointed is abolished, by giving three months notice or on payment of emoluments for the said period in lieu of notice.

10. In the present case, as per G.O.Ms.No563, the post of U.D. Stenographer is abolished. Therefore, in compliance of sub-rule 2 of Rule 24, the appointing authority was requested to pay three months emoluments in lieu of three months advance notice and accordingly the said emoluments were sent to the petitioner.

11. Therefore, from the above facts and circumstances, I am of the view, that the respondents have complied with the directions of this court in disposal of the appeal by complying with the principles of natural justice and however, as the said post was abolished by the Government, issued cheque for three months emoluments and hence the impugned order cannot be found fault with and the writ petition is devoid of any merits and the same is liable to be dismissed.”

Thus, the above order in W.P.No.25407 of 2003 would clearly demonstrate that this Court felt that concerned authorities have complied with the principles of natural justice as the appellate authority has passed the order after taking statement from the petitioner and after considering the material on record. Similarly, Rule 24(2) of A.P. Sports Authorities Rules, 1993 was also duly followed.

9) Aggrieved by the above order, the petitioner filed W.A.No.246 of 2011. A Division Bench of this Court in its judgment dated 29.02.2011 while dismissing the appeal observed thus:

“Serious allegations have been thrown against the writ petitioner-appellant, in that he was a habitual absconder from duties and he has also misappropriated the money taken by him towards grant and hence, in accordance with Rule 24 (2) of the Service Rules of the Sports Authority of Andhra Pradesh, his services came to be terminated. It is also now brought out that the post of UD stenographer has been abolished by the State Government vide the order passed in G.O.Ms.No.563 Finance Department dated 2.5.2002, therefore, by the time the appeal came to be taken up for consideration, the post of UD Steno was not available at all in the cadre of the Sports Authority of Andhra Pradesh. Rule 24, which dealt with the issue of termination of services, enables the services to be terminated by giving notice of three months or by way of payment of emoluments for three months in lieu of such notice. Exercising this power, the services of the petitioner appellant have been dispensed with.

The learned Single Judge has noticed that after abolition of posts of UD Stenographer, there is no way, the appeal of the writ petitioner/appellant could have been decided in his favour by the second respondent State Government. Further there is no challenge

made to the validity of Rule 24 framed by the Sports Authority of Andhra Pradesh. The discretion that vested with the learned Single Judge has been properly exercised in this matter.

A Stenographer who has to carry out the secretarial assistance, were to stay away from performing his duties for months together and that too repeatedly, there is no way that he can be permitted to continue in service. Therefore, we do not find any justification to admit this Writ Appeal and hence, it is dismissed at the admission stage. There shall be no order as to costs.”

So, what is crystal clear is that, in the earlier round of litigation the petitioner has challenged his termination proceedings on the grounds of non-following of principles of natural justice and also questioning the validity of Rule 24(2) of A.P. Sports Authorities Rules, 1993. However, this Court in the concerned writ petition and writ appeal has elaborately discussed those issues and negated the contentions raised by the petitioner. Now, the petitioner again contends that the termination proceedings are violative of Article 311 of the Constitution inasmuch as no enquiry was conducted and no principles of natural justice are followed before terminating him from service. A holistic view of facts pertaining to his case would show that petitioner cannot re-agitate the same issue again and again.

10) The next contention of the petitioner is that Rule 24 of A.P. Sports Authorities Rules, 1993 is violative of Article 311(2) of the Constitution and Rule 24 being a subordinate legislation cannot override the provisions of the Constitution. I am afraid this argument does not hold water. Rule 24 of A.P. Sports Authorities Rules, 1993 reads thus:

24. Termination of service:

(1) The service of a temporary employee may be terminated by the Appointing Authority without assigning any reason.

(2) The service of a permanent employee may be terminated by the appointing authority by giving a notice of three months or on payment of emoluments for such period as the notice falls short of three months or without notice on a payment of three months emoluments if the post to which he/she is appointed is abolished.

(3) If a person is appointed to a post created for a specified period for

which the post has been created;

(a) he shall cease to be in the employment of SAAP on the expiry of the period of which the post has been created;

(b) at any time during the employment the Appointing authority can terminate his/her appointment by giving one month notice or by paying on month's pay and allowances in lieu of such notice or the employee himself/herself can terminate his/her appointment by giving one month's notice to the Appointing Authority.

(4) An employee who is given notice of termination of Service under Sub Rule (3) above may be granted during the period of notice, such Earned Leave as may be admissible to him/his under the Government Leave Rules."

Rule 24(2) prescribes the procedure to be followed when the post of a permanent employee is abolished. It says that the services of permanent employees may be terminated by the appointing authority by giving a notice of three months or on payment of emoluments for such period as the notice falls short of three months or without notice on a payment of three months emoluments if the post to which he/she is appointed is abolished. In the scheme of Rule, conducting of enquiry is not contemplated because such a situation does not arise.

Then Article 311 of the Constitution which deals with the procedure to be followed in cases of dismissal, removal or reduction in rank of the employees in civil service reads as follows:

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State

(1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.”

Now, the contention of the petitioner is that since Rule 24(2) of A.P. Sports Authorities Rules, 1993 has not contemplated any enquiry before termination of an employee as laid down under Article 311(2) of the Constitution, the said Rule is to be held as ultra virus to the Constitution. This argument cannot be accepted because the reason for termination under Rule 24(2) is due to the abolition of the post held by the concerned employee and not because of any charges levelled against him. So, the question of conducting enquiry prior to termination as contemplated under Article 311(2) of the Constitution does not arise.

11) So, at the out set, I find no merits in the writ petition and accordingly the same is dismissed. No order as to costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 04.06.2015

Murthy