

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

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WRIT PETITION NO.12929 OF 2010

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ORDER:

This writ petition is filed under Article 226 of the Constitution of India, assailing the order passed by the 2nd respondent-Project Director, District Water Management Agency, Karimnagar, vide proceedings No.W16/331/09, dated 06-05-2010 terminating the petitioner from service.

2. Heard Mr.M.Ram Mohan Reddy, learned counsel appearing for the petitioner and the learned Government Pleader appearing for the respondents.

3. The petitioner is a Graduate in Mathematics and native of Karimnagar District. The 1st respondent, vide proceedings No.W7/390/2006, dated 29-05-2006, appointed the petitioner as Technical Assistant. While he was working as such, the 2nd respondent herein-Project Director issued a show cause notice bearing No.W16/331/09-1, dated 06-04-2010, calling upon the petitioner to show cause as to why he should not be removed from service, alleging negligence on the part of the petitioner in recording excess measurements. By virtue of the said show cause notice, the petitioner was asked to submit his explanation/reply within 7 days from the date of said notice. Thereafter, the 2nd respondent herein passed the order, vide proceedings No.W16/331/09, dated 06-05-2010, removing the petitioner from service. Calling in question, the validity and legal sustainability of the order passed by the 2nd respondent, the present writ petition is filed.

4. A counter affidavit is filed by the 2nd respondent denying the averments made in the affidavit filed in support of the writ petition and justifying the impugned action of the 2nd respondent.

5. It is contended by the learned counsel appearing for the petitioner that the impugned order of removal passed by the 2nd respondent is highly illegal,

arbitrary, without jurisdiction and violation of principles of natural justice and patent infringement of Article 14 of the Constitution of India. It is further submitted by the learned counsel for the petitioner that the very action of coming to a conclusion for removal of the petitioner in the show cause notice itself is highly illegal and arbitrary. It is also submitted by the learned counsel for the petitioner that the 2nd respondent herein issued show cause notice on 06-04-2010 fixing time of 7 days for submission of reply from the date of the said notice, but the petitioner was served with the said show cause notice on 15-04-2010, as such, the petitioner herein lost the opportunity of submitting his explanation also to the show cause notice. It is also submitted by the learned counsel for the petitioner that since the petitioner was appointed by the 1st respondent, the 2nd respondent herein has no jurisdiction to pass the impugned order.

6. Reiterating the contents of the counter affidavit filed by the 2nd respondent, it is vehemently argued by the learned Government Pleader appearing for the respondents that there is no illegality nor any procedural infirmity in the impugned action, as such, the petitioner is not entitled for any relief from this Court under Article 226 of the Constitution of India and the writ petition is not maintainable. It is also submitted by the learned Government Pleader that having failed to avail the opportunity to submit explanation/reply in response to the show cause notice, it is not open for the petitioner herein to assail the impugned order of termination. It is also submitted by the learned Government Pleader that in view of availability of alternative remedy of appeal to the 1st respondent herein-District Collector against the orders of termination passed by the 2nd respondent, the writ petition is not maintainable.

7. In the above background, now the issues that emerge for consideration before this Court in the present writ petition are:

1. Whether the impugned order of removal of the petitioner from service, vide proceedings No.W16/331/09, dated 06-05-2010 is sustainable and tenable?

2. Whether the present writ petition is maintainable before this Court under Article 226 of the Constitution of India?

8. The information available before this Court manifestly discloses that the 2nd respondent herein-Project Director by way of show cause notice, dated 06-04-2010, directed the petitioner herein to submit reply within 7 days from the date of show cause notice. A perusal of the said show cause notice also reveals that even before asking the petitioner herein to submit his explanation,

a decision was taken to remove the petitioner from service. In the considered opinion of this Court, the said conclusion arrived at by the 2nd respondent herein even before submission of explanation by the petitioner cannot be sustained and the said conclusion categorically demonstrates the pre-determined mind of the 2nd respondent herein to dispense with the service of the petitioner. The said action, in the definite opinion of this Court, cannot be countenanced. Another significant aspect, pointed out by the learned counsel for the petitioner, which is not disputed in the counter is that the petitioner received the show cause notice on

15-04-2010, wherein the 2nd respondent herein granted 7 days time for submission of explanation from the date of show cause notice, which deprived the petitioner from submitting the explanation also. This Court finds sufficient force in the said contention. Therefore, the impugned action of the 2nd respondent herein is also in violation of principles of natural justice. The above narration, in unequivocal terms, drives this Court towards an irresistible conclusion that the impugned order passed by the 2nd respondent herein is highly illegal, arbitrary and unreasonable, besides being violative of principles of natural justice, as such, the same cannot be sustained.

9. It is settled and well established proposition of law that when there is violation of non-adherence to the principles of natural justice, the writ petition can be maintained by the aggrieved party despite the availability of alternative remedy of appeal. The contention contra advanced by the learned Government Pleader is answered in negative with regard to the maintainability of the writ petition.

10. For the aforesaid reasons, the writ petition is allowed, setting aside the impugned order passed by the 2nd respondent herein, vide proceedings No.W16/331/09, dated 06-05-2010, and the matter is remanded to the 2nd respondent herein for fresh consideration after giving notice and opportunity of being heard to the petitioner. This exercise shall be completed within a period of two months from the date of receipt of a copy of this order. No order as to costs. Miscellaneous petitions, if any pending in this writ petition shall stand closed.

A.V.SESHA SAI, J

DATED: 26-11-2015

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