

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

WRIT PETITION NO.6333 OF 2005

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Between:

P.M.Ravikumar Babu .. Petitioner

and

The Managing Director, Non-Conventional
Energy Development Corporation of
Andhra Pradesh Ltd. and another .. Respondents

DATE OF JUDGMENT PRONOUNCEMENT : 13th OCTOBER, 2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE SANJAY KUMAR

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
2. Whether copies of the judgment may be marked to Law Reporters/Journals Yes/No
3. Whether His Lordship wishes to see the fair copy of the judgment? Yes/No

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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WRIT PETITION NO.6333 OF 2005

ORDER

The petitioner was a technician in the service of the Non-Conventional Energy Development Corporation of Andhra Pradesh Limited at Kadapa. He was subjected to disciplinary proceedings and was dismissed from service under proceedings dated 18.04.1994. Aggrieved thereby, he filed W.P.No.11784 of 1994 before this Court, which was allowed on 26.03.2004. As this Court, while setting aside the proceedings dated 18.04.1994, granted liberty to the respondent Corporation to take action as per service rules governing the conditions of the petitioner, disciplinary proceedings were initiated afresh against him. By order dated 07.06.2004, an Enquiry Officer was appointed to conduct an enquiry into the allegations leveled against the petitioner. Basing upon the enquiry report dated

10.09.2004, show-cause notice dated 01.02.2005 was issued to the petitioner to explain as to why his services should not be terminated. Upon considering his explanation dated 11.02.2005, the respondent Corporation issued order dated 19.02.2005 terminating him from service with immediate effect. Aggrieved thereby, he filed the present writ petition.

The main ground of challenge canvassed by the petitioner before this Court is that the enquiry conducted against him was in violation of the principles of natural justice and that no effective opportunity was given to him to defend himself. He further alleged that the Enquiry Officer relied upon the report submitted by the District Collector, Kadapa, which was not even furnished to him and he was also not given an opportunity to examine witnesses on his own behalf. He asserted that he had raised all these issues in his explanation submitted to the show-cause notice proposing the punishment of his termination from service, but the respondent Corporation did not choose to take the same into account and routinely issued the final order terminating him from service.

Smt. B. Niraja Sudhakar Reddy, learned counsel representing Sri Venkat Reddy Thipparthi, learned counsel for the petitioner, reiterated these grounds of challenge and asserted that the enquiry was a mere eye wash and that the respondent Corporation failed to abide by the prescribed procedure. She asserted that the respondent Corporation was required to follow the procedure prescribed under Rule 20 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (for brevity, 'the Rules of 1991'), and that perusal of the enquiry report would be sufficient to manifest clear violations of the prescribed procedure.

Pertinent to note, interference by this Court in the earlier round of litigation in W.P.No.11784 of 1994 was on the short ground that no departmental enquiry had been held by the respondent Corporation before removing the petitioner from service under the proceedings dated 18.04.1994. The respondent Corporation was therefore well aware that, pursuant to the liberty granted by this Court in the final order passed in W.P.No.11784 of 1994, it necessarily had to follow the prescribed procedure for initiating departmental action against the petitioner. It is also not in dispute that the respondent Corporation abides by the procedure prescribed in Rule 20 of the Rules of 1991.

In the backdrop of this admitted position, the enquiry report submitted by the

Deputy General Manager (SE) of the respondent Corporation, the Enquiry Officer, makes for an interesting reading. Therein, he adverted to the show-cause notice dated 29.03.1994 issued to the petitioner and his explanation dated 15.04.1994. He thereupon referred to the allegations leveled against the petitioner and recorded that the District Collector, Kadapa, under D.O. Letter dated 02.03.1994 informed that the petitioner was maintaining a voluntary organization in Gajula Street, Masapet, Kadapa. He also dealt at length with the events prior to the passing of the earlier proceedings dated 18.04.1994 whereby the petitioner's services were terminated and which were set aside by this Court in W.P.No.11784 of 1994. The respondent Corporation only examined one witness who confirmed that the report earlier submitted by him on 12.04.1994 was correct. There is no indication of any documents having been furnished to the petitioner, but the final conclusion of the Enquiry Officer is based on the D.O. letter dated 02.03.1994 of the District Collector, Kadapa, and the contents of the report submitted by the only management witness on 12.04.1994. There is also no indication of the petitioner being asked as to whether he wished to examine any witness in his own defence.

It appears that the charges leveled against the petitioner were two fold - unauthorized absence and maintaining a voluntary organization. No independent evidence was adduced before the Enquiry Officer in support of either charge. As regards the second charge of maintaining a voluntary organization, the only evidence seems to have been the letter issued by the District Collector, Kadapa, which was not even furnished to the petitioner.

Rule 20 of the Rules of 1991 details the procedure to be followed during an enquiry against a charge-sheeted employee. When such enquiry is undertaken by an authority, other than the disciplinary authority, the enquiring authority is required to follow the procedure as set out in the Sub-rules (9), (10), (11), (12), (13), (14), (15), (16), (17) and (18) of Rule 20 of the Rules of 1991. In the present case, the enquiry report does not demonstrate that the Enquiry Officer followed this procedure at all.

Sri Pochaiah Dorishetti, learned counsel appearing for the respondent Corporation, was therefore asked to produce the record. A voluminous case file was thereupon produced and the learned standing counsel was asked to verify the same and report to this Court as to whether the said record manifested adherence to the prescribed procedure under Rule 20 of the Rules of 1991. The learned standing counsel was unable to find any material in the record evidencing compliance with

the due procedure.

Sri Pochaiah Dorishetti, learned standing counsel, however strived to contend before this Court that the petitioner, having faced the enquiry, never objected thereto or raised the issue of violation of the prescribed procedure. This contention is only noted to be rejected. The explanation dated 11.02.2005 submitted by the petitioner to the show-cause notice dated 01.02.2005, proposing his termination from service, clearly reflects that he objected to the enquiry on the ground that it vitiated the principles of natural justice as no effective opportunity was given to him to defend himself. He specifically raised the issue of the District Collector's report not being furnished to him and stated that the report of the District Collector was behind his back.

The impugned order dated 19.02.2005 merely adverted to the findings of the Enquiry Officer and made a passing reference to the explanation submitted by the petitioner to the show-cause notice and blithely dismissed the same on the ground that it was not convincing and that there was no fresh ground to defend. Given these facts, Sri Pochaiah Dorishetti, learned counsel, was pointedly asked several times by this Court to justify his argument that the respondent Corporation had followed the due procedure. However, except for repeatedly giving prevaricating and evasive replies, the learned standing counsel had nothing to offer.

Given the aforesaid facts, this Court finds that notwithstanding the earlier round of litigation, the respondent Corporation again chose to abuse the due procedure and held a one-sided enquiry against the petitioner and basing on the same, it terminated him from service. This termination is unsustainable in law, being wholly in violation of the prescribed procedure. Be it noted that this Court is not concerned with the merits of the matter as, in exercise of writ jurisdiction under Article 226 of the Constitution, this Court would not sit in appeal over the decision of the disciplinary authority but would only subject the decision making process to judicial review. In this regard, the decision making process underlying the impugned order dated 19.02.2005 is ineluctably vitiated by complete disregard to the prescribed procedure.

The writ petition is therefore allowed setting aside the impugned order dated 19.02.2005. The respondent Corporation shall reinstate the petitioner in service with all consequential benefits, including backwages. Though the petitioner did not

render any service to the organization since his termination from service under the impugned order, the fact remains that this was wholly because of the illegal actions of the respondent Corporation itself and the respondent Corporation cannot be permitted to take advantage of its own illegalities so as to victimize the petitioner. Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

13th OCTOBER, 2015

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