

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.8917 of 2015

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ORDER:

The petitioner, who is working as a Technical Assistant with the Mahatma Gandhi National Rural Employment Guarantee Scheme, challenges the correctness and validity of the orders passed by the Project Director, Nalgonda District, on 23-01-2015, temporarily putting him off from contract services as such.

Sri M. Venkat Ram Reddy, learned counsel for the petitioner, would urge that the scheme, which has been framed by the State Government, provided for the disciplinary control as well. Para 6 of the Disciplinary Rules for FTEs of SRDS (2012) dealt with the terms and conditions for conducting Disciplinary cases and Appeals. Para 6.1 deals with involvement in criminal cases and convictions, which provision enabled the employee to be kept under suspension, whereas para 6.2 deals with the procedure for conducting and concluding the disciplinary cases. Thus, excepting in a case where an employee is involved in criminal cases and he is also convicted, the question of placing him under suspension would not arise. The learned counsel would further urge that even assuming that there is an inherent power in the appointing authority of an employee to also place him under suspension pending any inquiry, since the inquiry is required to be concluded under the Disciplinary Rules, in particular para 6.2 (vi), within thirty days from the date of detection of the irregularity, the period of suspension cannot prolong beyond the said thirty days' limit and after expiry of the thirty days' limit, the suspension can be treated to have lapsed. It was also further urged by the learned counsel for the petitioner that the petitioner and his likes are placed under suspension very routinely and thereafterwards their existence and their rights are completely forgotten. No subsistence allowance is tendered. Therefore, the entire exercise gets vitiated.

Per contra, Sri M.S.R. Chandra Murthy, learned Standing Counsel for the 4th respondent, would urge that the petitioner and others like him are engaged on a contractual basis. They stand on a different footing from those, who have been engaged on a regular basis and further, the irregularities committed have got to be investigated first very carefully and the necessary material has got to be gathered

before any penalty is imposed for the proven misconduct. Therefore, unless the employee is kept under suspension, his access to the records and men cannot be prevented.

I see considerable force in the submission made by the learned Standing Counsel. Suspension pending inquiry is considered to be a step-in-aid in conducting the inquiry smoothly and for valid and proper reasons and grounds. Placing an employee under suspension cannot be used as a medium for conveying the displeasure of the superior agency concerned. Suspension pending inquiry has to be resorted to very carefully and cautiously where the nature of the irregularities leveled against the individual are pretty grave, but not for routine reasons or considerations. The principle that every appointing authority has inherent power to suspend such an employee enables the employee to be prevented from gaining access to record and men, who are likely to set-forth freely and fairly the extent and nature of the irregularities indulged in by the individual. If access of the individual to the record is not prevented, the possibility of tampering with the record cannot be successfully eliminated. However, it is not merely enough for an employer to confine his employee to suspension and forget about his existence thereafter. Every endeavor must be made to ensure that the Inquiry shall be completed within the limits specified. Sometimes, depending upon the nature of the gravity of the allegations and the in-depth analysis that is required to establish such irregularities, time will be consumed. The thirty days limit, which has been prescribed and referred to supra, is a clear indicator that every sense of urgency should be shown in the matter. But the public agency, which has been entrusted with the task of managing the affairs, is not merely dealing with the conduction of inquiries against the defaulters. The main thrust is upon implementation of the Scheme, which alone will benefit the local employable individuals, but who are not gainfully employed.

I am, therefore, of the opinion that the failure to complete the inquiry within thirty days from the date of detection of the irregularities need not necessarily in every case result in a rigid approach of declaring such inquiry as not valid. On the other hand, the ends of justice would be far more effectively served by directing the respondents to complete the Inquiry within the time limit of thirty days, provided the petitioner extends the necessary cooperation for completing the same within the said stipulated period.

So far as the contention relating to payment of subsistence allowance or

wages in unjustifiable confinement of an employee to suspension is concerned, the principle of law is that, if an employer does not wish to extract any work from his employee and thus, puts him off the duty, he is liable to pay for the full wages in the absence of any provision for payment of subsistence allowance. But however, in case of contractual employees, they have would been paid wages only to perform the necessary duties and responsibilities. If they have committed any irregularities, they are liable to be put off the duty and such irregularities are bound to be investigated. Only if the irregularities are proved, such individual is liable to be penalized, but not otherwise. Therefore, the ends of justice would adequately be served if I direct the respondents to complete the Inquiry. In case the Inquiry concludes that the petitioner is no way responsible for the irregularities that are alleged to have been committed, then the respondents shall have to pay for the wages for the entire period.

With this, the writ petition stands disposed of at the admission stage after hearing Sri A.K.Jayaprakash Rao, learned counsel for Respondents 2 and 3 and Sri Raghavendra Reddy, learned counsel for Respondent 5, but however, without costs.

Consequently, the miscellaneous petitions, if any, stand disposed of.

NOOTY RAMAMOHANA RAO, J.

Note:

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01.04.2015.