

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

WRIT PETITION No.7725 OF 2016

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ORDER:

This Writ Petition, filed under Article 226 of the Constitution of India, challenges the order passed by the District Collector, Vizianagaram District – 2nd respondent herein, vide proceedings Rc.No.3236/2015/H.R.M.S., dated 28.12.2015, dismissing the appeal filed by the petitioner against the order passed by the Project Director – 4th respondent herein vide proceedings Rc.No.3236/15/E.G.S., dated 20.07.2015, terminating the petitioner from the post of Field Assistant.

2. Heard Sri P.Ramakrishna, learned counsel, appearing for the petitioner, learned Government Pleader for Panchayat Raj, appearing for the respondents 1 and 2 and Sri M.S.Ramachandra Murthy, learned standing counsel, appearing for the respondents 3 and 4.

3. According to the petitioner, he was appointed as Field Assistant, Gushini Grampanchayat, Nellimarla Mandal, Vizianagaram District, on 30.03.2006. The 4th respondent by virtue of an order vide proceedings Rc.No.3236/15/E.G.S., dated 20.07.2015 terminated the services of the petitioner on certain allegations. As against the said order of termination passed by the 4th respondent, the petitioner herein preferred an Appeal on 28.08.2015 before the 2nd respondent. The 2nd respondent - District Collector vide proceedings Rc.No.3236/2015/H.R.M.S., dated 28.12.2015 rejected the said Appeal filed by the petitioner herein.

4. Challenging the validity and legal sustainability of the orders of the Appellate Authority confirming the orders passed by the Primary Authority, the present writ petition has been filed.

5. It is contended by learned counsel for the petitioner that the impugned order passed by the Appellate Authority is highly illegal, arbitrary and unreasonable and violative of Article 14 of the Constitution of India. It is further submitted that the Appellate Authority did not take into consideration the contents of the appeal filed by the petitioner and in a mechanical manner, confirmed the orders passed by the Primary Authority. It is further submitted that had the contents of the appeal filed by the petitioner been taken into consideration, the Appellate Authority would not have confirmed the order passed by the Primary Authority.

6. On the contrary, it is submitted by learned standing counsel for the respondents that there is no illegality nor there exists any procedural infirmity in the impugned action and in the absence of the same, the present writ petition is not maintainable and the petitioner herein is not entitled for any relief from this Court under Article 226 of the Constitution of India.

7. The material available before this Court manifestly discloses that challenging the validity of the orders passed by the Primary Authority dispensing with his services, petitioner herein filed Appeal before the 2nd respondent – District Collector on 28.08.2015. A reading of the grounds of appeal placed on record by the petitioner along with the writ petition as a material paper vividly discloses that the petitioner herein urged a number of grounds in support of his stand. A perusal of the order passed by the Appellate Authority clearly shows that except concurring with the orders passed by the Primary Authority, the 2nd respondent did not undertake any exercise in the direction of considering the Appeal filed by the petitioner. This action of non consideration of the contents of the appeal by the Appellate Authority – 2nd respondent can neither be approved nor countenanced. Having

entertained the appeal, in the considered opinion of this Court, the District Collector ought to have considered the contents of the appeal and the grounds urged therein and ought to have arrived at the conclusions. The said exercise is conspicuously absent in the instant case. Therefore, the order passed by the Appellate Authority by any stretch of imagination cannot be sustained in the eye of law.

8. It is also brought to the notice of this Court that previously when there was inaction on the part of the 2nd respondent in disposing the appeal, the petitioner herein filed Writ Petition No.29496 of 2015 before this Court and this Court disposed of the said writ petition, directing the Appellate Authority to dispose of the appeal within a period of eight weeks. In the said order, this Court also directed the respondents not to fill up the vacancy till the disposal of the appeal.

9. In the facts and circumstances of the case, this Court is of the considered opinion that the Appeal filed by the petitioner herein requires reconsideration by the 2nd respondent – Appellate Authority.

10. For the aforesaid reasons, Writ Petition is partly allowed, setting aside the order passed by the 2nd respondent vide proceedings Rc.No.3236/2015/H.R.M.S., dated 28.12.2015 and the appeal filed by the petitioner is remanded to the

2nd respondent- Appellate Authority for fresh consideration, in accordance with law, after giving notice and opportunity of being heard to the petitioner herein. Till such exercise attains finality, the subject vacancy shall not be filled up.

11. Miscellaneous petitions pending consideration, if any, in the Writ Petition shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

10.03.2016

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