

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITIONS No. 23263 & 23264 OF 2008
AND
CONTEMPT CASES No. 1716 & 1718 OF 2011

COMMON ORDER :

Since an identical relief has been sought for, under the same set of facts, both these Writ Petitions are being considered for disposal by this common order.

Though, both the petitioners claim to have joined as Village Electricity Worker in erstwhile Andhra Pradesh State Electricity Board (now the DISCOM), they were appointed as Contract Junior Lineman in 2002 and their services were regularized with effect from October 2004. While so, the Divisional Manager, NPDCL, the 4th respondent herein issued the notice dated 26.02.2007 to the petitioners to show cause as to why disciplinary action should not be initiated for production of false educational qualification certificates claiming themselves to have studied up to 9th class, though they studied up to 5th and 7th class respectively. Not satisfied with the explanation submitted by the petitioners, the 4th respondent conducted inquiry and passed the order of punishment dated 28.03.2007 postponing three increments with cumulative effect. However, the appellate authority, the Superintending Engineer, the 3rd respondent herein *suo motu* reviewed the order dated 28.03.2007 and *vide* proceedings dated 11.09.2008, ordered termination of the petitioners' services.

This court, by order dated 23.10.2008, while suspending the order of termination dated 11.09.2008, directed that the

petitioners be continued in service. Despite the said orders, the petitioners were not allowed to join duty, compelling them to initiate contempt proceedings, C.C.Nos. 1716 and 1718 of 2011.

Learned counsel for the petitioners *Sri A.K. Jayaprakash Rao*, vehemently contends that the petitioners were initially appointed as Village Electricity Workers for which no educational qualifications are required. He further contends that there is no justification on the part of the appellate authority in ordering termination of the services of the petitioners, for, they had not used the said certificates either seeking appointment or for getting promotion, hence, the punishment imposed on them is disproportionate. According to the learned counsel, some other workers viz. *S.Sri Y. Madhava Reddy*, *B. Mariya Das*, *S. Venkateswarlu* and *D. Satyanarayana*, on whom the similar punishment was imposed, were not terminated from service, thus, the petitioners were discriminated. In support of his contention, the learned counsel relied upon the judgments in ***TATA Engineering & Locomotive Co. Ltd.*¹** and ***Rajendra Yadav v. State of Madhya Pradesh*²**.

On the other hand, learned Standing Counsel for the respondents *Sri R. Vinod Reddy* would urge that irrespective of the fact whether the petitioners have been benefited from the said educational qualification certificates or not, mere production of the same amounts to misconduct. He, however, admits that in the counter-affidavit filed in the Contempt Cases, it has been stated

¹ 2002 Supreme Court Cases (L&S) 909

² (2013) 3 Supreme Court Cases 73

that the services of the similarly-situated employees, who have been imposed the punishment of stoppage of increments and whose names have been made a mention by the petitioners, were not terminated.

Having considered the rival submissions, the grounds urged by the learned counsel for the petitioners that his clients are illiterate and they have rendered service to the respondent Corporation since 1987 do not weigh with this Court to come to a different conclusion. But however, the factum of discrimination pleaded by the learned counsel requires consideration, particularly in the light of the judgments rendered by the Apex Court, cited *supra*.

In *Rajender Yadav's case* (cited 2 *supra*), the law has been laid down as under:

“The doctrine of equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The disciplinary authority cannot impose punishment which is disproportionate i.e. lesser punishment for serious offences and stringent punishment for lesser offences.”

To the same effect is the judgment in ***TATA Engineering & Locomotive Co. Ltd.*** (cited 1 *supra*), wherein the Apex Court has been influenced by the following:

“Since as many as three workmen on almost identical charges were found guilty of misconduct in connection with the same incident, though in separate proceedings, and one was punished with only one month’s suspension, and the other was ultimately reinstated in view of the findings recorded by the Labour Court and affirmed by the High Court and the Supreme Court, it would be denial of justice to the appellant if he alone is singled out for punishment by way of dismissal from service.”

In view of the above-quoted judgment, the order of termination of the petitioners deserves to be set aside.

Here, yet another aspect, which requires to be noted is, the order of termination was dated 11.09.2008 and this Court directed the respondents to continue the petitioners in service *vide* order dated 27.10.2008. Immediately thereafter, the vacate stay petition was filed by the respondent DISCOM which came to be dismissed only on 10.02.2010. There may be justification on the part of the respondents in not implementing immediately the *ex parte* order dated 27.10.2008. However, there cannot be any justification for not implementing the orders of this Court after the vacate stay petition was dismissed, as, admittedly the order therein remained unchallenged and hence, it became final. In other words, the petitioners, in normal circumstances, ought to have been taken into service with effect from 28.10.2008.

Hence, considering the fact that there is no material before this Court to the effect that the petitioners had not been employed gainfully in the interregnum, i.e. from 12.10.2008 till today, in the facts of the present case, there shall be a direction to the respondents to pay 50% of the last drawn pay to the petitioners

and that they shall be taken into service forthwith. The petitioners shall also notionally be entitled to other service benefits, if any including seniority, etcetera.

Subject to the above, the Writ Petitions are disposed of. No costs.

Consequently, the miscellaneous Applications, if any shall stand disposed of.

CONTEMPT CASES No. 1716 & 1718 OF 2011

Inasmuch as the Writ Petitions itself have been disposed of, no further orders need be passed in the Contempt Cases, which have complained wilful disobedience on the part of the respondents of the interim order dated 23.10.2008 passed therein. Hence, both the Contempt Cases are closed.

02nd December 2016

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CHALLA KODANDA RAM, J

