

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition Nos.33757 and 33760 of 2016

Common Order:

These two Writ Petitions are being disposed of by this common order as the facts are identical and they arose out of identical circumstances.

The petitioners were appointed as Grade-II Telugu Pandits by the first respondent pursuant to a selection in Special DSC-2012 of Khammam District. The petitioner in W.P.No.33757 of 2016 is working in Ashram Girls High School, Boddugudem of the then Chintur Mandal, whereas the petitioner in W.P.No.33760 of 2016 is working in Ashram High School, Repaka of the then Kunavaram Mandal. The qualification required for the said post is a pass in M.A., (Telugu) and it is the case of the petitioners that they acquired the said qualification by distance education mode from Osmania University Distance Education Centre, Hyderabad. Initially, they were dismissed from service on 17.03.2016 on the ground that on verification of the certificates from the Controller of Examinations of Osmania University they were found to be not genuine. Challenging the same, the petitioners filed OA Nos.1296 of 2016 and 1293 of 2016 respectively and the orders of termination were set aside. After receipt of the orders of the Tribunal, the petitioners were kept under suspension and articles of charges were issued by framing two charges. The dismissal orders were kept in abeyance in view of the orders passed by the Tribunal dated 19.07.2016. An order was passed appointing an Enquiry Officer for conducting the enquiry and the Assistant Tribal Welfare Officer, Yellandu

was appointed as Enquiry Officer on 19.07.2016 itself. The articles of charges were received by the petitioners on 22.07.2016 and the petitioners submitted their reply on 12.08.2016. The petitioners were asked to appear before the Enquiry Officer on 16.08.2016 and on that day they attended but sought time for producing the certificates. However, without granting such time a report was submitted to the disciplinary authority, first respondent and based on the said report now a show cause notice is issued proposing to dismiss the petitioners from service. Challenging the said show cause notice dated 15.09.2016, these Writ Petitions are filed.

Learned counsel for the petitioners submits that as per the decision of this Court reported in *Government of AP v. M.A. Majeed*¹, the question of appointing an Enquiry Officer even before receiving reply to the charges does not arise and in the instant case the articles of charges were framed on 19.07.2016 and the Enquiry Officer and Presenting Officer were appointed on the same day. He further submits that the Enquiry Officer submitted his report on 22.08.2016 without granting time as requested. He relies on a decision of the Hon'ble Supreme Court reported in *Union of India v. Mohd. Ramzan Khan*² and submits that the Enquiry Officer's reports should be made available to the petitioners in order to submit their explanations and in the instant case the same was not done.

Learned Government Pleader appearing for the respondents submits that if there are any legal infirmities they will take necessary steps

¹ 2006(1) ALT 661 (FB)

² (1991) 1 SCC 588

for curing the infirmities, but this Court shall not interfere with the show cause notice issued on 15.09.2016.

But, since the show cause notice is issued proposing to dismiss the petitioners from service, this Court heard the learned counsel for the petitioners and the learned Government Pleader. This Court is not inclined to accept the submission made by the learned counsel for the petitioners that the appointment of the Enquiry Officer on 19.07.2016 is bad in law. The petitioners appeared before the Enquiry Officer pursuant to the notice issued by the Enquiry Officer and it is not open to the petitioners in the absence of any prejudice to raise the said contention. However, the only grievance that survives is with regard to not granting of time pursuant to their appearance on 16.08.2016 for production of certificates.

In the circumstances, the petitioners are given time to submit the certificates required by the Enquiry Officer on or before 31.10.2016 and on receipt of the same or on failure of the same it is open to the Enquiry Officer to prepare a report and submit to the competent authority. The report so submitted shall be made available to the petitioners along with show cause notice in order to submit their explanations on the report. The competent authority shall take action only after receipt of explanations from the petitioners. In view of the same, the report dated 22.08.2016 submitted by the Enquiry Officer and present show cause notice dated 15.09.2016 are set aside and the petitioners are given liberty to submit the certificates as aforesaid within the said period.

The Writ Petitions are, accordingly, allowed to the extent as indicated above. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in these Writ Petitions shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 30.09.2016
Nsr

