

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

WRIT PETITION No.10954 of 2016

ORDER:

This Writ Petition is filed under Article 226 of the Constitution of India for the following relief:

“to issue writ of Mandamus to declare the proceedings Rc.No.3679/15/P.E./DVC dated: 07.01.2016 and proceedings Rc.No.1678/2014/EGS/DVC dated: 28.04.2015 (wrongly shown as 28.04.2014) issued by the 3rd respondent as illegal, arbitrary, contrary to service conditions, contrary to law laid down by this Hon'ble Court, violative of principles of Natural Justice and consequently direct the respondents to reinstate the petitioner as Rozegar Sevak/Field Assistant under M.G.N.R.E.G. Scheme to Kondagandredu Gram Panchayat, Gurla Mandal, Vizianagaram District with all incidents benefits attached to the post.”

Heard Sri P.V.V. Satyanarayana, learned counsel, appearing for the petitioner, learned Government Pleader for Panchayat Raj for respondent Nos.1 and 2 and Sri M.S.R. Chandra Murthy, learned Standing Counsel, appearing for the respondent No.3.

According to the petitioner, he was appointed as Field Assistant by the 3rd respondent on 19-11-2009. The 3rd respondent while keeping the petitioner under suspension issued a show cause notice bearing No.1678/2014/E.G.S./ D.V.C., dated 28-04-2014. In response to the said show cause notice, the petitioner herein submitted an explanation. Thereafter the 3rd respondent – Project Director vide proceedings No.3679/2015/P.E./DVC, dated 07-01-2016 terminated the

services of the petitioner herein. The said order passed by the 3rd respondent, terminating the petitioner from the post of Field Assistant is under challenge in the present writ petition.

It is contended by learned counsel for the petitioner herein that the impugned order of termination is highly illegal, arbitrary, unreasonable, violative of Article 14 of the Constitution of India and in total violation of principles of natural justice. It is the further submission of learned counsel that the 3rd respondent failed to consider the explanation submitted by the petitioner herein. It is the further submission of learned counsel for the petitioner that had the explanation offered by the petitioner been considered by the 3rd respondent the impugned order would not have emanated.

Per contra, it is vehemently contended by learned counsel for the 3rd respondent that there is no illegality nor there exists any procedural infirmity in the impugned action and the present writ petition is not maintainable in view of the alternative remedy of appeal to the District Collector – 2nd respondent herein.

There is absolutely no dispute with regard to the reality that in response to the show cause notice, dated 28-04-2014 issued by the 3rd respondent the petitioner herein submitted a detailed explanation running into five (5) pages, touching all the charges.

A perusal of the questioned order makes it evident that the 3rd respondent did neither refer to the explanation nor the contents of the same in the impugned order. This action, in the considered opinion of this Court, cannot be approved. Having asked the

petitioner to submit explanation to the show cause notice and having received the explanation submitted by the petitioner herein, there is absolutely no justification on the part of the 3rd respondent in completely ignoring the said explanation. This, in the definite opinion of this Court, is a flagrant violation of principles of natural justice. Therefore, the issue in the present writ petition needs to be considered afresh by the respondents herein.

The contention of the learned counsel for the respondents, touching the maintainability of the writ petition on the ground of alternative remedy cannot be sustained in view of the violation of principles of natural justice and the said contention of the learned counsel is rejected.

For the aforesaid reasons, the writ petition is allowed, setting aside the order issued by the 3rd respondent vide proceedings No.3679/2015/P.E./DVC, dated 07-01-2016 and the matter is remanded to the 3rd respondent for fresh consideration, in accordance with law, after considering the explanation submitted by the petitioner herein and after giving notice and opportunity of being heard to the petitioner herein. The said exercise shall be completed within a period of two (2) months from the date of receipt of a copy of this order.

Miscellaneous Petitions pending, if any, shall stand closed.
There shall be no order as to costs.

A.V. SESA SAI, J

April 19, 2016

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

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