

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Contempt Case No.311 of 2013,
Review WPMP No.30489 of 2013 in WP No.9203 of 2012,
WVMP No.453 of 2016 in WP No.40956 of 2015
and
WP No.40956 of 2015

Common Order:

The petitioner was appointed as a Computer Operator in the National Child Labour Project IN West Godavari District on 18.08.2004 and worked as such up to 11.11.2007. Thereafter, he was appointed as Field Officer by the District Collector and Chair Person of the Project. He was given a certificate of appreciation for his duties by the second respondent in the years 2007 and 2009. However, the fourth respondent issued an order of termination on 05.11.2009 terminating the petitioner from his service. The said order of termination was challenged in WP No.26193 of 2009 and the same was allowed on 29.08.2011 by setting aside the order of termination. In the said order, this Court observed that the order was passed on the instructions of the District Collector by the appointing authority and no enquiry was held against the petitioner though adverse comments were made against him. However, this Court left it open to the second respondent to conduct an enquiry against the petitioner after issuing notice and complete the exercise within a period of four months and further steps would depend upon the outcome of the disciplinary proceedings. When another order of termination was passed on 07.03.2012 affirming the earlier order of termination the same was challenged in WP No.9203 of 2012. This Court, after considering the rival contentions, noticed that no charges were framed against the petitioner and the petitioner was not asked to submit any explanation. His statement was recorded by the In-charge Project Director on 27.12.2011

in the form of questions and answers and a notice was given to the petitioner and seven (7) others to attend the enquiry on 02.01.2012. On the said date, the statement of the petitioner was recorded again in the form of questions and answers. The statements of the witnesses were not recorded in his presence. Those persons were neither allowed to be cross-examined nor was the petitioner permitted to adduce his evidence in the matter. Accordingly, this Court found that the procedure adopted by the respondents was not in accordance with law and allowed the Writ Petition No.9203 of 2012 by an order dated 17.12.2012, setting aside the proceedings dated 07.03.2012 and upholding the earlier order of termination dated 05.11.2009. After allowing the Writ Petition as aforesaid, the petitioner was not issued any order of reinstatement and the petitioner filed Contempt Case No.311 of 2013. In the said Contempt Case the second respondent appeared pursuant to an order of this Court and after appearance, the order of reinstatement was passed on 03.09.2013. When the petitioner was continuing in service, a charge sheet was issued, which was signed by the second respondent as well as by the fourth respondent, specifying the charges and indicating at the end of the charge sheet as follows.

“In the above circumstances you are once again directed to offer your explanation why disciplinary action should not be taken by terminating your services besides recovery of received Honorarium, TA and DA for non-working period as per the job chart entrusted in chapter-IV guidelines for operationalisation of NCLP's and Letter No.S-27016/8/2012-CL, Government of India, Ministry of Labour and Employment, New Delhi dated 23.07.2015.”

Since the respondents 2 and 4 had already made up their mind as indicated in the said charge sheet, the petitioner challenged the same in WP No.40956 of 2015. This Court, while admitting the said Writ Petition

observed that a *prima facie* perusal of the impugned order shows that it is not only a charge sheet but disciplinary authority had already come to a conclusion to impose punishment even before the explanation is called for from the petitioner and, accordingly, granted interim stay. However, it appears that WPMP No.30489 of 2013 in WP No.9203 of 2012 was filed on 21.08.2013 seeking review of the order in WP No.9203 of 2012 dated 17.12.2012 and the said application was never pursued. The said Review Petition is listed along with WVMP No.453 of 2016 in WP No.40956 of 2015 seeking vacation of the stay orders in WPMP No.52875 of 2015 in WP No.40956 of 2015 dated 29.12.2015. The above facts are undisputed.

2. The counter affidavit filed on behalf of the respondents 1, 2, 4 and 5 states that the petitioner is not an employee but he is a Volunteer/Field Officer appointed for a specific period on temporary basis on payment of honorarium in Balakarmika Vikasa Samithi, Eluru, which was registered under the Societies Act. The Industrial Disputes Act, 1948 is applicable to the establishment and it is not open to the petitioner to approach this Court without going to the Labour Court. When the performance of the petitioner is not to the satisfaction of the respondents, it is open to the respondents to discontinue his services. Since the District Collector is the Chairman of the National Child Labour Project, he can terminate the services of the petitioner when his services were not satisfactory. Though the petitioner was given a show cause notice specifying his duties for releasing the child labour and admitting them into regular schools he has not identified a single child labour in the entire project area. He did not make any visits to the project area to ensure elimination of child labour. He did not assist the fourth respondent in submission of quarterly progress report, annual progress report, utilisation certificates and

submission of audit statements since 2012-13, 2013-14 and 2014-15. There were other allegations also against the petitioner apart from publication of adverse news in the local newspapers. In view of the poor performance, the services of all the staff including the petitioner were terminated on 05.11.2009. With regard to appreciation certificate it was stated that the appreciation certificate should have been given to one Ch. Babu Rao, Needa Volunteer Organization, Gopalapuram but the petitioner manipulated and changed the name. It is also stated that the petitioner influenced the entire enquiry machinery by not filing the affidavit prepared on 19.06.2012 by the then Project Director and there were demands of illegal gratification from the non-governmental organizations and also harassment of women teachers who were working in the special schools. However, the petitioner was reinstated in compliance with the orders of this Court. The responsibilities of the fourth respondent are additional responsibilities apart from his regular duties of the original department. There are other averments made in the detailed counter affidavit making the petitioner responsible for several commissions and omissions in the project.

3. Learned counsel for the petitioner submits that when the order of termination was set aside twice and in the impugned order the proposed action is indicated, the respondents 2 and 4 are prejudiced against the petitioner to terminate his services somehow or the other. He further submits that the second respondent violated the order of this Court by not implementing the order in WP No.9203 of 2012 dated 17.12.2012, when the order of termination was set aside but passed an order of reinstatement only on 03.09.2013 after his appearance in the contempt case which shows the arbitrary action of the second respondent.

4. Learned Government Pleader appearing for the respondents submits that there were allegations against the petitioner and in view of the order in WP No.9203 of 2012 the authorities could not take any action on the allegations and in those circumstances only WPMP No.30489 of 2013 in WP No.9203 of 2012 was filed seeking review of the order in WP No.9203 of 2012 dated 17.12.2012, in order to enable the respondents to proceed further on the allegations. He further submits that in spite of two rounds of litigation the allegations remained and no enquiry was conducted.

5. So far as the maintainability of the Writ Petition is concerned, though the learned Government Pleader relied on the decisions of the Hon'ble Supreme Court in Steel Authority of India Limited v. National Union Waterfront Workers¹ and R.K. Panda v. Steel Authority of India², the said decisions were rendered under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and the facts of those cases are not applicable to the facts of the present case. Admittedly, the petitioner was employed under National Child Labour Project under the Chairmanship of the District Collector at the district level. The fourth respondent who is a Deputy Commissioner of Labour is the Project Director. The project is being implemented by the Governmental agency with the central funds. This Court has no hesitation to hold that the grievance is amenable to the jurisdiction of this Court and more so when no such objection was taken in the earlier two rounds of litigation. Accordingly, this Court holds that the Writ Petition is maintainable.

¹ (2001) 7 SCC 1

² (1994) 5 SCC 304

6. The other point that remains for consideration is the allegations against the petitioner and the course adopted by the respondents in pursuance thereof. In the first round of litigation in WP No.26193 of 2009 this Court pointed out the infirmities and after pointing out the infirmities liberty was given to the respondents to conduct enquiry in accordance with law. When no such enquiry was conducted and the earlier order of termination dated 05.11.2009 was affirmed by a subsequent order dated 07.03.2012, the petitioner had to come to this Court once again in WP No.9203 of 2012, wherein this Court pointed out the deficiencies in the enquiry procedure and allowed the Writ Petition on 17.12.2012. Though this Court did not observe with regard to pending allegations, the respondents filed WPMP No.30489 of 2013 seeking review of the said order in order to enable them to continue with enquiry. Without any order in the said application when a charge sheet was issued, the petitioner approached once again in WP No.40956 of 2015 and in view of the predetermination expressed in the charge sheet with regard to proposed action, this Court found fault with the said charge sheet and granted stay which is asked to be vacated in WVMP No.453 of 2016. In the entire sequence of events the petitioner is taking advantage of the lapses of the respondents and the respondents are committing the lapses. The allegations against the petitioner remained as it is and no enquiry in accordance with law was conducted. The charges mentioned against the petitioner in the charge sheet are as follows.

“Charge No.1: The very object of the Society is to withdraw the working children in the age group of 9 to 14 years from Hazardous and Non-Hazardous employments; but you have failed to identify rescue, Repatriate and Rehabilitate them by admitting them into regular schools. Therefore, it is a violation in observing protocol on prevention, Rescue, Repatriation and Rehabilitation aspect of the Society.

Charge No.2: You have failed to produce records as reminded by Government of India for submission of quarterly

progress reports, annual progress reports, statement of accounts, utilisation certificates during the period, resulting no grant-in-aid was released for which you are responsible.

Charge No.3: You have failed to hand over the registers, records, court files, cheque books and other relevant records as directed in the show cause notice dated 21.08.2015.”

It is unfortunate that the respondents failed to understand the purport of the orders of this Court passed on the earlier two occasions which resulted in allowing the Writ Petitions. What made the second respondent to comply with the order of this Court in WP No.9203 of 2012 and issue an order of reinstatement on 03.09.2013 after appearance in the Contempt Case but not complying with the same earlier clearly shows the arbitrary action of the second respondent. In view of the same and in order to inspire confidence on the petitioner, this Court thinks it fit to entrust the enquiry to the Assistant Commissioner of Labour (Central), Vijayawada. Now the respondents want to go ahead with the enquiry and it is in the public interest that the petitioner be subjected to enquiry in respect of the allegations against him. In view of the same, this Court disposes of WPMP No.30489 of 2013 in WP No.9203 of 2012, WVMP No.453 of 2016 in WP No.40956 of 2015, Contempt Case No.311 of 2013 and WP No.40956 of 2015 with the following order.

7. The charges mentioned in the charge sheet dated 28.11.2015 shall remain and an enquiry shall be conducted in respect of those charges against the petitioner by an independent authority other than respondents 2 and 4 who appears to have been prejudiced and indicated their mind for termination of the services of the petitioner. In the circumstances, the petitioner is at liberty to submit his explanation to the said charge sheet dated 28.11.2015 to the Assistant Commissioner of Labour (Central), Vijayawada, who shall be the Enquiry Officer in respect of the charges levelled against the petitioner in the charge sheet dated 28.11.2015. The

Assistant Commissioner of Labour (Central), Vijayawada, shall conduct an enquiry in accordance with law by giving due opportunity to the respondents 2 and 4 on the one hand and to the petitioner on the other hand and pass appropriate orders within a period of three (3) months from the date of receipt of a copy of this order. It is needless to observe that the petitioner shall cooperate for conclusion of the enquiry. The Enquiry Officer appointed as aforesaid shall submit his report to the second respondent, who shall pass appropriate orders on the basis of the enquiry report. In view of the reinstatement of the petitioner by virtue of the order dated 03.09.2013 the petitioner shall continue in service till an order is passed after submission of the enquiry report by the second respondent and his future position would be subject to further orders to be passed by the second respondent. It is needless to observe that in view of the order of reinstatement dated 03.09.2013 the petitioner is entitled for the usual pay and allowances as are admissible to him as on the date of order of termination dated 07.03.2012 till the order is passed by the second respondent.

8. With the above order, Review WPMP No.30489 of 2013 in WP No.9203 of 2012, WVMP No.453 of 2016 in WP No.40956 of 2015 and WP No.40956 of 2015 are disposed of. However, in view of the order of reinstatement and in view of the orders passed as above, the Contempt Case No.311 of 2013 is closed. There shall be no order as to costs. The miscellaneous petitions pending, if any, shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 01.09.2016

Note:

Communicate a copy of the order to the
Asst. Commissioner of Labour (Central), Vijayawada
(B/O)
Nsr