

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

WRIT PETITION No.10644 OF 2010

-

ORDER:

In the present writ petition the challenge is to the order of the Government issued vide G.O.Rt.No.89 Higher Education (EC.2) Department dated 16.02.2010.

Heard Sri Ganta Rama Rao, learned Senior Counsel representing the learned counsel for the petitioner on record.

The facts in nutshell leading to filing of the present writ petition are as infra :

The petitioner herein was initially appointed as a Lab Technician in the 3rd respondent Engineering College on 10.11.1986 in E.C.E. Department and subsequently he got promotion as Senior Mechanic on 01.12.1990. While the petitioner was working in the said capacity, the 3rd respondent initiated disciplinary proceedings, against the petitioner and by virtue of an order vide reference No.BEC/PF/1832 dated 22.08.2005 inflicted punishment of reversion from the post of Senior Mechanic to the Lab Technician. Aggrieved by the said order of punishment, the petitioner herein filed appeal before the 2nd respondent on 05.09.2005. The 2nd respondent, by virtue of order vide proceedings No.E4/34755/02-vol.II dated 23.04.2007, did set aside the order of reversion passed by the 3rd respondent, while giving liberty to the Management of the 3rd respondent institution to proceed with the disciplinary proceedings from the stage where they concluded the enquiry and received explanation from the incumbent. Felt aggrieved by the said order passed by the 2nd respondent, the 3rd respondent college carried the matter in further appeal before the 1st respondent-State on 15.05.2007.

The 1st respondent-State vide G.O.Rt.No.89 dated 16.02.2010

allowed the said appeal filed by the 3rd respondent by setting aside the order passed by the 2nd respondent-Director of Technical Education.

Calling in question the validity and legal sustainability of the said order passed by the State Government vide G.O.Rt.No.89 dated 16.02.2010, the present writ petition came to be filed.

This Court on 30.04.2010 issued Rule nisi.

It is contended by learned senior counsel, appearing for the petitioner that the impugned questioned order passed by the State Government is highly illegal, arbitrary, unreasonable and violative of Article 14 of the Constitution of India. It is further contended by learned Senior Counsel that the letter dated 09.08.2005 of the Director of Technical Education states that the 1st respondent-State misconstrued the purport of the letter dated 09.08.2005 addressed by the 2nd respondent to the 3rd respondent-Management. It is further submitted that the said letter cannot, by any stretch of the imagination, be construed as an order according approval. It is also the submission of learned Senior Counsel that since the 3rd respondent did not obtain prior permission of the competent authority before passing the impugned order, the order of the State Government cannot be sustained in the eye of law.

On the contrary, it is vehemently contended by learned Government Pleader that there is no illegality nor there exists any procedural and infirmity in the impugned action, as such 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.

In the above background, now the issue that emerges for consideration of this Court is-“whether the questioned order passed by the 1st respondent vide G.O.Rt.No.89 dated 16.02.2010 is sustainable and tenable and whether the same is in accordance with the provisions of the Andhra Pradesh Education Act, 1982 (for brevity ‘the

Act’).”

In order to adjudicate the issue in the present writ petition, it would be relevant to refer to the provisions of Section 79 of the Act, which reads as under :

79. Dismissal, removal or reduction in rank or suspension, etc., of employees of private institutions : (1) *No teacher or member of the non-teaching staff employed in any private institution (hereinafter in this Chapter referred to as ‘the employee’) shall be dismissed, removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges :*

[Provided that no order of dismissal, removal or reduction in rank shall be passed under this sub-section against an employee other than an employee of a minority educational institution without the prior approval of such authority or Officer as may be prescribed for different classes of private institutions ;

Provided further that the management may prefer an appeal against any order of the Officer or authority refusing approval under this sub-section to such authority or officer and within such period as may be prescribed].

(2) *An inquiry under sub-section (1) shall be completed within a period of two months from the date of communication of charges against the employee.*

(3)(a) *No employee shall be placed under suspension except when an inquiry into the gross misconduct of such employee is contemplated.*

(b) *No such suspension shall remain in force for more than a period of two months from the date of suspension and if such inquiry is not started and completed within that period, such employee shall, without prejudice to the inquiry, be deemed to have been restored as employee :*

Provided that the competent authority may, for reasons to be recorded in writing, extend the said period of two months for a further period not exceeding two months, if in the opinion of such competent authority the inquiry could not be completed within the said period of two months for reasons directly attributable to such employee.

(4) *Every such employee as is placed under suspension under sub-section (3) shall be paid subsistence allowance at such rates as may be prescribed during the period of his suspension.*

(5) *Before imposing any penalty, other than the penalties specified in sub-section (1), an employee shall be informed in writing of the allegations on which action is proposed to be taken and be given an opportunity of making representation, but it shall not be necessary to hold an oral enquiry into such allegations.*

A reading of the above provisions of law makes it abundantly clear that before resorting to action of dismissal, removal or reduction in rank of the incumbent, it is the duty on the part of the concerned authority to obtain prior approval of the prescribed authority. In the

instant case, the 2nd respondent by taking into consideration the above said provisions of law, had set aside the order of reversion passed by the 3rd respondent by way of an order dated 23.04.2007 while keeping it open for the Management to proceed with the disciplinary proceedings as per law.

The validity of the said order was questioned by the 3rd respondent-College before the State Government by way of further appeal. A perusal of the order passed by the State Government on the said appeal, vide G.O.Rt.No.89 dated 16.02.2010 clearly demonstrates that the State Government took into consideration the letter addressed by the Director of Technical Education/2nd respondent to the management. The said letter dated 09.08.2005 is placed on record along with the writ petition as a material paper and the said letter reads as under :

“I invite your attention to the references 1st and 2nd cited, where in you have requested this office to accord necessary permission for proposed punishment of reversion of Sri N.Subba Rao who have committed certain acts of misconduct, under Section 79(1) of Andhra Pradesh Education Act, 1982.

In this connection, I am to inform that as per Section 79 of Andhra Pradesh Education Act “No teacher or member of the non-teaching staff employed in any private institution shall be dismissed, removed or reduced in rank except after an enquiry has been conducted duly framing the charges and the employee in question been given a reasonable opportunity of being heard in respect of those charges”.

While this is so, Supreme Court of India in its Judgement, in T.M.A PAI VS State of Karnataka dated:30.10.2002 held at para 64 that it will not be necessary for the institution to get prior permission or ex-post-facto approval of Government authority while taking disciplinary action against a teacher or any other employee.

In the light of above judgement proposals have been submitted to Government for amendment to Andhra Pradesh Education Act vide reference 3rd cited, orders of Government are still awaited.

However, as the Andhra Pradesh Education Act is yet to be amended, I request you to take an appropriate action on the issue, as deemed fit in consultation with your legal counsel, taking into consideration the above provisions of Andhra Pradesh Education Act and Judgement of Supreme Court.”

While referring to the above said letter the State Government in

the impugned order obviously construed the same as an order according approval by the competent authority under the provisions of Section 79 of the Act. A cursory reading of the said letter shows that the 2nd respondent-Director of Technical Education requested the 3rd respondent to take appropriate action in consultation with their counsel and also taking into consideration the provisions of the Act. Even according to learned Government Pleader, there is no amendment to Section 79 of the Act so far.

In the considered opinion of this Court the said letter dated 09.08.2005 cannot be construed as an order, according approval for issuing the order of punishment. In fact the 2nd respondent in his order dated 23.04.2007 categorically dealt with the said issue and eventually kept it open to the 3rd respondent to proceed with the proceedings as per law, while setting aside the order of reversion. The said order, in the considered opinion of this Court and having regard to the provisions of Section 79 of the Act, cannot be faulted.

For the aforesaid reasons, the writ petition is allowed, setting aside the order in G.O.Rt.No.89 dated 16.02.2010. Consequently, the 3rd respondent is also directed to take action as per the orders of the 2nd respondent.

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

15.06.2016
Rds

A.V. SESA SAI, J