

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

WRIT PETITION Nos. 23554 & 28959 OF 2017

DATED 12TH SEPTEMBER, 2017

WRIT PETITION No. 23554 OF 2017

Between:

D.Anil Kumar ... Petitioner

AND

The District Collector,
Nizamabad, Nizamabad District, and others ... Respondents

Counsel for the petitioner : Sri Y.V.Satyanarayana

Counsel for the respondents : G.P. for Services (T.S.)

WRIT PETITION No. 28959 OF 2017

Between:

The District Collector,
Nizamabad, Nizamabad District, and others ... Petitioners

AND

D.Anil Kumar ... Respondent

Counsel for the petitioners : G.P. for Services (T.S.)

Counsel for the respondent : Sri Y.V.Satyanarayana

THE COURT MADE THE FOLLOWING

COMMON ORDER: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

These two Writ Petitions arise out of common order passed by the Andhra Pradesh Administrative Tribunal at Hyderabad (for short, 'the Tribunal'). Therefore, they are heard and being disposed of together by common order.

2. For convenience, the parties are referred to as they are arrayed in W.P.No. 23554 of 2017. The petitioner was appointed as Typist – cum – Computer Operator on outsourcing basis in the office of the Tahsildar, Bheemgal. Subsequently, he was shifted to the office of the Tahsildar, Bodhan. Respondent No. 2 issued proceedings No. B3/4245/2007 dated 13-05-2013 discontinuing the petitioner purportedly for not attending the duties and not having computer knowledge. Assailing this order, the petitioner filed O.A.No. 4263 of 2013. In pursuance of an *interim* order granted in the said O.A. directing the respondents to examine the case of the petitioner and pass orders as per rules, respondent No. 1 issued proceedings No. B3/2426/2013 dated 09-01-2014, wherein he has observed that the petitioner has not reported and not worked in the office of the Tahsildar, Bheemgal, and therefore he was deputed to work at Bodhan; that the Tahsildar, Bodhan, has complained that the petitioner was most irregular in attending the duties as he was habituated to attend the office after 11 a.m. and leave the office before 5 p.m. without permission and that he is also not having proper computer knowledge and his work is not up to the mark. It is further stated that though the petitioner was shifted to the office of Tahsildar, Kammarpally, on humanitarian grounds and taking a lenient view, he continued to behave in the same manner. On the said reasons, respondent No. 1 has opined that the petitioner does not deserve to be continued. Assailing this order, the petitioner filed O.A.No. 2996 of 2014. The Tribunal has disposed of both the said O.As. by common order holding that no

notice was given to the petitioner calling for his explanation as to why his services should not be terminated for unsatisfactory performance and dereliction of duties and that the action of the respondents in straightaway discontinuing the petitioner is in violation of the principles of natural justice. Accordingly, the Tribunal has set aside both the aforementioned proceedings with the direction to the respondents to reinstate the petitioner as Typist – cum – Computer Operator in Nizamabad District, if any of the Computer Operators appointed along with him are continuing, within a period of eight weeks from the date of receipt of a copy of the order.

3. At the hearing, learned Government Pleader for Services (T.S.) has submitted that since the petitioner was engaged on outsourcing basis and in the absence of employer-employee relationship, there was no obligation on the part of the respondents to issue notice before termination. We are unable to accept this submission for the reason that if there was no employer-employee relationship, there was no need for respondent No. 1 to pass the aforementioned order of termination and addressing the same to the petitioner directly. If the respondents were not satisfied with the performance of the petitioner, they could have informed the same to the purported outsourcing agency with a request to it to discontinue the services of the petitioner with them. In the instant case, respondent No. 1 has passed a detailed speaking order casting stigma on the petitioner regarding his work and conduct. The law is well settled that even in case of a temporary employee, if the order of termination is stigmatic, such an order cannot be passed without giving an opportunity of being heard to such temporary employee (see ***Shamsher Singh and another Vs. State of Punjab***¹; and ***S.Zabeda Parveen Vs. A.P. Women's Cooperative Finance Corporation***,

¹ (1974) 2 SCC 831

Hyderabad, and others²). Therefore, the Tribunal in our opinion has correctly held that termination of the petitioner's services even as an outsourcing employee is in violation of principles of natural justice.

4. In these facts and circumstances of the case, we do not find any reason to interfere with the order of the Tribunal. W.P.No. 28959 of 2017 is dismissed. W.P.No. 23554 of 2017 is allowed with the direction to the respondents to forthwith take the petitioner into service as Typist – cum – Computer Operator in Nizamabad District. However, this order will not preclude the respondents from issuing show-cause notice to the petitioner if the latter's performance is not satisfactory and pass appropriate speaking orders after considering the explanation if any submitted by the petitioner.

5. As a sequel to disposal of W.P.No. 23554 of 2017, W.P.M.P.No. 29122 of 2017 shall stand closed as infructuous and as a sequel to dismissal of W.P.No. 28959 of 2017, W.P.M.P.No. 36029 of 2017 shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J.

M.S.K.JAISWAL, J.

Date: 12-09-2017.

JSK

² 2016 (1) ALT 469