

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.19606 of 2006

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed seeking verbatim the following relief:

‘to issue any appropriate writ, direction or order more particularly in the nature of Writ of Mandamus, modifying the award dated 16.11.2005 published on notice board on 8-2-2006 passed in I.D.No.6 of 2003 dated 10-8-2005 on the file of Honourable Additional Industrial-cum-Additional Labour Court, Hyderabad, by which the 2nd respondent declared the action of the 1st respondent in terminating the petitioner from service by the order dated 12-1-1989 was illegal, the petitioner is entitled to a lump sum compensation of Rs.30,000/- in lieu of reinstatement into service and to other service benefits from the 1st respondent by issuing directions to the 1st respondent to reinstate the petitioner, into service with back wages, continuity of service and all attendant benefits as the petitioner has not received the compensation of Rs.30,000/- in lieu of reinstatement and pass such other order..’

2. I have heard the submissions of *Sri Mohd. Ghousuddin*, learned counsel appearing for the writ petitioner. Though the 1st respondent entered appearance, there is no representation. I have perused the material record.

3. The facts, as per the pleadings and the submissions made on behalf of the petitioner, in brief, are as follows:

The petitioner was appointed as a Librarian in St.John's Church High School, Secunderabad, *vide* order, dated 10.06.1987, bearing reference no.SJCHS/ 37/ 87/ 2 on the basis of his certificate in Library Sciences issued by the Government of Andhra Pradesh, Department of Public Libraries. He worked without any room for complaint from any quarter. He was appointed on a consolidated salary of Rs.750/- per month. Later his salary was increased to Rs.900/- with effect from 01.08.1988. By letter, dated 12.01.1989, with bald allegations that are based on a figment of imagination, the 1st respondent dispensed with the services of the petitioner with immediate effect, *inter alia*,

stating that the petitioner shall be no longer the employee of the school and that he is directed to handover the charge of his post to the Office Superintendent. Before issuing the said letter/order neither a show cause notice nor a charge sheet was issued and the explanation of the petitioner was also not called for. No enquiry was conducted. The said order/letter was issued misusing the power and without providing any opportunity to the petitioner to prove that he is not at fault and is not guilty of any misconduct. The petitioner made representations to the 1st respondent, Commissioner and Director of School Education, District Educational Officer and the Chief Minister of the State of Andhra Pradesh. However, there was no response to the said representations of the petitioner. Hence, the petitioner approached the Labour Court and raised an industrial dispute in ID.no.6 of 2003 and filed a claim petition. The Secretary and Correspondent of the school, that is, the 1st respondent herein, filed a counter affidavit and resisted the claim petition of the petitioner. After the petitioner was examined in chief, he was not cross examined and no evidence was also adduced on the side of the 1st respondent school. After hearing the arguments on the side of the petitioner, the impugned Award was passed, *inter alia*, holding that the order, dated 12.01.1989, terminating the services of the petitioner was illegal; however, in lieu of reinstatement and service benefits, a compensation of Rs.30,000/- recoverable from the 1st respondent was awarded to the petitioner. When the learned Chairman of the Industrial Tribunal held that the order of termination of service of the petitioner from the school is illegal, the Tribunal ought to have ordered reinstatement with back wages and attendant benefits instead of awarding a meager compensation of Rs.30,000/- in lieu of reinstatement and attendant benefits. Hence, the writ petition is filed.

4. Learned counsel for the petitioner submitted as follows: - 'The facts borne out by record amply establish that the termination is illegal. The learned Chairman of the Tribunal also recorded a finding to that effect in the

Award, which is impugned in the writ petition. When the termination is illegal, as per settled legal position, the petitioner, whose services were terminated without following the procedure established by law and the principles of natural justice, is entitled to reinstatement with full back wages and attendant benefits. In the facts and circumstances of the case, the Tribunal committed a grave error in not granting the relief of reinstatement with back wages and attendant benefits and in granting a meager compensation of Rs.30,000/- . The Tribunal was also in error in coming to the conclusion that the delay of 14 years in approaching the Tribunal disentitles the petitioner to the said relief of reinstatement with back wages and attendant benefits. The Tribunal ought to have seen that the illegal termination from service is a material fact but, not the length of service of 1 ½ years and the consolidated pay of Rs.900/- per month as well. The length of service and the salary are irrelevant; the said aspects should not have been considered for denying the relief of reinstatement with back wages and attendant benefits to the petitioner.

5. At the hearing, learned counsel for the petitioner fairly stated that the petitioner by now has attained the age of superannuation as he was 50 years by 19.09.2006, the date of filing of the writ petition. He however brought to the notice of the Court, the defence raised by the 1st respondent before the Tribunal-cum-Labour Court wherein it was stated that the services of the petitioner were poor and that he did not heed the warnings and that he is a source of indiscipline and that the work suffered because of him and his conduct, and that he did not improve performance despite opportunities and that he is of complaining nature. He further contended that though there are no reasons mentioned in the termination proceeding, the said allegations made against the petitioner in the counter certainly and expressly cast a stigma and hence, the order of termination is not a simple order of termination or discharge and, therefore, it is idle for the 1st respondent to contend that it is a simple order of termination or discharge.

6. As already noted, though the 1st respondent entered appearance through a counsel, no representation was made on the date of hearing and no submissions were advanced on the side of the 1st respondent.

7. Admittedly, the petitioner was appointed as a Librarian in St. John's Church High School being represented by its Secretary and the Correspondent, 1st respondent herein, by virtue of orders, dated 10.06.1987, on a consolidated pay of Rs.750/- per month. Later his salary was increased from Rs.750/- to Rs.900/- with effect from 01.08.1988. His services were terminated by letter, dated 12.01.1989, with immediate effect and he was directed to handover his charge to the Superintendent of the Office and accordingly he was relieved from service on 12.01.1989. As noted by the Tribunal, he worked hardly for 1 ½ years. Even according to the petitioner's case, he is entitled to consolidated pay and no other benefits. Be that as it may. The services of the petitioner were admittedly terminated on 12.01.1989. He kept quiet for more than 14 years without approaching the Tribunal-cum-Labour Court. Considering the unexplained long delay and the laches on the part of the petitioner in approaching the Tribunal, the Tribunal having found that the termination is illegal awarded a lump sum compensation of Rs.30,000/- instead of granting the relief of reinstatement. Now that the petitioner has attained the age of superannuation, he is admittedly not entitled to reinstatement. Considering the delay in approaching the Tribunal-cum-Labour Court and the absence of any explanation much less valid explanation for the long delay, this Court is of the considered view that the Tribunal is justified in granting compensation instead of granting the relief of reinstatement with back wages and attendant benefits.

8. Now the short question that remains to be considered is as to whether or not the compensation awarded is adequate in the facts and circumstances of the case. The petitioner also did not plead that during the period from the

date of termination of service till filing of the writ petition he was not gainfully employed. However, considering the following facts viz., that the petitioner had put in only 1 ½ years of service till his termination; that he was working on a consolidated pay of Rs.900/-; that though he has got a left over service of more than two decades as on the date of termination, he approached for relief after 14 years of termination from service; and, that he did not plead and establish that he was not elsewhere gainfully employed during the interregnum period, this Court is of the considered view that the compensation awarded can be reasonably enhanced to meet the ends of justice.

9. Accordingly, the Writ Petition is disposed of enhancing the compensation from Rs.30,000/- to Rs.50,000/-. The 1st respondent shall pay the said amount to the petitioner within two months from the date of receipt of a copy of this order. On failure to so pay, the said amount shall carry interest at 12% per annum till the date of payment. It is made clear that the amount, if any, already paid shall be given credit.

Pending miscellaneous petitions, if any, shall stand closed.

There shall be no order as to costs.

11th April, 2017
Vjl

M. SEETHARAMA MURTI, J