

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.5599 of 2007

ORDER :

The petitioner by name, V.Chandrakala of Kunaram Village, Kalva Sirampur Mandal, Karimnagar District, maintained the writ petition, with a prayer to issue order or direction, especially one in the nature of Writ of Mandamus, declaring the impugned office order No.A/ 44/ 07 dated 21.02.2007 issued by the 3rd respondent, among three respondents i.e., 1. The District Collector, Karimnagar, 2. The Project Director, Peddapalli 3. Child Development Project Officer, Peddapalli, as illegal, arbitrary and to set aside the same with a consequential direction to respondents 1 to 3 to continue the petitioner in service by duly granting all other consequential benefits and to pass such other order or orders that are deem fit.

2. The averments in the affidavit filed in support of the writ petition are as follows:

The petitioner was appointed as Anganwadi worker on 08.02.1993 and has been continuing to work in the same capacity without any adverse remarks. On 04.01.2007, as one of her relatives expired, she applied for leave and asked

her colleague to take care of the centre and went to attend the funerals and in the absence of her, her colleague did not prepare food. However, on the same day, two of the students fell sick and on came to know about the news, she immediately went to the hospital and attended them. Basing on the above incident, a memo dated 06.01.2007 was issued to her alleging that it is result of her negligence, the students consumed nutrient food and fell sick. She submitted her explanation on factual aspects on the same day. However, ignoring the same, another memo dated 23.01.2007 was issued contending that the two students fell sick having eaten the iron tablets lying in the Anganwadi centre and to submit explanation, for which she submitted explanation on 24.01.2007, categorically pleading that none of the students consumed iron tables and the tablets are intact and also pleaded that she kept the iron tablets in the stock room which was locked, therefore, there is no possibility of students consuming iron tablets. Thereafter neither any enquiry conducted nor opportunity given to her to rebut any further allegations. While so, without even considering her explanations, she received another memo dated 25.01.2007 stating that due to her negligence, children fell ill by consuming iron tablets and submitted to higher authorities to remove her from services. On receipt

of the same, she also submitted a detailed representation dated 28.01.2007 to the 2nd respondent duly enclosing relevant documents. But without considering any of the submissions of her, a show cause notice dated 31.01.2007 again issued seeking to remove her from service and she submitted her explanation on 05.02.2007. Unfortunately, without considering any of these, they issued the impugned proceedings dated 21.02.2007 removing her from service on the ground of she did not keep the records properly and did not render proper service to beneficiaries. It is her submission pursuant to it that she could not have been removed from service on untenable grounds, that too, without conducting any regular enquiry and without following the principles of natural justice. The alleged misconduct of providing nutrient food allegedly resulted sickness of two students is not correct as replied by her and the explanation remained un-rebutted and issuing the impugned order dismissing her from service is unsustainable. It is her submission that even they issued charge memo dated 06.01.2007 and received explanation, they did not modify the charge memo besides which they could not and the removal from service by imposing a major penalty on altogether a new ground is also unsustainable and wholly unjust and they are bound to conduct regular departmental

enquiry for coming to any definite conclusion that is lacking. Thereby, the termination of service or removal from service is unsustainable. It is also the submission that it is a pre-determined proceeding and the conclusions are baseless and she is not guilty of any charge and there is no opportunity by conducting regular enquiry. Once employee sought to be made as guilty of charge in all fairness, once explanation given, an enquiry is supposed to be conducted, without which the termination is unjust. It is also her submission that she has been working at the best of her ability sincerely and dedicatedly without any remark all through and it is her only source of livelihood from the job and removing is unjust and unsustainable causing acute hardship to her.

3. The counter-affidavit is filed by the learned Government Pleader representing the respondents denying the said averments of no enquiry conducted and alleging as if an enquiry conducted, no doubt with no material produced of any such enquiry conducted, much less, as a regular departmental enquiry, pursuant to the show cause notice including last one dated 25.01.2007 or to the show cause notice dated 31.01.2007. It is the allegation that as per the circular memo No.11645/ K2/ 96 dated 24.08.1997

issued by the Directorate of Women Development and Child Welfare, Andhra Pradesh, Hyderabad, Instances of Indiscipline mentioned in clause (A) included in case of any food poisoning or life risk events to children, pregnant/lactating mothers by taking unhygienic food, water, in particular of AWCs, the AWW is liable for termination. The procedure for initiating Disciplinary Action is laid down in clause (B) speaks calling for explanations whenever any irregularities are committed by AWWs, issue of two memos to mend ways, if explanation and corrective action is not satisfactory issue show cause notice. The whole procedure is to be completed within a month, termination of service duly approved by the District Selection Committee.

4. It is the submission of the learned Government Pleader there from that the services are totally unsatisfactory and she did not even care to sickness of the children, who consumed poison substance practically with life risk and even otherwise once there is non-satisfaction of the service, by calling for explanation and if the corrective action is not satisfactory by issuing show cause notice, the services can be terminated subject to approval of the District Selection Committee. It is the submission that leave apart departmental enquiry is conducted, as mentioned in the

counter, in which no material produced otherwise no regular departmental enquiry is even contemplated for removal for dissatisfaction of service from any explanation with memos and corrective action for the explanation not satisfactory.

5. Heard both sides pursuant to the rival submissions at length. Perused the material on record.

6. The only decision placed reliance by both sides in this regard is the Constitution Bench (Five Judge Bench) expression of the Apex Court in *Champaklal Chimanlal Shah v. The Union of India*¹.

7. Before coming to the expression, coming to the case on hand from the factual matrix, it is not in dispute practically of there is a selection procedure for appointing the Anganwadi workers to work to achieve the avowed objects of the scheme. No doubt, on termination of the scheme, the services can be terminated because it is not mentioned as a regular appointment, though not mere temporary appointment for not a time span but for at best otherwise to say governed by the contractual service, though for period indefinite. The Circular instructions referred supra thereby no way say application of the civil service conduct rules or any contemplation of regular

¹ AIR 1964 SC 1854

departmental enquiry and a provision for termination of service if performance is not satisfactory and corrective action not taken, despite two memos by calling for explanation, whenever any irregularity pointed out and if not satisfied with service on approval of the District Selection Committee to terminate the service. Whether same is arbitrary and unjust and whether it meets the requirements of principles of natural justice one of the core questions to determine.

8. The clause (B) of the Circular dated 24.08.1997 referred supra clearly speaks calling for explanations and issuing of two memos and where not satisfactory with the explanation for corrective action, the termination can be made or to give effect to. Thereby it meets the requirements of principles of natural justice from the procedure contemplated above under clause (B) of the circular memo. The other thing is whether termination can be justified by virtue of the circular memo without any regular or departmental enquiry? The Apex Court in Champaklal Chimanlal Shah (supra) particularly at para-11 referring to the earlier expression in Parshotam Lal Dhingra

v. Union of India² and Article 311 of the Constitution of India observed as follows:

“11. Before however we consider the facts of this case, we should like to make certain general observations in connection with disciplinary proceedings taken against public servants. It is well known that government does not terminate the services of a public servant, be he even a temporary servant, without reason; nor is it usual for government to reduce a public servant in rank without reason even though he may be holding the higher rank only temporarily. One reason for terminating the services of a temporary servant may be that the post that he is holding comes to an end. In that case there is nothing further to be said and his services terminate when the post comes to an end. Similarly a government servant temporarily officiating in a higher rank may have to be reverted to his substantive post where the incumbent of the higher post comes back to duty or where the higher post created for a temporary period comes to an end. But besides the above, the government may find it necessary to terminate the services of a temporary servant if it is not satisfied with his conduct or his suitability for the job and/or his work. The same may apply to the reversion of a public servant from a higher post to a lower post where the post is held as a temporary measure. This dissatisfaction with the work and/or conduct of a temporary servant (1) [1958] S.C.R. 828 may arise on complaint against him. In such cases two courses are open to government. It may decide to dispense with the services of the servant or revert him to his substantive post without any action being taken to punish him for his bad work and/or conduct. Or the Government may decide to punish such a servant for his bad work or misconduct, in which case even though the servant may be temporary he will have the protection of [Art. 311\(2\)](#). But even where it is intended to take action by way of punishment what usually happens is that something in the nature of what may be called a preliminary enquiry is first held in connection with the alleged misconduct or unsatisfactory work. In this preliminary enquiry the explanation of the government servant may be taken and documentary and even oral evidence may be considered. It is usual when such a preliminary enquiry makes out a prima facie case against the servant concerned that charges are then framed against him and he is asked to show cause why disciplinary action be not taken against him. An enquiry officer (who may be himself in the case where the appointing authority is other than the Government) is appointed who holds enquiry into the charges communicated to the servant concerned after taking his explanation and this inquiry is held in accordance with the principles of natural justice. This is what is known as a formal departmental enquiry into the conduct of a public servant. In this enquiry evidence both documentary and oral may be led against the public servant concerned and he has a right to cross-

² AIR 1958 SC 36

examine the witnesses tendered against him. He has also the right to give documentary and oral evidence in his defence, if he thinks necessary to do so. After the enquiry is over, the enquiry officer makes a report to the Government or the authority having power to take action against the servant concerned. The government or the authority makes up its mind on the enquiry report as to whether the charges have been proved or not and if it holds that some or all the charges have been proved, it determines tentatively the punishment to be inflicted on the public servant concerned. It then communicates a copy of the enquiry officer's report and its own conclusion thereon and asks him to show cause why the tentative punishment decided upon be not inflicted upon him. This procedure is required by [Art. 311\(2\)](#) of the Constitution in the case of the three major punishments, i.e., dismissal, or removal or reduction in rank. The servant concerned has then an opportunity of showing cause by making a representation that the conclusions arrived at the departmental enquiry are incorrect and in any case the punishment proposed to be inflicted is too harsh.

12. Generally therefore a preliminary enquiry is usually held to determine whether a prima facie case for a formal departmental enquiry is made out, and it is very necessary that the two should not be confused. Even where government does not intend to take action by way of punishment against a temporary servant on a report of bad work or misconduct a preliminary enquiry is usually held to satisfy government that there is reason to dispense with the services of a temporary employee or to revert him to his substantive post, for as we have said already government does not usually take action of this kind without any reason. Therefore when a preliminary enquiry of this nature is held in the case of temporary employee or a government servant holding a higher rank temporarily it must not be confused with the regular departmental enquiry (which usually follows such a preliminary enquiry) when the government decides to frame charges and get a departmental enquiry made in order that one of the three major punishments already indicated may be inflicted on the government servant. Therefore, so far as the preliminary enquiry is concerned there is no question of its being governed by [Art. 311\(2\)](#) for that enquiry is really for the satisfaction of government to decide whether punitive action should be taken or action should be taken under the contract or the rules in the case of a temporary government servant or a servant holding higher rank temporary to which he has no right. In short a preliminary enquiry is for the purpose of collection of facts in regard to the conduct and work of a government servant in which he may or may not be associated so that the authority concerned may decide whether or not to subject the servant concerned to the enquiry necessary under [Art. 311](#) for inflicting one of the three major punishments mentioned therein. Such a preliminary enquiry may even be held ex parte, for it is merely for the satisfaction of government, though usually for the sake of fairness, explanation is taken from the servant concerned even at such an enquiry. But at that stage he has no right to be heard for the enquiry is merely for the satisfaction of the Government, and

it is only when the government decides to hold a regular departmental enquiry for the purposes of inflicting one of the three major punishments that the government servant gets the protection of [Art. 311](#) and all the rights that protection implies as already indicated above. There must therefore be no confusion between the two enquiries and it is only when the government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the three major punishments indicated in [Art. 311](#) that the government servant is entitled to the protection of that Article. That is why this Court emphasised in ParshotamLal Dhingra's case(1) and in [Shyam Lal v. The State of Uttar Pradesh](#)(2) that the motive or the inducing factor which influences the government to take action under the terms of the contract of employment or the specific service rule is irrelevant.”

9. In para-11 referred supra, it is observed that dissatisfaction with the work and/ or conduct of a temporary servant may arise on complaint against him. In such cases, two courses are open to government. One may decide to dispense with the services of the servant or revert him to his substantive post without any action being taken to punish him for his bad work and/ or conduct. Or the Government may decide to punish such a servant for his bad work or misconduct, in which case even though the servant may be temporary he will have the protection of Article 311(2). But even where it is intended to take action by way of punishment what usually happens is that something in the nature of what may be called a preliminary enquiry is first held in connection with the alleged misconduct or unsatisfactory work. Thus, the expression is very clear reiterating the earlier expression that in case of dissatisfaction of service from complaint of any corner on

the conduct of a servant who is not a permanent, one of the options is to dispense with the service. For that no departmental enquiry is contemplated unless the employer chosen to punish the said servant even temporary by conducting departmental enquiry. From this proposition, now coming to the order of termination, whether it is outcome of punishment in terminating the service or only from dissatisfaction of the service in termination out of the two options, the employer is entitled to avail either of them. The impugned proceedings dated 21.02.2007 in letter No.A/ 44/ 07 of Child Development Project Officer/ 3rd respondent speaks on the subject in relation to the writ petitioner, Smt.V.Chandrakala, Anganwadi worker as to negligence in running Anganwadi, Kunaram thereby terminating from service, proceedings issued with references three in number viz., 1. Circular Memo dated 14.03.1997, which may be wrong as the very termination proceedings were dated 21.02.2007, 2) Instructions of District Collector, Karimnagar dated 12.02.2007 and 3) Memo dated 13.02.2007 issued by the Project Director. The proceeding speaks with reference to the same, as Smt.V.Chandrakala is not properly discharging her duties by acting negligence to the duties and not even keeping the records in order to receive the benefits by the beneficiaries

properly thereby terminated from the service. The proceedings no way mentions that it is by way of punishment. The proceedings no way mentions that there is any preliminary enquiry or regular departmental enquiry but for memos issued particularly two in number and dissatisfied with the service and terminated. Once such is the case, irrespective of any earlier explanations called for and any explanation given by her, once the memos were issued as contemplated by the circular dated 24.08.1997 clause (B) and services are thereby terminated without mentioning as a punishment, it is within the competence pursuant to the memo and also the Apex Court expression clearly show not necessary by punishment. Article 311(2) of the Constitution of India has thus no application. Once such is the conclusion, the contentions in the writ petition that the termination without regular departmental enquiry and without considering the earlier explanations are untenable cannot be accepted, as it is the prerogative of the employer conferred by the Circular instructions in the appointment and also substantiated by the expression of any dissatisfaction of the service may result in termination followed by the two memos that are covered by the reference.

10. No doubt, it is one of the contentions apparently tenable of the learned counsel for the writ petition that without two memos, the question of termination does not arise even pursuant to the circular instructions (B) and what are the memos referred to in the writ petition first two memos not connected with the memos 3 and 4 and thereby the question of termination without saying that not mend as a corrective measure does not arise. In fact what is contemplated by Circular clause (B) is giving of memos and it need not be in reference to the same action or same negligence of duty or dissatisfactory duty. The non-maintenance of the records in order and negligence to duties may be of misconduct if it is intentional and may not be a mis-conduct if it is a mere negligence outcome of a dissatisfactory service. Here in the proceedings, it is not stated as a part of misconduct. If at all it is stated as misconduct and the employer chosen to conduct a departmental enquiry then any preliminary enquiry is required and there from regular departmental enquiry necessary and conducting of regular departmental enquiry out of the two choices the second shows apparently a mis-mention in the counter, as if an enquiry conducted, for no enquiry conducted even according to the writ petitioner and also from the record. Thus it is difficult to say, it is part

of any institution of regular departmental enquiry and violation of the same without enquiry in termination as a punishment. As it is made clear that it is not by punishment but by dissatisfaction of service, the dissatisfaction service may be on any of the counts to the conscious of the employer. Once the employer's conscious permits within the option in terms of Circular clause (B), the termination cannot be interfered with by sitting in the writ petition against the impugned order.

11. Accordingly, the Writ Petition is dismissed. However, it is made clear that whatever the benefits so far received by the petitioner are unrecoverable. It is made clear that this no way a stigma to the petitioner to secure any future employment, including for similar employment. No costs.

12. Miscellaneous petitions, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:07-02-2017

Note:
Issue C.C. in one week.

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