

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE N. BALAYOGI

WRIT PETITION No.13520 of 2014

ORDER: (Per Justice Sanjay Kumar)

The Union of India and the National Institute of Nutrition, the respondents in O.A.No.38 of 2014 on the file of the Central Administrative Tribunal, Hyderabad Bench, filed this writ petition aggrieved by the order dated 11.04.2014 passed therein. The O.A. was filed by respondents 1 and 2 herein assailing the suspension orders dated 22.11.2013 passed against them by the Director In-charge, National Institute of Nutrition, Hyderabad, on the ground that the same was without authority of law. Accepting this plea, the Tribunal allowed the said O.A.

By order dated 29.04.2014, this Court granted interim suspension of the order passed by the Tribunal. W.V.M.P.No.2947 of 2015 was filed by respondents 1 and 2 herein, the applicants in the O.A., to vacate the said order.

Heard Sri B. Narayana Reddy, learned Assistant Solicitor General for India, appearing for the petitioners, and Sri T.P. Acharya, learned counsel for respondents 1 and 2, the applicants in the O.A.

As comprehensive arguments were advanced covering the entire gamut of the controversy, the main writ petition itself is taken up for disposal.

It is not in dispute that though the issue failing for consideration in this writ petition is with regard to the validity of the suspension orders, the disciplinary proceedings against the first and second respondents

herein have already concluded and separate judicial proceedings have been initiated in relation thereto.

The only ground on which the Tribunal thought it fit to interfere in the matter was that there was no regular Director appointed to the National Institute of Nutrition and the Director In-charge had no jurisdiction to exercise the statutory powers of a Director and pass suspension orders. However, perusal of the order passed by the Tribunal manifests that the Tribunal misdirected itself by considering delegation of the powers of the Director General to the Directors, which is not at all relevant to the present case.

Rule 2(g) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short, 'the Rules of 1965'), defines 'disciplinary authority' to mean an authority competent under the Rules to impose upon a Government servant any of the penalties specified in Rule 11. Rule 10 of the Rules of 1965 deals with the power of suspension which provides that the Appointing Authority or any authority to which it is subordinate or the Disciplinary Authority or any other authority empowered in that behalf by the President, by general or special order, has the power to place a Government servant under suspension.

Sri T.P. Acharya, learned counsel, does not dispute the fact that his clients are Group 'C' and 'D' officers and that their Appointing Authority is the Director of the Institute. He would however seek to place reliance on the delegation of powers of the Director General and of the Governing Body to assert that the Director In-charge of the Institute would not have the power to pass a suspension order.

Having perused the Rules relating to delegation of powers by the Director General and the Governing Body, we are of the opinion that these

Rules are totally irrelevant to the issue as the disciplinary powers vesting in the Director of the Institute are not delegated by the Director General or by the Governing Body. The powers of delegation, which have been referred to, speak of the delegation of the powers of the Director General or the Governing Body themselves and do not relate to the inherent powers of the Director of the Institute.

Sri T.P. Acharya, learned counsel, would also seek to place reliance upon the instructions of the Government of India under O.M.No.F.7/14/61-Ests. (A) dated 24.01.1963, which states to the effect that an officer appointed to perform the current duties of an appointment can only exercise administrative or financial powers but cannot exercise statutory powers.

However, the order dated 11/16.07.2012 passed by the Director General, Indian Council of Medical Research, New Delhi, through the Administrative Officer, states to the effect that Dr. K. Polasa, Scientist-F, was posted as the Director In-charge of the National Institute of Nutrition and thereafter, order dated 29.04.2014 was passed by the Assistant Director General of the Indian Council of Medical Research directing re-employment of Dr. K. Polasa, Scientist-F, as the Director In-charge of the Institute for a period of one year after her superannuation on 30.04.2014. This being the nature of her appointment, we are of the opinion that her services cannot be taken to be for the purpose of performing 'current duties' as referred to in the instructions under O.M.No.F.7/14/61-Ests. (A) dated 24.01.1963. Once Dr. K. Polasa was appointed as the In-charge Director of the Institute, she would be entitled to exercise all powers vesting in such Director, including disciplinary powers. It cannot be accepted that merely because an

In-charge Director is appointed to the Institute, such officer would not be in a position to exercise disciplinary powers leaving the employees in the Institute free to discharge their duties as per their own whims and fancies without supervisory control.

Though Sri T.P. Acharya, learned counsel, would also assert that Dr. K. Polasa was not eligible to be appointed as the Director In-charge of the Institute as she is only a Scientist-F Grade and the Rules provide that a temporary appointment can be made to this post only from the category of Scientist-G Grade, no separate challenge was ever levelled by the first and second respondents herein to the validity of her appointment as the Director In-charge of the Institute. They cannot therefore be permitted to do so at this stage by indirect means.

Viewed from any angle, we find the order passed by the Tribunal to be wholly unsustainable on facts and in law.

The writ petition is accordingly allowed setting aside the order dated 11.04.2014 passed by the Central Administrative Tribunal, Hyderabad Bench, in O.A.No.38 of 2014.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

N. BALAYOGI, J

25th January, 2017.
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