

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

AND

THE HON' BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

WRIT PETITION No. 31743 of 2017

ORDER: (per GSP, J)

This writ petition is filed seeking judicial review of the order dated 03.08.2017 passed in O.A.No.2299 of 2017 by the Andhra Pradesh Appellate Tribunal (for short, 'the Tribunal').

2. The petitioner herein is the applicant in the O.A. before the Tribunal. The brief facts of the case are that the petitioner was appointed as Junior Assistant, on compassionate grounds, vide proceedings dated 30.04.2013 issued by the 1st respondent. She joined duty in 2(A) R&V Regiment, NCC, Tirupati, on 15.05.2013, and she was put on probation for a period of two years. On the ground of lapses and shortcomings in her performance and based on the unsatisfactory performance reports forwarded by respondent No.2, by proceedings dated 9-12-2015 the probation of the petitioner was extended for a period of one year w.e.f., 10-6-2015 so as to give her an opportunity to rectify her lapses and the same was communicated to her. However, there was no improvement in her performance. In the meanwhile, the petitioner was attached to 5(A) Girls Battalion of NCC, Tirupati, as she had problems with office staff of her Unit. Her probation was further extended by four months from 10.07.2016 to give her a final chance to rectify the lapses in performance and improve professional knowledge in discharging her duties. Even then the petitioner could not improve her performance. Therefore, respondent No.2, has not recommended for declaration of probation of the petitioner

and instead has recommended for termination of her services. Consequently, the petitioner was served with a Show Cause notice dated 12.01.2017, under Rule 17(a)(ii) of the A.P. State and Subordinate Services Rules, 1986 (for short, 'the Rules'), calling for her explanation within one month as to why her services should not be terminated. The petitioner has submitted her reply to the Show Cause notice inter alia making allegations against her colleagues with regard to sexual harassment meted out to her by them. The disciplinary authority constituted an Internal Complaints Committee to investigate into the allegations made by the petitioner. The Committee had conducted an enquiry and submitted report dated 03.05.2017 with the finding that there was no sexual harassment as alleged by the petitioner. Thereafter, the 1st respondent vide proceedings dated 17.07.2017 terminated the services of the petitioner. The termination order was communicated to the petitioner by respondent No.2 vide letter dated 22.07.2017.

3. Aggrieved by the order of termination, the petitioner approached the Tribunal by filing O.A.No.2299 of 2017. By order dated 03.08.2017, the O.A was admitted and notices were ordered to the respondents returnable in four weeks. The petitioner, seeking judicial review of the said order, has filed the present Writ Petition.

4. Heard the arguments of learned counsel for the petitioner and the learned counsel for the respondents.

5. In the facts and circumstances of the case, the point for consideration is whether the Tribunal erred in rejecting the interim relief of continuing the petitioner in service as Junior Assistant?

6. Rule 17(a)(ii) of the Rules reads as under:

“The appointing authority may, at any time, before or after the expiry of the prescribed period of probation either extend by not more than one year, whether on duty or otherwise, the period of probation of a probationer, in case the probation has not been extended under sub-rule (b) of this rule or terminate his probation and discharge him from service after giving him one month’s notice or month’s pay in lieu of such notice, on account of unsatisfactory performance or progress during training or unsatisfactory performance of duties or unsatisfactory conduct or for any other sufficient reason to be recorded in writing.”

7. Learned counsel for the petitioner submitted that as per the aforementioned provision, the appointing authority may at any time, before or after the expiry of the prescribed period of probation, either extend by not more than one year, whether on duty or otherwise, the period of probation of a probationer in case the probation has not been extended under sub-rule (b) or terminate the probation of an employee and discharge him from service after giving one month’s notice or by paying one month’s pay in lieu of such notice, on account of unsatisfactory performance or progress during training or unsatisfactory performance of duties or unsatisfactory conduct or for any other sufficient reasons to be recorded in writing. He has further submitted that the impugned order does not disclose any valid reasons for exercise of the said power by the 1st respondent under Rule 17(a)(ii) of the Rules. It is argued by the learned counsel that the observation of the Tribunal that no stigma is attached in the order of termination, is not based on facts of the case and that in fact there is stigma attached to the petitioner in the order terminating her services and that therefore the Tribunal erred in not granting the interim relief of continuing the petitioner in service. Therefore, the learned counsel sought for setting aside the order passed

by the Tribunal and prayed for grant of interim order in exercise of jurisdiction of this Court under Article 226 of the Constitution of India.

8. The jurisdiction of this Court under Article 226 of the Constitution is supervisory and not appellate. In *Shama Prashant Raje Vs. Ganpatrao*¹, at para-5, the Supreme Court held as under:

"... Article 226 is not intended to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or order to be made. But notwithstanding the same, on a mere perusal of the order of the inferior Tribunal if the High Court comes to a conclusion that such Tribunal has committed manifest error by misconstruing certain documents or the High Court comes to the conclusion that on the materials it is not possible for a reasonable man to come to a conclusion arrived by the inferior Tribunal or the inferior Tribunal has ignored to take into consideration certain relevant materials or has taken into consideration certain materials which are not admissible, then the High Court will be fully justified in interfering with the findings of the inferior Tribunal...."

9. In the O.A., the petitioner challenged the termination order alleging that it was passed without any valid reasons. She has also sought for interim relief in the said O.A. seeking a direction to the respondents-authorities to continue her in service as Junior Assistant. The Tribunal, having admitted the O.A., and ordered notices to the respondents, has rejected the interim relief with the following observations:

"3. The applicant was relying upon the judgment of the Honourable High Court in W.P. No.8872 of 2016, dated 18-3-2016. Having perused the above judgement, it shows that there it is a case where the incumbent therein was alleged gross misconduct and since it attaches stigma, the Honourable High Court was pleased to grant relief. However, the case on hand is different, no stigma is attached in the order of

¹ (2000) 7 SCC 522

termination. Thus, balance of convenience does not lie in favour of the applicant."

The order passed by the Tribunal reveals that prima facie case does not lie in favour of the petitioner, that she has not put in satisfactory performance as required under the Rules in spite of extending her probation period and, therefore, her services were terminated.

10. With regard to the observation of the Tribunal that there is no stigma attached to the petitioner in the termination order, in our opinion, the same having been made at the stage of admission of the O.A. and while considering the aspect of grant of interim relief, the said observation does not preclude the petitioner from raising the said issue at the time of the hearing of the O.A.

11. In the present writ petition, the petitioner has sought for a mandamus to set aside the order dated 03.08.2017 passed by the Tribunal in O.A.No.2299 of 2017, pending disposal of the writ petition. She has also sought for a direction to continue her in service as Junior Assistant. The main relief and the interim relief claimed by the petitioner in this writ petition are one and the same, i.e., to direct the respondents-authorities to continue her in service as Junior Assistant. The Tribunal has admitted the O.A. and ordered notices to give an opportunity to the respondents to advance arguments. The reasons recorded by the Tribunal clearly indicate that the elements of prima facie case and the balance of convenience do not lie in her favour for grant of interim relief.

12. In view of the foregoing reasons, there are no valid grounds to interfere with the order passed by the Tribunal and hence the writ petition is liable to be dismissed.

13. In the result, the writ petition is dismissed. No costs.
Miscellaneous petitions, if any pending, shall also stand dismissed.

C.V. NAGARJUNA REDDY, J

GUDI SEVA SHYAM PRASAD, J

29th December, 2017

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AND

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WRIT PETITION No. 31743 of 2017

(Order of the Division Bench delivered by
Hon'ble Sri Justice Gudiseva Shyam Prasad)

29th DECEMBER, 2017

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