

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.33114 of 2017

04.10.2017

Between:

The District Collector & Chairman, DSC-2008,
Vizianagaram District and others

..Petitioners

and

T.Kishore and another

..Respondents

Counsel for the petitioners: Government Pleader for Services (A.P.)

Counsel for the respondents: ---

The Court made the following:



ORDER: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This writ petition is filed for a *certiorari* to quash order, dated 31.03.2017, in O.A.No.1333 of 2016 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'the Tribunal')

2. We have heard the learned Government Pleader for Services (A.P.) appearing for the petitioners and perused the record.

3. Respondent No.1 was selected by the District Selection Committee 2008 and appointed as School Assistant (English) on 16.10.2009. His services were regularized with effect from 19.10.2009. On successful completion of probation period, his probation was declared by order, dated 19.03.2012, with effect from 18.10.2011. More than six years after his appointment, respondent No.1 received show-cause notice, dated 22.01.2016, as to why he shall not be removed from service. Following the said show cause notice, petitioner No.2 passed an order on 06.02.2016 terminating the services of respondent No.1 as School Assistant (English). Feeling aggrieved by the said order, respondent No.1 filed O.A.No.1333 of 2016. The Tribunal, on appreciation of the facts and legal position, has allowed the O.A.

4. The action for removal of respondent No.1 was triggered by an order passed by the Tribunal and as confirmed by this Court at the instance of respondent No.2. It appears, while making selections, the claim of respondent No.2 was unduly overlooked, as a result whereof, he filed O.A.No.11331 of 2009 before the Tribunal. The Tribunal allowed the said O.A. on 29.09.2010 directing the petitioners to issue appointment orders to respondent No.2 for the post of School Assistant (English) as per his merit and Rules. W.P.No.20888 of 2011 filed by the petitioners against the aforesaid order was dismissed by this Court, by order, dated

16.04.2015. Evidently, to accommodate respondent No.2, the petitioners have removed respondent No.1. In the order impugned in this writ petition, the Tribunal has relied upon the judgment of the Supreme Court in *Vikas Pratap Singh vs. State of Chhattisgarh*¹. The following observations of the Apex Court relied upon by the Tribunal are apt to be reproduced here under:

“23. This Court in [Gujarat State Deputy Executive Engineers' Association v. State of Gujarat and Ors.](#), 1994 Supp (2) SCC 591 although recorded a finding that appointments given under the `wait list' were not in accordance with law but refused to set aside such appointments in view of length of service (five years and more).

24. In *Buddhi Nath Chaudhary and Ors. v. Akhil Kumar and Ors.*, (2001) 2 SCR 18, even though the appointments were held to be improper, this Court did not disturb the appointments on the ground that the incumbents had worked for several years and had gained experience and observed:

"We have extended equitable considerations to such selected candidates who have worked on the posts for a long period."
(See: [M.S. Mudhol \(Dr.\) and Anr. v. S.D. Halegkar and Ors.](#), (1993) II LLJ 1159 [SC and Tridip Kumar Dingal and Ors. v. State of West Bengal and Ors.](#), (2009) 1 SCC 768)

25. Admittedly, in the instant case the error committed by the respondent-Board in the matter of evaluation of the answer scripts could not be attributed to the appellants as they have neither been found to have committed any fraud or misrepresentation in being appointed qua the first merit list nor has the preparation of the erroneous model answer key or the specious result contributed to them. Had the contrary been the case, it would have justified their ouster upon re-evaluation and deprived them of any sympathy from this Court irrespective of their length of service.

26. In our considered view, the appellants have successfully undergone training and are efficiently serving the respondent-State for more than three years and undoubtedly their termination

¹ (2013) 14 SCC 494

would not only impinge upon the economic security of the appellants and their dependants but also adversely affect their careers. This would be highly unjust and grossly unfair to the appellants who are innocent appointees of an erroneous evaluation of the answer scripts. However, their continuation in service should neither give any unfair advantage to the appellants nor cause undue prejudice to the candidates selected qua the revised merit list.”

5. In our opinion, the judgment in Vikas Pratap Singh (supra) is apposite to the present case, in that, if the petitioners have committed wrong in the selection process, as a result of which, respondent No.2 could not be selected, respondent No.1, who was not only selected but also appointed and also whose probation was declared, cannot be removed in order to accommodate respondent No.2. Neither the Tribunal in its order in O.A.No.11331 of 2011 nor this Court in W.P.No.20888 of 2011 issued any direction to the petitioners to replace respondent No.1 with respondent No.2. By appointing and declaring the probation of respondent No.1, a legitimate right came to be vested in him. Such a right cannot be allowed to be defeated for no fault on his part. The Tribunal, in our opinion, has not committed any error in protecting the rights of respondent No.1 and allowing O.A.No.1333 of 2016.

6. Hence, we do not find any merit in this Writ Petition and the same is, accordingly, dismissed.

7. As a sequel to dismissal of the writ petition, W.P.M.P.No.41200 of 2017 filed by the petitioners for interim relief shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J

KONGARA VIJAYA LAKSHMI, J

04th October, 2017
GHN

