

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION No.31783 of 2017

Date:19.9.2017

Between:

S.Venkataiah,
S/o Nagulaiah and another.

..... Petitioners

And:

The State of A.P., repto by its
Principal Secretary, Primary School
Education Department, Guntur District
and three others.

....Respondents

Counsel for the petitioners: Mr. Velagani Narasimhulu

Counsel for respondent Nos.1, 3 & 4: GP for Services (AP)

Counsel for respondent No.2: Mr. G.Seena Kumar

The Court made the following:

ORDER: *(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

This Writ Petition is filed feeling aggrieved by order, dated 06.9.2017, in M.A(SR).No.4165 of 2017 in Original Application No.5784 of 2014 on the file of the Andhra Pradesh Administrative Tribunal at Hyderabad (for short 'the Tribunal').

We have heard Mr. Velagani Narasimhulu, learned counsel for the petitioners and Mr. G.Seena Kumar, learned counsel for respondent No.2.

The petitioners along with another person by name Gayathri filed O.A.No.5784 of 2014 before the Tribunal seeking declaration that proceedings, vide Rc.No.4650/B6/2011, dated 23.10.2012, issued by respondent No.4 is illegal, arbitrary and in violation of principles of natural justice and consequently, a direction was sought for appointment of the petitioners in the post of Cluster Resource Persons on contract basis in YSR Kadapa District with all consequential benefits.

On behalf of the petitioners, on 21.7.2015, a letter was addressed by the learned counsel for the petitioners to the Registrar (Judicial) of the Tribunal, wherein it was stated that the proceedings impugned in the afore-mentioned O.A. filed by petitioners was also the subject matter of O.A.No.2518 of 2013 and that the said O.A. was disposed of on 03.4.2014. The petitioners, therefore, requested for permission to withdraw

O.A.No.5784 of 2014 with liberty to avail other remedies as per law. Consequent on the said letter, the Tribunal has dismissed the said O.A. as withdrawn by order, dated 23.7.2015. The petitioners herein have filed MASR.No.4165 of 2017 for restoration of the said O.A. At the S.R. stage, the said application was dismissed by the Tribunal on the short ground that there is no provision in the Andhra Pradesh Administrative Tribunals Act, 1985 (for short 'the Act) or the Rules made thereunder for restoration on withdrawal of the O.A.

Learned counsel for the petitioners has drawn our attention to Section-22 of the Act. Sub-section-(1) thereof envisages that the Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central Government, the Tribunal shall have power to regulate its own procedure including the fixing of places and time of its inquiry and deciding whether to sit in public or in private.

Under sub-section-(3) thereof, the Tribunal is conferred with the same powers as are vested in the civil Court under the Code of Civil Procedure in respect of the matters enumerated therein, which include the power to set aside any order of

dismissal of any representation for default or any order passed by it *ex parte*.

In our considered view, when the Tribunal is conferred with the power of setting aside an order of dismissal for default, we do not find any reason why such a power cannot be exercised for restoring the O.A. which was dismissed as withdrawn at the request of a party. The Tribunal has not exercised the jurisdiction which is inherently available with it by dismissing the M.A without dealing with the pleas raised by the petitioners on merits for restoration of the afore-mentioned O.A.

For the afore-mentioned reasons, the impugned order is set aside and MA(SR).No.4165 of 2017 in O.A.No.5784 of 2014 is remanded to the Tribunal for disposal on merits.

The Writ Petition is, accordingly, allowed to the extent indicated above.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE GUDISEVA SHYAM PRASAD

19th September 2017

DR