

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.26988 of 2010

Date : 14.6.2017

Between :

Chandaluru Rama Rao S/o Subrahmanyam
R/o Penubarthi village, Rapur mandal
SPSR Nellore district

Petitioner

And

The State of A P
Rep by its District Collector (PW)
SPSR Nellore district at Nellore

Respondents

The Court made the following:



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ORAL ORDER:

Heard learned counsel for petitioner. No representation for respondents.

Petitioner was appointed as Panchayat Secretary on contract basis in the year 2003 and his contract was renewed from time to time. While he was working on contract basis, show cause notice dated 9.8.2010 was served on him. In the show cause notice it was alleged that there was negligence in performance of his duties in conducting Gramasabha under Deepam scheme; on 15.2.2010 he disobeyed the orders of superiors; misbehaved with superior officers and habituated to quarrel with the villagers, therefore, he was called upon to explain why his services should not be terminated by invoking clause 5 of Annexure II appended to G.O.Ms.No. 148 P.R & R.D(Mandal.II) Department dated 6.5.2003. It appears, petitioner submitted his explanation and on consideration of the explanation and report of Mandal Parishad Development Officer (for short MPDO), by order dated 5.10.2010 he was removed from the contract service. Challenging the same, this writ petition is filed.

2. Learned counsel for petitioner submits that there was no opportunity afforded to the petitioner and no proper enquiry was held while terminating his service, the order of termination is punitive in nature and stigmatic, therefore no such order can be passed without following the due process. He further submits that after show cause notice was issued and explanation was submitted by the petitioner, further report dated 21.9.2010 was obtained from the MPDO which was not furnished to petitioner and said report was also made as a basis to terminate his service and said action becomes ex-facie illegal. Other pleas urged by the petitioner in the explanation were not considered in right perspective, he has meritorious service and in recognition of his meritorious service, he was also granted certificate of merit on the Republic Day. In support of his contention

that termination is illegal and petitioner is entitled to all the benefits and reinstatement and continuation of service, he placed reliance on the decision of the Delhi High Court in Mangal Singh Vs The Chairman, National Research Development Corporation and others¹.

3. Reading of the counter affidavit would show that several reports were obtained from various authorities on various allegations. It appears, in addition to the allegations contained in the show cause notice there were certain other allegations which were not reflected in the show cause notice. In the report dated 26.8.2010 of MPDO/third respondent herein, it was alleged that there was man-handling of the Senior Assistant of the office of third respondent by the petitioner and the allegation was proved. Third respondent further complained that conduct of the petitioner is not good and if he continued as Panchayat Secretary, same things would be repeated by him. The explanation submitted by the petitioner was referred to MPDO for further enquiry and MPDO in his report dated 21.9.2010 stated that petitioner did not change his attitude and still continues the disobedient attitude to higher authorities and always tried to quarrel with other staff in the mandal. At any rate, this subsequent report of the MPDO dated 21.9.2010 was not communicated to the petitioner though it was also made as basis to terminate the services of the petitioner.

4. The termination of service of petitioner was not termination simplicitor but was on the ground of misconduct committed by him and several other allegations leveled against him. Thus, when action is taken against a person, even appointed on contract basis and by not invoking the terms of contract, service is to be terminated, it is but necessary to follow the basic principles before terminating the service. An order of termination on account of misconduct will have deleterious effect. It being stigmatic, the said stigma would continue to hunt the person wherever he would seek to secure employment. Thus, reasonable opportunity is required to be afforded. All the documents

¹ WP (Civil) 2553 of 2007 dt 10.8.2009

which are relied upon to hold an employee as guilty must be furnished, due opportunity of submitting explanation to be granted and if necessary personal hearing should be afforded before passing an order having civil and evil consequences. As noticed above, as the order is not preceded by due opportunity of hearing, the order is liable to be set aside and it is accordingly set aside.

5. Petitioner was appointed on contract basis, the contract was renewed from time to time and by the order impugned, the contract was not renewed further. Petitioner is out of contract employment for last more than 7 years. Thus, at this stage, no direction for reinstatement can be granted to the petitioner. The order of termination is set aside on technical ground. The competent authority is directed to cause show cause notice on the petitioner by supplying all the relevant documents which are relied upon in support of the allegations, grant sufficient time to submit his explanation, fix a particular date for personal hearing, afford opportunity of personal hearing and then pass appropriate orders as warranted by law duly considering the documents on record, explanation offered by the petitioner and assigning due reasons in support of the decision and shall communicate the same to the petitioner. If the petitioner succeeds in satisfying the competent authority that the termination was illegally made and that the allegations leveled against him are not sustainable, it is open to the petitioner to make appropriate claim for the period out of service. The entire exercise shall be completed within two months from the date of receipt of copy of this order.

6. Writ Petition is allowed to the extent indicated above. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE: 14.6.2017
TVK

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