

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

+WRIT PETITION No.21094 of 2014

% 02-06-2017

#Smt. B. Yogeswaramma

....Petitioner

Vs.

\$ The Collector, Collectorate Office,
Srikakulam District, Srikakulam District and others.

.... Respondents

!Counsel for the petitioner : Sri J. Sudheer

Counsel for the Respondent: GP for Women Development & Child
Welfare Department.

<Gist :

>Head Note:

? Cases referred:
(1992) 4 SCC 719



THE HON'BLE SRI JUSTICE SANJAY KUMAR

THE HON'BLE SRI JUSTICE N. BALAYOGI

WRIT PETITION No.21094 of 2014

Date:02-06-2017

Between:

Smt. B. Yogeswaramma

... Petitioner.

AND

The Collector, Collectorate Office,
Srikakulam District, Srikakulam District and others.

... Respondents



THE HON'BLE SRI JUSTICE SANJAY KUMAR

THE HON'BLE SRI JUSTICE N. BALAYOGI

WRIT PETITION No.21094 of 2014

ORDER: (Per Hon'ble Sri Justice N. Balayogi)

This writ petition is being preferred, aggrieved by the orders in O.A.No.3556 of 2014, dated 07-11-2014, passed by the A.P. Administrative Tribunal, Hyderabad.

In fact, the petitioner Smt. B. Yogeswaramma was initially appointed as Anganawadi Worker in the year 1992. In pursuance of a notification for the post of Supervisor Grade-II, she was selected and joined as Supervisor Grade-II on contract basis in the year 2003. Vide proceedings dated 15-11-2012, the petitioner was transferred from the Office of the CDPO, ICDS Project, Amadalavalasa to CDPO, ICDS Project, Mandasa by the second respondent as per the message of the first respondent dated 15-11-2012 basing on the enquiry report of the third respondent.

The case of the respondents is that the petitioner misused SNP Food Stock to a tune of Rs.1,02,149/- by forgery of the signatures of Anganawadi Workers for which she was issued a show cause notice dated 17-11-2012 as to why her service contract cannot be terminated besides recovery of amount from her. The petitioner submitted her explanation dated 03-12-2012 to the second respondent and thereafter, the first respondent issued orders dated 17-11-2012 directing the petitioner to report before third respondent and she was relieved on 20-11-2012 and reported before the second respondent on 20-11-2012.

The third respondent-Child Development & Project Officer, ICDS Project, Amudalavalasa, Srikakulam District again submitted a fresh enquiry report dated 26-03-2013 alleging that the petitioner misused SNP Food Stock to a tune of Rs.22,28,611/- for which a show cause notice issued to the petitioner. She submitted her explanation on 27-04-2013 & 24-06-2013 to the third respondent. The third respondent, having not satisfied with the explanations of the petitioner, terminated her Service Contract vide proceedings D.O.Lr.No.1532/A1/2012, dated 23-01-2014 and ordered for recovery of Rs.22,98,611/-. Further directed to launch a complaint with the local police for the offences of tampering of records, forgery, misappropriation, fraud and also misrepresentation of facts and impersonation as per the instructions of the first respondent by orders dated 02-02-2013.

Further contention of the respondents is that CCA Rules are not applicable to the other person who involved in the offence along with the petitioner was also terminated from service by proceedings dated 17-05-2014.

The material on record clearly shows that one Anganwadi Worker of L.N. Peta submitted a representation on 16-10-2012 to the ICDS Project Director against the petitioner basing on which, the first respondent directed the third respondent to investigate and submitted a report. During enquiry, the third respondent noticed several irregularities and reported to the second respondent about the pilferage/misuse of SNP Food Stock to a tune of Rs.1,02,149/- and forgery of the signatures of the Anganwadi Workers by the petitioner.

The first respondent also entrusted the enquiry to the CEO, Zilla Parishad, Srikakulam on the complaints received against the petitioner, who conducted enquiry and submitted report dated 15-11-2012 to the first respondent finding the petitioner and CDPO, ICDS Project, Amadalvalasa are jointly responsible for the misuse of SNP Food Stock who submitted a report on 19-11-2012. Basing on the said report, a fresh notice for the second time dated 06-04-2013 was issued alleging that the petitioner misused SNP Food Stock to a tune of Rs.22,98,611/- and besides recovery of the said amount.

A reading of the proceedings dated 13-05-2014 goes to suggest that the Regional Deputy Director WD&CW Department, Visakhapatnam was instructed to finalize the disciplinary action initiated against the petitioner since the Regional Deputy Director is the appointing authority, there is no need to take up common proceedings. Further, as the petitioner is a contract employee, she does not come under APCS (CC&A) and Rules 1991. The second respondent in his Proceedings No.1532/2012/A1, dated 23-05-2014, came to the conclusion that the explanation of the petitioner is not at all convincing and her service contract is terminated with immediate effect. Further that some of Rs.22,98,611/- shall be recovered from her as per the provisions of A.P. Revenue Recovery Act towards pecuniary loss caused to the Government and directed the CDPO, ICDS Project, Bogapuram, where the petitioner was working as a contract supervisor, to discharge the petitioner from the duties with immediate effect and report compliance.

In the instant case, the initial enquiry report of the third respondent, the allegation is that the petitioner pilferage/misuse of SNP Food Stock to a tune of Rs.1,02,149/- as per the report of the

third respondent dated 15-11-2012 for which a show cause notice dated 17-11-2012 was issued and immediately as per the proceedings dated 20-11-2012, the petitioner was relieved from her duties with instruction to report before the Project Director DW & CDA, Srikakulam. Again the Project Director, DW & CDA submitted a revised enquiry report dated 26-03-2013 ascertaining the recovery amount from the petitioner to a tune of Rs.22,98,611/- and consequently a show cause notice dated 06-04-2013 was issued for which the petitioner submitted appropriate explanations.

In the case of **GOVERNING COUNCIL OF INSTITUTE OF KIDWAI MEMORIAL INSTITUTE OF ONCOLOGY, BANGALORE vs. Dr.PANDURANG GODWALKAR AND ANOTHER¹**, wherein the Hon'ble Supreme Court held as follows:-

“It is settled law that if an employee who is on probation or holding an appointment on temporary basis is removed from the service with stigma because of some specific charge, then a plea cannot be taken that as his service was temporary or his appointment was on probation, there was no requirement of holding any enquiry, affording such an employee an opportunity to show that the charge leveled against him is either not true or it is without any basis.

Further held that whenever the service of an employee is terminated during the period of probation or while his appointment was on temporary basis, by an order or termination simpliciter after some preliminary enquiry, it cannot be held that as some enquiry had been made against him before the issuance of order of termination it really amounted to his removal from service on a charge as such penal in nature.”

¹ (1992) 4 SCC 719

In the instant case, the very plea of the petitioner is that since the appointment of the petitioner as Supervisor Grade-II on contract basis in the year 2003, she has been functioning as Supervisor Grade-II at various places either in the Service Register as Anganawadi Worker or Supervisor Grade-II, she had no complaint whatsoever and she has been discharging her duties to the best of her ability without giving any room for complaint or any quarter. Both the reports went on alleging misuse of food stock to a tune of Rs.1,02,6149/- and other misappropriation of Rs.22,98,611/- are different and contradicting to each other. Moreover, the eggs were supplied by the DPO to the Director from which the petitioner is nowhere concerned with the supply and shortages and show cause notices alleged to have been issued to the petitioner in order to protect as per her contention.

As a matter of fact, there will be a Special Officer for each Mandal, who will look into the welfare schemes. The said concerned Special Mandal Officer never complained against the petitioner. Had there been any forgery of the documents and signatures of the Anganwadi Workers certainly, there should be a criminal action, which was never initiated against the petitioner, because there may not be any material.

It is also a clear case of the petitioner that no enquiry officer was appointed to conduct enquiry and no enquiry was conducted in her presence.

Before passing an order of termination, the authority who examined as to whether any officer on probation or holding temporary appointment in fact removed from service without initiating any departmental enquiry. The petitioner is no doubt a

contract Anganwadi Worker and her appointment as per Rule 9 of the State and Subordinate Service Rules and she was appointed as a Supervisor-Grade-II by entering into a contract. The termination of the petitioner from service with a specific charge of misuse of funds, forgery of documents, which is a stigma affect her future employment. The termination of the petitioner on the ground of misuse of SNP food stock to a tune of Rs.22,98,611/- and also forgery of signatures of the Anganwadi Workers and documents, which clearly amounted to punishment, because the real foundation of the action against the petitioner was the act of misusage because of the alleged misuse which had never been enquired into.

It was also held that in the matter of stigma, this Court as held that the fact which an order of termination may have on person's future prospects of employment as a matter of relevant consideration. Since the order of the respondents contained stigma, the termination would be bad for, the petitioner who shall suffer a substantial loss of reputation which may affect her future prospects.

Further, admittedly, the action of the termination is only based on the report of the first respondent-District Collector and the third respondent on behalf of the back of the petitioner without a regular departmental enquiry. Hence, the order of the termination is to be treated as "founded" on the allegations and is bad.

As per orders in O.A.No.5487 of 2013 dated 17-07-2013, the Tribunal directed the respondents to accept her application for recruitment to the post of Supervisor Grade-II on regular basis and allow her to participate in the selection process to be conducted on 04-08-2013.

Further, the contention of the petitioner is that the CDPO-4th respondent, who is inimical towards her, thrust everything on her which is not acceptable, she has distributed the commodities to the Anganwadi workers and acknowledged the receipt of the stocks and CDPO is the custodian of the records with ulterior moto, the respondents kept silent all these years and issued distant and different show cause notices one for misuse of SNP Food Stock to a tune of Rs.1,02,149/- and another for misappropriation of Rs.22,98,611/-.

Further alleged that the fourth respondent and one Konchada Leela Rani, Supervisor belong to the same community, whose involved in an offence of illegal transportation of civil supplies commodities, Laveru Police registered a Case in C.C.No.140 of 2008 since then the supervisor Koncheda Leela Rani and fourth respondent bore grudge and mentally harassed the petitioner, transferred her and also harassed her by unnecessarily implicated in the two show cause notices.

In view of the facts discussed hereinabove, we are of the firm view that there is no dispute that the petitioner was appointed as Anganwadi Worker and subsequently Supervisor Grade-II on contract basis initially for a period of one year w.e.f 01-04-2012 to 31-03-2013. The condition No.10 of the said contract postulates that the services of the petitioner can be terminated on giving one month notice or pay in lieu thereof and she shall be subject to disciplinary control. No such one month notice or payment of one month salary in lieu of such notice was paid to the petitioner. The petitioner is covered by Rule 9 of State and Subordinate Service Rules, which the Tribunal relied upon, but the Tribunal having found

that the petitioner cannot be regarded as a regular member of service, as she was appointed under the provisions contained in Rule 9 (b), ignored the basic principle that the services of the petitioner were terminated without conducting any regular enquiry and ordered for recovery of the amount under Revenue Recovery Act from her on the ground of fraud, misappropriation, which cast stigma on the petitioner, which affect her future prospects of employment and she shall suffer a substantial loss of reputation and it may affect her future prospects on account of such an order. The reasons stated by the respondents for terminating her services simply based on the reports of the respondents behind back of the petitioner, without a regular departmental enquiry are illegal and unsustainable.

In the aforesaid circumstances, we are unhesitatingly hold that the Tribunal committed serious error in dismissing the O.A., simply relying on the reports of the respondents without holding any regular departmental enquiry that the petitioner is responsible for short supply of eggs and short supply of SNP Food Stock to Anganwadi Workers and tampering of records and misappropriation of the Government funds and further that she cannot afford any preference for any appointment in that or any other services.

Further, we find that there is no material to show that the petitioner has been gainfully employed during the termination, therefore, she is entitled to reinstatement and back wages from the date of her termination till her reinstatement. She is also entitled to continuity of service. It is however open to the respondents to take such action against the petitioner as they fit in accordance with law.

Accordingly, the writ petition is allowed, while setting aside the order dated 07-11-2014 in O.A.No.3556 of 2014 on the file of Andhra Pradesh Administrative Tribunal, Hyderabad. No costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand disposed of.

SANJAY KUMAR, J

N. BALAYOGI, J

Date: 02-06-2017.

L.R. Copy to be marked.

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