

* IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND

* HON'BLE SRI JUSTICE M. GANGA RAO

+ W.A.NO.1188 of 2016

And

+ W.A.(SR).No.183707 of 2016

% Date: 02-11-2017

W.A.No.1188/2016

Between:

1. The Government of Andhra Pradesh, rep. by its Principal Secretary, Labour Employment, Training & Factories, Secretariat, Hyderabad.
2. District Collector & Chairperson, National Child Labour Project and Bala Karmika Vikas Samithi, West Godavari District.
3. Project Director, National Child Labour Project, Eluru, West Godavari District.

.... Appellants
(in both the W.As)

And

Sabbani Venkata Bhogeswara Rao
S/o. Jalasundara Rao, R/o. H.No.20-C-4-1,
Eluru, West Godavari District.

... Respondent
(in both W.As)

! Counsel for the Appellants : G.P. for Labour

^ Counsel for Respondent : Mr. M. Pitchaiah.

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? Cases referred

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE M. GANGA RAO

WRIT APPEAL No.1188 of 2016
And
WRIT APPEAL (SR) No.183707 of 2016

COMMON JUDGMENT: (Per VRS,J)

These writ appeals arise out of a common order passed by the learned Judge, disposing of one writ petition filed by the employee challenging a charge memo, and another a petition for review filed by the Government in respect of a writ petition already allowed in favour of the same employee.

2. Heard learned Government Pleader for Labour and Mr. M. Pitchaia, learned counsel appearing for the respondent.

3. The respondent herein was appointed as a computer operator in the National Child Welfare Project on 18.08.2004. He continued in the same post up to 11.11.2007. Thereafter he was appointed as Field Officer.

4. By order dated 05.11.2009, the services of the respondent were terminated, on the ground that his performance was poor and that such a performance had an adverse effect upon the functioning of the project.

5. Challenging the said order dated 05.11.2009, the respondent filed W.P.No.26193 of 2009. It was allowed by a learned Judge on the ground that the order of termination cast stigma upon the respondent and that no enquiry was conducted before slapping the order of termination. The operative portion of the order of the learned Judge dated 29.08.2011 passed in W.P.No.26193 of 2009 reads as follows:

“Hence, the writ petition is allowed, and the impugned order is set aside. It is left open to the 2nd respondent to conduct enquiry against the petitioners, after issuing notice, and complete the exercise within a period of four months from the date of receipt of a copy of

this order. Further steps would depend upon the outcome of the disciplinary proceedings. If no proceedings are instituted within four months, or they are not concluded within that period, the 2nd respondent shall reinstate the petitioners, without prejudice to his right, to proceed further.”

6. Taking advantage of the said order, the Government could have framed charges and proceeded afresh in terms of Rule 20 of the A.P. Civil Services (Classification, Control & Appeal) Rules. But they did not do so. On the contrary another order of termination simpliciter was passed on 07.03.2012, on the basis of certain statements allegedly made by certain witnesses. It will be useful to extract the order dated 07.03.2012, as the same will expose the kind of enquiry that the Government undertook, pursuant to the order of remand passed by this Court in W.P.No.26193 of 2009. The order of termination dated 07.03.2012 reads as follows:

“In the reference 2nd cited, the Hon’ble High Court of Andhra Pradesh of Hyderabad in its order issued instructions to the second respondent in W.P.No.26193 of 2009 i.e. the Project Director, NCLP, West Godavari District, Eluru that to conduct enquiry against the petitioners and take further steps on the outcome of the disciplinary proceedings. A detailed enquiry was conducted with the following concerned officers .

1. Sri Z. Krupakar, Deputy Educational Officer, Eluru.
2. Sri Jalla Veerabhadra Rao, Ex-Project Officer, NCLP, Eluru.
3. Sri T.N. Snehan, Core Swachandra Seva Samstha, Koyyalagudem.
4. Sri Ch. Babu Rao, Needa Swachandra Seva Samstha, Gopalapuram.
5. Sri G.V. Raghavulu, N.B.E.A, Swachandra Seva Samstha, Ajjaram.

As per the statements of the 1st to 5th it reveals that the petitioners acted negligently, demanded bribe from the NGOs and not submitted progress reports timely to the concerned officers. The persons those who are attended to the enquiry expressed their views and good for re-appointment of the petitioners. Due to misbehavior of the petitioners and for non submission of progress reports timely to the Government of India, Ministry of Labour, New Delhi, it caused to stop funds to the running project.

Hence, I hereby inform you that on the basis of the enquiry reports and NCLP, rules and regulations, the termination of petitioners is correct and the action taken by the then concerned officers is correct.”

7. Challenging the said order dated 07.03.2012, the respondent filed another writ petition in W.P.No.9203 of 2012. The said writ petition was allowed by a learned Judge, by an order dated 17.12.2012. In the order dated 17.12.2012, the learned Judge did not pass an order sending the matter back to the authorities, as the chance already given by the order dated 29.08.2011 had not been made use of by the department.

8. Therefore, contending that at the most the learned Judge could have only remanded the matter for *de novo* proceedings, the department filed an application in Rev.M.P.No.30489 of 2013, seeking review of the order of the learned Judge in W.P.No.9203 of 2012.

9. In the mean time, during the pendency of the application for review, the respondent moved a contempt petition in C.C.No.311 of 2013. The authorities also issued a fresh charge memo dated 28.11.2015, framing three charges against the respondent. Challenging the said charge memo the respondent filed a writ petition in W.P.No.40956 of 2015.

10. Therefore, the learned Judge took up the contempt petition, the application for review of the order in W.P.No.9203 of 2012 and the fresh writ petition W.P.No.40956 of 2015 for fresh disposal. After hearing both parties, the learned Judge refused to interfere with the charge memo and thus disposed of W.P.No.40956 of 2015, with a mere direction to the department to proceed in accordance with law. On the review application, the learned Judge did not think fit to review the original order, as no charge memo had been framed. However, the Contempt Petition was closed.

11. Therefore, challenging the order passed in the application for review and in the fresh writ petition, the State has come up with the above writ appeals.

12. The only grievance of the State is that while setting aside the order of termination dated 07.03.2012, the learned Judge ought to have given a chance to the department to proceed afresh in accordance with law. But no opportunity was granted to the State in the order dated 17.12.2012 passed in W.P.No.9203 of 2012. Therefore, it is contended by the learned Government Pleader that at least the learned Judge dealing with the review application should have rectified such an error apparent on the face of the record and allowed the department to initiate *de novo* proceedings.

13. We have carefully considered the above submissions.

14. There are two fallacies in the contentions of the learned Government Pleader. The first is that no charge memo was issued before passing the first order of termination dated 05.11.2009, and hence it came to be set aside in W.P.No.26193 of 2009 by order dated 29.08.2011. In the order dated 29.08.2011, liberty was granted to the department to initiate *de novo* proceedings. This chance given in the first order dated 29.08.2011 was not taken advantage of by the department. However, the department proceeded again to pass one more order of termination without a charge memo, but simply on the basis of the statements recorded behind the back of the respondent. Thus the appellants missed the opportunity given on the first occasion and hence they cannot complain about the denial of another opportunity on the second occasion.

15. The second fallacy in the argument of the learned Government Pleader is that at least when they issued a charge memo dated

28.11.2015, they could have included the allegations on the basis of which the original termination was ordered. But this charge memo contained a different set of allegations. It must be pointed out that this charge memo dated 28.11.2015 was issued, long after the disposal of W.P.No.9203 of 2012. Therefore, there is no use in the department now crying that they did not have an opportunity to initiate *de novo* proceedings in respect of the first proceedings.

16. In view of the above, we find no reasons to interfere with the order of the learned Judge. Hence the writ appeals are dismissed. As a sequel, miscellaneous petitions pending in these writ appeals, if any, shall stand closed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J.

M. GANGA RAO, J.

2nd November, 2017
Js.



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