

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.25334 OF 2004

ORDER:

The petitioner, who worked as a Record Assistant in the 4th respondent-School, filed this writ petition challenging the order dated 31.07.2002 passed by the 4th respondent removing the petitioner from service, as illegal and contrary to the provisions of Section 79 of the A.P. Education Act, 1982 (for short 'the Act') and consequently to direct the 4th respondent to continue the petitioner as Record Assistant from 01.08.2002 and also to pay the monetary benefits of salary and allowances payable to the petitioner.

2. The case of the petitioner is that he obtained M.A. post graduate degree from the Nagarjuna University in the year 1995. He was selected and appointed as Record Assistant in pursuance of the notification dated 20.07.1994 issued by the 4th respondent with prior approval of the Regional Joint Director, Guntur vide proceedings dated 23.08.1995. He was paid salary of Rs.650/- against the salary amount of Rs.2,300/- as recorded in the Acquittance Register of the 4th respondent-School. While he was working as such, he was not allowed to continue in the said post. Therefore, he made a representation to the respondents and other authorities including the District Collector, but in vain. The petitioner approached this Court by way of Writ Petition No.23779 of 1999. This Court by order dated 11.02.2000

directed the 4th respondent-School to allow the petitioner to join duty as Record Assistant and continue in the said post. Accordingly, the petitioner was allowed to join duty in the month of February, 2000 in the 4th respondent-School and he was allowed to continue as Record Assistant in the School, but the petitioner was not paid salaries since February, 2000. For non-payment of salaries to the petitioner since February, 2000 after allowing him to work as Record Assistant, he filed Writ Petition No.18263 of 2000 for payment of salaries.

The 4th respondent, on being receipt of the notice from this Court in the Writ Petition No.18263 of 2000, bore grudge against the petitioner. When the Legal Aid Counsel Sri C.S.Subba Rao sent notice to the 4th respondent based on petitioner's representation to the Hon'ble the Chief Justice, High Court of A.P. dated 16.06.2001, the 4th respondent sent a Charge sheet dated 01.08.2001 to the petitioner as a counterblast to the notice and a show-cause notice was given to the petitioner to explain as to why disciplinary action should not be taken against him for the alleged misconduct within five days from the date of receipt of the notice, alleging that the petitioner had not discharging the duties entrusted to him and disobeying the instructions given by his superiors and leaving the premises after signing in the attendance register.

The petitioner submitted his reply to the charge sheet on 20.05.2002 denying all the allegations levelled against him

and stating that it was issued only to wreck vengeance against him and requested to drop the charges against him. The 4th respondent asked the petitioner by letter dated 24.05.2002 to attend before the Enquiry Officer Sri D.Narayana Murthy and to participate in the enquiry conducted by him in respect of the charges levelled against him as per the charge sheet dated 01.08.2001. The Enquiry Officer, without giving reasonable opportunity to the petitioner in the enquiry and rejecting the request of the petitioner to engage an advocate to participate in the enquiry, conducted *ex parte* enquiry on 06.07.2002. The Enquiry Officer submitted enquiry report dated 14.07.2002. Based on Enquiry Officer's report, the 4th respondent passed the removal order on 31.07.2002.

The petitioner submitted a representation dated 03.08.2002 to the Hon'ble the Chief Justice, High Court of A.P. and also A.P. High Court Legal Services Committee. The A.P. High Court Legal Services Committee had forwarded the petitioner's representation to the District Educational Officer, Guntur vide letter dated 27.08.2002 and also to the 4th respondent to send report in respect of the petitioner's representation dated 03.08.2002. The 4th respondent sent a reply on 13.09.2002 to the A.P. High Court Legal Services Committee denying the petitioner's allegations made in his representation stating that the petitioner's representation is devoid of any merit. The A.P. High Court Legal Services

Committee had sent the petitioner's representation dated 04.09.2003 to the District Judge and Chairman, District Legal Services Authority, Guntur for taking necessary action. The District Judge, Guntur as Chairman of the District Legal Services Authority, Guntur sent a notice dated 15.12.2003 to the petitioner as well as 4th respondent to attend before him on 20.12.2003. The Chairman, District Legal Services Authority, Guntur, after several adjournments again sent notice dated 20.03.2004, asking the petitioner and the 4th respondent to appear on 03.04.2004. On 03.04.2004, the 4th respondent represented to District Legal Services Authority, Guntur stating that W.P.No.18263 of 2000 filed by the petitioner is pending for adjudication before the High Court and the matter could not be decided by the District Legal Services Committee. Hence, the Chairman, District Legal Services Authority, Guntur closed the matter. Then, the petitioner made a representation to the A.P. High Court Legal Services Committee, Hyderabad on 06.04.2004 and 24.06.2004. The High Court Legal Services Committee has appointed Sri T.Rama Krishna Rao, senior legal aid counsel, to appear in the matter and do the needful.

The petitioner further states that from the date of his initial appointment as Record Assistant on 06.09.1995 to 31.07.2002, the date of removal from service, he was harassed and not paid salaries and was removed from service contrary to law without prior approval of the competent

authority as required under Section 79 of the Act and being aggrieved by the same, the present writ petition came to be filed.

03. Sri T.Rama Krishna Rao, learned counsel appearing for the petitioner, would contend that the petitioner was selected and appointed as Record Assistant in the 4th respondent-School on 24.08.1995 after prior approval of the Regional Joint Director of School Education, Guntur vide his proceedings dated 23.08.1995 and he had joined duty on 05.09.1995 and was paid Rs.650/- per month less than the amount of Rs.2,300/- as recorded in the acquittance register towards his monthly salary. When he was not allowed to discharge his duties, the petitioner made a representation to the higher authorities including the District Collector, but in vain. Then, the petitioner filed W.P.No.23779 of 1999. This Court, by order dated 10.02.2000, directed the 4th respondent-School to allow the petitioner to join duty as Record Assistant and continue him in the said post. In pursuance of the said direction, the petitioner was allowed to join duty in the month of February, 2000. Thereafter, the petitioner was not paid the salaries and he was removed from service w.e.f. 01.08.2002 by proceedings dated 31.07.2002. Being aggrieved by the order of removal from service, the petitioner filed the present writ petition as illegal, arbitrary and contrary to the provisions of Section 79 of the Act.

The learned counsel would further contend that the termination of the petitioner is not preceded by proper enquiry as required under the provisions of the Act and no prior approval of the prescribed authority i.e. the Regional Joint Director of School Education, Guntur, was obtained for removing the petitioner from the service. Even in the so-called enquiry, the petitioner was not given proper and full opportunity to defend his case. A farce of enquiry was conducted and without considering his explanation to the show-cause notice of removal, the petitioner was removed from service illegally. The 4th respondent had harassed the petitioner continuously by one way or the other and for some time without allowing to discharge his duties as Record Assistant and he was not paid salaries regularly as per his entitlement. Now, the 4th respondent, who is not the competent authority to remove the petitioner, has passed the removal order contrary to the provisions of Section 79 of the Act. The Management alone is competent to pass the removal order, that too with the prior approval of the prescribed authority.

The learned counsel would further contend that the removal order is arbitrary, capricious and whimsical violating the Articles 14, 19(1)(g) and 21 of the Constitution of India. Hence, he prayed this Court to set aside the removal order dated 31.07.2002 and reinstate the petitioner with continuity of service and salary and allowances.

The learned counsel relied on the decisions reported in *V.D.M.L. Kalyani Vs. Government of Andhra Pradesh and others*¹ and *Priyadarshini College of Engineering and Technology, Nellore District and another Vs. A.Judson and others*², in support of his contention that without conducting enquiry, without following the procedure and without prior approval of the competent authority i.e. Regional Joint Director of School Education under the provisions of Section 79 of the Act, the termination is illegal.

The petitioner was terminated contrary to the provisions of the Act. Hence, the termination order is liable to be set aside and for illegal termination, the petitioner is entitled for payment of arrears of salary along with interest.

04. Per contra, Sri N.Sriram Murthy, learned counsel appearing for respondents 4 and 5, would contend that the petitioner was originally engaged as Record Assistant in the 4th respondent-School in an unaided post and he was paid Rs.650/- initially. The petitioner is a petition-monger and he used to send petitions to the authorities without doing any work. Further, he approached this Court by way of Writ Petition No.23779 of 1999 without attending his duties. This Court by order dated 11.02.2000, directed the 4th respondent-School to allow the petitioner to join duty as Record Assistant and continue him in the said post. As per the orders of this Court, the petitioner was allowed to join duty in the month of

¹ 2012(6) ALD 292

² 2016(2) ALD 655

February, 2000 and he was continued as Record Assistant in the school and he was paid Rs.650/- per month towards salary. However, the petitioner failed to receive the salary and refused to sign in the Acquittance Register. Hence, the salary amounts were sent to the petitioner through cheques by registered post, but the same were refused. As the petitioner was not discharging his duties and disobeying the instructions of the superiors, a charge sheet dated 01.08.2001 was issued to the petitioner and not satisfied with the reply submitted by the petitioner on 20.05.2002, one Sri D.Narayana Murthy, advocate was appointed as an Enquiry Officer to enquire into the charges and the petitioner was issued notices to participate in the enquiry on 24.05.2002 and 06.07.2002, and his request for engaging an advocate was not accepted and the Enquiry Officer submitted *ex parte* report on 14.07.2002. Based on the Enquiry Officer's report, the 4th respondent who is the competent authority to impose punishment as per by-law 10(k) of the Society, passed the removal order removing the petitioner from service. Hence, prior approval under Section 79 of the Act is not required to terminate the services of the petitioner. Hence, there is no illegality or irregularity in removing the petitioner from service. Hence, the writ petition is misconceived and is liable to be dismissed.

05. In the facts and circumstances of the case and in considered view of this Court, the petitioner was selected and

appointed as Record Assistant on 24.08.1995 in the 4th respondent-School pursuant of the notification dated 20.07.1994 and his appointment was approved by the Regional Joint Director of School Education, Guntur. The petitioner joined duty on 05.09.1995. After some time, the petitioner was not allowed to discharge his duties as Record Assistant and his representations to the higher authorities including the District Collector in vain. Hence, he approached this Court by filing Writ Petition No.23779 of 1999 and this Court by order dated 12.02.2000 directed the 4th respondent to permit the petitioner to join duty as Record Assistant and continue him in the said post. The petitioner was allowed to duty in the month of February, 2000 as per the orders of this Court, but he was not paid salaries @ Rs.2,300/- per month as per the Acquittance Register. But, however, it appears that the salary amount was sent through cheques by registered post. When the petitioner's request for payment of salaries was not acceded to, he approached this Court by filing Writ Petition No.18263 of 2000 and a representation was also made to the A.P. High Court Legal Services Committee, Hyderabad, for which the 4th respondent initiated disciplinary proceedings against the petitioner by issuing charge sheet dated 01.08.2001 alleging that he was not discharging the duties regularly and he was disobeying the instructions of the higher authorities. The departmental enquiry was conducted, but the Enquiry Officer

conducted a farce enquiry wherein the petitioner was not given full and fair opportunity to defend his case. But, the Enquiry Officer submitted an *ex parte* enquiry on 14.07.2002 and the 4th respondent based on the Enquiry Officer's report, passed the order removing the petitioner from service on 31.07.2002.

06. It is found that the removal order is passed contrary to the provisions of Section 79 of the Act without prior approval of the competent authority i.e. Regional Joint Director of School Education, Guntur and no proper enquiry was conducted by following the procedure as laid down under Section 79 of the Act. Section 79 of the A.P. Education Act, 1982 reads as follows:

“79. Dismissal, removal or reduction in rank or suspension, etc., of employees of private institutions. – (1) No teacher or member of the non-teaching staff employed in any private institution (hereinafter in this chapter referred to as ‘the employee’) shall be dismissed, removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

[Provided that no order of dismissal, removal or reduction in rank shall be passed under this sub-section against an employee other than an employee of a minority educational institution without the prior approval of such authority or officer as may be prescribed for different classes of private institutions;

Provided further that the management may prefer an appeal against any order of the officer or authority refusing approval under this sub-section to such authority or officer and within such period as may be prescribed].

(2) An inquiry under sub-section (1) shall be completed within a period of two months from the date of communication of charges against the employee.

(3)(a) No employee shall be placed under suspension except when an inquiry into the gross misconduct of such employee is contemplated.

(b) No such suspension shall remain in force for more than a period of two months from the date of suspension and if such inquiry is not started and completed within that period, such

employee shall, without prejudice to the inquiry, be deemed to have been restored as employee:

Provided that the competent authority may, for reasons to be recorded in writing, extend the said period of two months for a further period not exceeding two months, if in the opinion of such competent authority the inquiry could not be completed within the said period of two months for reasons directly attributable to such employee.

(4) Every such employee as is placed under suspension under sub-section (3) shall be paid subsistence allowance at such rates as may be prescribed during the period of his suspension.

(5) Before imposing any penalty, other than the penalties specified in sub-section (1), an employee shall be informed in writing of the allegations on which action is proposed to be taken and be given an opportunity of making a representation, but it shall not be necessary to hold an oral inquiry into such allegations.”

07. Removal of petitioner is contrary to the decisions of this Court in *V.D.M.L. Kalyani* (1 supra) and *Priyadarshini College of Engineering and Technology* (2 supra), wherein it is held that the mandate of Section 79(1) of the Act applies to all teaching and non-teaching staff employed in a private institution, whether the employee is appointed in aided or unaided post. It is further held that provision of Section 79 of the Act mandates that the prior approval of the competent authority is required for termination of an employee. On this ground alone, the removal order is liable to be set aside. Even the Enquiry Officer's report is not supported by any evidence and based on the said report the 4th respondent, who is not competent to terminate the services of the petitioner, passed the termination order contrary to the provisions of Section 79 of the Act, which is illegal.

08. The plea of the learned counsel for the respondents that the petitioner was removed by the 4th respondent as he was

authorised under the by-laws of the Society and there is no necessity to obtain prior approval of the competent authority under Section 79 of the Act and the petitioner filed this writ petition in the year 2004 after his termination in the year 2002 without availing the remedy of appeal under Section 80 of the Act, do not merit consideration and untenable. He approached the Legal Services Authority on 03.08.2002 and also the District Educational Officer, Guntur on 27.08.2002. After receiving the report from the 4th respondent on 13.09.2002, on the representation of the petitioner dated 04.09.2003, the A.P. High Court Legal Services Committee, Hyderabad, on 06.04.2004 appointed Sri T.Rama Krishna Rao, Senior Legal Aid Counsel to appear in the matter and do the needful. Hence, filing of the writ petition in the year 2004 against the removal order passed in the year 2002, could not be said to be filed belatedly. His further contention is that the 4th respondent-School is not a State within the meaning of Article 12 of the Constitution of India and relied on the judgment of this Court passed in W.P.No.23589 of 2017 dated 31.07.2017, wherein it is held that the Raja Mahendra College of Engineering, Ibrahimpatnam managed by the society, is not a State within the meaning of Article 12 of the Constitution of India as it is not a deemed university. The said decision is of no help to the plea of the learned counsel for the respondents as the 4th respondent-School is governed

by the provisions of A.P. Education Act, 1982 and receiving grant-in-aid.

9. In considered view of the Court, the State has an obligation to provide facilities and opportunities to the people to avail the benefit of right to Education. The 4th respondent's institution has to cater to the needs of the educational opportunities. When an element of public intent is created, the Record Assistant working in the institution is also entitled to and avail the remedy provided under Article 226 of the Constitution of India as the jurisdiction part is very wide. So, he cannot be denied the same benefit which is available to others. The 4th respondent school is a statutory body entrusted generally with the performance of a public duty, which is ordinarily a public function and it is a State within the meaning of Article 12 of the Constitution of India and the petitioner seeks enforcement of statutory rules. Hence, the Writ Petition is maintainable before this Court.

10. For the reasons stated above, the Writ Petition is allowed declaring the removal of the petitioner from service on 31.07.2002 as illegal and contrary to law. Accordingly, the 4th respondent is directed to allow the petitioner to join duty as Record Assistant in the 4th respondent-School and to pay the salaries from the date of petitioner's illegal termination till the date of allowing the petitioner to duty @ Rs.2,300/- per month along with interest at 9% per annum. The

4th respondent is further directed to complete the above exercise within a period of two (2) months from the date of receipt of a copy of this order. No order as to costs.

11. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE M.GANGA RAO

20-09-2018
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THE HON'BLE SRI JUSTICE M.GANGA RAO



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