

**THE HON'BLE SRI JUSTICE M.GANGA RAO**

**WRIT PETITION No.21025 OF 2002**

**ORDER:**

Petitioner, who is working as Junior Teacher in the first respondent-Institute, filed this writ petition being aggrieved by the Order No.NIMH/Estt.6 (168)/92/08 dated 03.04.2002 whereby the petitioner was appointed afresh in the post of Fitter-cum-Machinist and posted to work as a Junior Teacher in the Model School at New Delhi.

Case of the petitioner is that in response to the notification dated 25.01.1992 issued by the second respondent for one post of Junior Teacher reserved for 'SC' category, petitioner made an application. After completion of the selection process, she was appointed to the post of the Junior Teacher in the basic pay of Rs.1200/- in the scale pay of Rs.1200-30-1560-40-2040 with usual allowances on Central Government rates, vide Memorandum No.NIMH/Estt.5(39)/92/8937 dated 02.07.1992 issued by the second respondent. Petitioner was placed under probation for a period of two years commencing from 20.07.1992. In usual course, her probation has to be declared by 19.07.1994. To her misfortune, on 22.04.1994, one Mahaveer Singh tried to outrage her modesty, for which, she made a complaint before Bowenpally Police on 22.04.1994 and the same was registered as F.I.R.No.51/1994 for the offences punishable under Sections 354, 342 and 323 of Indian Penal Code. The same was tried by the Additional Metropolitan Magistrate (Mahila Court), Hyderabad, in S.C.No.486/1994 wherein after due trial, vide judgment dated 21.09.1995 the accused Mahaveer Singh was found guilty of the

offence and was sentenced to undergo rigorous imprisonment for five years and also to pay a fine of Rs.5000/-, in default, to suffer simple imprisonment for five years. Further, in response to the complaint made to the first respondent by the petitioner for the same incident, Mahaveer Singh was given Rule 14 charge sheet. In the domestic enquiry, the said charge was not proved. Hence, Mahaveer Singh was absolved from the charge in domestic enquiry even before final verdict in criminal case. Thereafter, basing on the complaint made by Mahaveer Singh in respect of the very same incident, as a counter blast to the complaint filed by the petitioner, the petitioner was issued with Rule 14 charge sheet on 19.07.1994. Petitioner's probation was extended for six months w.e.f.20.07.1994 by the second respondent vide order dated 01.09.1994. Petitioner made a representation to the first respondent on 28.09.1994 requesting not to postpone declaration of her probation. The second respondent vide Office Order dated 03.02.1995 informed the petitioner that the Departmental Promotion Committee had reviewed her case and had adopted sealed cover procedure and the declaration of the probation and confirmation of the petitioner's services would be decided only after conclusion of disciplinary proceedings initiated against the petitioner. Petitioner submitted a representation on 16.11.1995 seeking intervention of the first respondent for declaration of her probation since the proceedings pending were nothing to do with declaration of probation. The first respondent issued orders dated 10.04.1997 informing the petitioner that the charges framed against the petitioner under Rule 14 charge sheet were not proved and she was exonerated from all the charges but with a censure

the matter was closed. *In spite* of the same, the first respondent issued proceedings dated 25.04.1997 terminating petitioner's services as Junior Teacher without any prior notice, enquiry and without assigning any reasons. Questioning the said order, petitioner filed W.P.No.9706/1997. This Court after considering contentions urged by both the parties and referring to various decisions of the Supreme Court and this Court, passed order dated 26.02.2002 setting aside the order dated 25.04.1997 and remitted the matter back to the first respondent for the purpose of re-considering the decision in the light of the observations made by this Court therein. Pursuant thereto, the first respondent by impugned proceedings appointed the petitioner afresh in the vacant post of Fitter-cum-Machinist, to which post the petitioner is not qualified, on the ground that the post of Junior Teacher is not available, and directed the petitioner to go and work under the control of Principal, MSMDC, New Delhi. Being aggrieved by the same, the present writ petition came to be filed.

This Court on 23.10.2002 while admitting the Writ Petition granted interim direction in WPMP No.26306 of 2002. By virtue of said interim direction, the petitioner has been continuing as Junior Teacher in the second respondent-Institute.

The first respondent filed a counter affidavit denying the averments made in the affidavit filed in support of the writ petition stating that Mahaveer Singh is an independent episode. In the absence of clear material, it cannot be said that the episode of Mahaveer Singh had influenced the first respondent in taking impugned action and this episode cannot be taken into consideration for the purpose of appreciating the facts and

circumstances of this case. Mahaveer Singh also made a complaint against the petitioner on the same day and not with ante-date as alleged by the petitioner and charge sheet was also issued to the petitioner. Writ petitioner's probation was extended for the reasons that her performance was not up to the mark as admitted by her in letter dated 06.04.1994 as a departmental enquiry was pending against the petitioner. The Departmental Promotion Committee informed the petitioner by order dated 03.02.1995 that sealed cover procedure was adopted and declaration of petitioner's probation would be decided after termination of the disciplinary proceedings. After thorough enquiry, the first respondent issued order dated 10.04.1997 informing the petitioner that charge against the petitioner was not proved. That itself shows that the first respondent acted in a very fair manner insofar as the petitioner is concerned. After completion of the disciplinary proceedings against the petitioner, the sealed cover was opened and as per the contents of the sealed cover, the first respondent issued order dated 25.04.1997 terminating her services as the petitioner was on probation. Petitioner's representation was rejected on 19.04.2002 by the first respondent. It is further stated that the petitioner made all sorts of frivolous and irrelevant allegations against the officers and no officer ever victimized the petitioner. The allegation of victimization is vague and absolutely baseless and is not borne out by any record. Petitioner was reinstated by order dated 03.04.2002 by the first respondent. Since no post of Junior Teacher is vacant at NIMH, Secunderabad, to accommodate the petitioner, she was shown against the vacant post of Fitter-cum-Machinist having

identical pay scale of Junior Teacher and posted at Model School, New Delhi, for mentally deficient children, to work under close supervision and control of Principal, MSMD, in order to have an objective assessment of her work performance. The impugned order was not issued to cause any inconvenience to the petitioner and only to accommodate the petitioner in the Organization as a Junior Teacher. The only objection raised by the petitioner to work at New Delhi was that she does not know Hindi language. But, the said averment is incorrect since it is very clear from her application wherein the petitioner clearly stated that she can read and write Hindi and it clearly shows that the petitioner is acquainted with Hindi language and can easily communicate with children with that knowledge. Hence, prayed to dismiss the writ petition.

Sri CMV Velu, learned counsel appearing for the petitioner, would contend that on the basis of the complaint given by Mahaveer Singh, petitioner was given Rule 14 charge sheet. Pending enquiry, for the reasons best known to the respondents, the petitioner's probation was not declared and they adopted sealed cover procedure. He would further contend that for not accepting the compromise suggested by the respondents and to take vengeance for the same, the respondents issued termination order dated 25.04.1997 by invoking clauses 2 and 3 of Memorandum dated 02.07.1992 wherein the petitioner was selected and appointed as a Junior Teacher in the pay scale subject to the conditions stipulated therein. However, the termination order dated 25.04.1997 was set aside by this Court vide order dated 26.02.2002 passed in W.P.No.9706 of 1997 by making certain observations and the matter was remanded back to

the first respondent for the purpose of re-considering the decision taken, in the light of the observations made by this Court. Accordingly, by impugned order dated 03.04.2002, the petitioner was taken back into services with effect from the date of her joining the duty subject to conditions stipulated therein. Her pay was fixed at Rs.4000-6000 by protecting the last pay drawn by her. She was posted at New Delhi and directed to work under the control and supervision of Principal, MSMD, in order to have an objective assessment of her work performance during the period of probation. Petitioner was also directed to submit an undertaking of the acceptance of the above stipulations to the first respondent before joining the duty, which is highly illegal and arbitrary. The impugned order passed by the first respondent by exercising his power amounts to severe punishment for nothing. It could be easily found that the impugned order is passed at the instance of Mahaveer Singh as the petitioner has not compromised in the earlier incident. Learned counsel further contends that this Court in its earlier order dated 26.02.2002 held that the petitioner's services were terminated improperly and there no reason for not declaring her probation, by merely holding that disciplinary proceedings are pending, by adopting the sealed cover procedure by the Departmental Promotion Committee, which is nothing to do with the declaration of probation of the petitioner, which clearly shows as to how the petitioner was victimized in her service.

Learned counsel further contends that since date of her earlier termination on 25.04.1997, which was set aside by this Court in W.P.No.9706/1997, petitioner is entitled for all the service benefits and fixation of her pay by giving continuity of service and

all other benefits, but the first respondent, on remitting the matter by this Court while setting aside the earlier termination order, for no reason or logic, passed the impugned order reinstating the petitioner afresh as Fitter-cum-Machinist for which post she is not qualified and posted at far of place at New Delhi only to victimize the petitioner and to leave the job on her own. That could be an idea of the respondents. Petitioner in her young age was put to all sorts of troubles/difficulties in discharging her duties for resisting the male domination at the work place. Hence, he prayed to set aside the impugned order.

Per contra, Smt.S.Shiva Kumari, learned counsel appearing for the respondents, vehemently contends that there is no victimization of the petitioner at work place and no convincing reasons in support of allegation of her victimization were placed before the first respondent. The first respondent independently acted as per rules. Her performance as a teacher was judged without any extraneous considerations. The incident of Mahaveer Singh is highlighted only to create confusion and the petitioner made allegations against some officers who are not even named. The impugned order was passed not to put any inconvenience to the petitioner but only to accommodate the petitioner in the organization as a Junior Teacher. As per the orders of this Court dated 26.02.2002 in W.P. No.9706/1997 on remand, the case of the petitioner was re-considered by the first respondent as per Rules and then only impugned order was passed. The allegations of the petitioner that she was asked to compromise in the matter with Mahaveer Singh were only made to prejudice this Court. The first respondent has not passed this order in the backdrop of

episode of Mahaveer Singh, as alleged by the petitioner, but the same is passed as per Rules and the petitioner was not placed under any difficult position. Learned counsel further contended that the present Writ Petition is filed substantially for the same issue raised in earlier W.P.No.9706/1997 which was considered and disposed of. Hence, the present writ petition is hit by the doctrine of *Res Judicata* under Section 11 of the Code of Civil Procedure. As the petitioner was under probation and she being a temporary employee, by invoking clauses 2 and 3 of the appointment order, earlier she was terminated as per Rules. On remand only, the present order came to be passed as per Rules, which cannot be said to be illegal and arbitrary. Hence, the petitioner is not entitled for any relief in this writ petition and the same is liable to be dismissed.

Having considered the facts and circumstances of the case and the rival contentions of both the counsel, in considered view of this Court, the action of the respondents in appointing the petitioner afresh by the impugned order dated 03.04.2002 as Fitter-cum-Machinist, for which post she is not qualified, under the premise that there is no post of Junior Teacher available in respondent Organization, is unsustainable. Initially, the petitioner was selected and appointed in pursuance of the notification dated 25.01.1992 issued by the second respondent for the post of Junior Teacher reserved for candidates belonging to SC category, to be posted at Special Education Centre of the first respondent and the petitioner was appointed in the post of Junior Teacher in the Central Pay of Rs.1200-2040 with all usual allowances applicable to the Central Government employees vide proceedings dated

02.07.1992 issued by the second respondent and she joined duty on 20.07.1992. She was under probation for a period of two years from 20.07.1992 and her probation has to be completed by 19.07.1994. Due to the incident occurred on 22.04.1994 wherein the co-employee of the petitioner by name Mahaveer Singh tried to outrage the modesty of the petitioner and based on the complaint of the petitioner, FIR in crime No.51/94 was registered by Bowenpally Police against Mahaveer Singh for the offence punishable under Sections 354, 342 and 323 of Indian Penal Code and he was tried for the said offences by the Additional Metropolitan Sessions Judge (Mahila Court), Hyderabad, in S.C.No.486/1994 wherein vide judgment dated 21.09.1995 the accused was sentenced to undergo rigorous imprisonment for five years and to pay fine of Rs.5000/-, in default to undergo simple imprisonment for five years.

After carefully considering the material available on record, this Court found that the incident occurred against the petitioner and subsequent refusal of the petitioner to compromise in the criminal proceedings, could only be the reason for the subsequent proceedings passed against the petitioner, there is no other reason worth consideration to pass impugned order. Petitioner was victimised at work place and was put to all difficulties and finally her services were terminated on 25.04.1997. Thereafter, as per the orders passed by this Court in W.P.No.9706/1997 dated 26.02.2002 the present impugned order is passed. The impugned order is passed without application of mind by the first respondent to the facts and circumstances of the case and rules of law applicable to the case. Learned counsel for the respondent tried to

convince this Court that by invoking clauses 2 and 3 of the Memorandum of appointment dated 02.07.1992, the earlier termination of the petitioner was ordered. It is apt to extract clauses 2 and 3 of Memorandum of appointment, for better adjudication of the matter, which are as under:

- 2) The appointee will be on a probationary period of 2 years from the date of joining duty. The probationary period may be extended at the discretion of the competent authority. During the probationary period, the services of the employee can be terminated at any time without giving any notice and without assigning any reason.
- 3) The appointment can be terminated at any time by giving one month's notice on either side during the period of probation and three months notice after completion of probation. The Institute, however, reserves the right to terminate the services of the employee forthwith or before the expiry of notice period by making payment to the employee of a sum of equivalent to the pay and allowances for the period of notice or the unexpired portion thereof. The employee cannot, however, surrender pay and allowances in lieu of the period of notice or unexpired portion thereof and he may be required to serve for the full period of notice."

From a perusal of the above clauses coupled with the material on record, this Court feels that the impugned order is passed only as a measure of punishment in the background of Mahaveer Singh, however, giving a colour to it that the petitioner was terminated as per clauses 2 and 3 of Memorandum of appointment during the period of probation. This Court is of the considered view that the first respondent acted arbitrarily and contrary to the rules while passing the impugned order. Hence, the impugned order is liable to be set aside.

Accordingly, the Writ Petition is allowed by setting aside the Order No.NIMH/Estt.6 (168)/92/08 dated 03.04.2002 directing the

respondents to reinstate the petitioner into service as Junior Teacher in the first respondent-Organization with continuity of service and all other benefits and the petitioner is entitled for payment of difference of arrears of pay by treating the petitioner as deemed to be in continuous service as per the orders of this Court in W.P.No.9706/1997 dated 26.02.2002 wherein her earlier termination was set aside. This exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

21.08.2018  
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**(M.GANGA RAO, J)**