

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.11169 OF 2001

ORDER:

The petitioner, worked as a Senior Assistant in the third respondent-A.K.Navjivan Women's College, Hyderabad, filed this Writ Petition for the following reliefs:

- (i) compelling the respondents to treat the petitioner as senior Assistant from 1.6.1995 and pay all the dues upto date;
- (ii) compel the respondent No.3 to implement the orders of the Commissioner and Director of Collegiate Education, A.P., Hyderabad, issued in Rc.No.1877/PC.3-2/95, dated 2.11.1999 and in proceedings Rc.No.1879/Admn.V-2/95 dated 28.3.2000; and
- (iii) compel the respondents 1 and 2 to produce the records relating to Rc.No.1879/Admn.V-3/95 dated 26.2.2002 of the 1st respondent; and
- (iv) to pass such other order or orders as this Court may deem fit and proper in the circumstances of the case.

The case of the petitioner is that he was appointed as L.D.C. (Junior Assistant) and thereafter, he was promoted as U.D.C. While so, a charge sheet was issued to the petitioner on 06.01.1995 alleging that he frequently availed leave in the year 1994 i.e. 5 days in the month of January, 8 days in the month of February, 9 days in the month of March, 4 days in the month of April, 4 days in the month of July, 15 days in the month of August, 11 days in the month of September, 31 days in the month of October, 5 days in the month of November and 12 days in the month of December. It was further alleged that absence of the petitioner resulted in serious problem to the administrative work of the College, petitioner failed to complete the accounts and he had also replied irresponsibly to the letter of the Principal dated

20.12.1994 in that regard, he failed to prepare UG accounts by collecting materials from the Superintendent even though the petitioner as well as the Superintendent attended the college on 7th, 8th, 21st, 22nd, 24th, 25th and 26th November, which shows negligence on his part. Thus, the petitioner was placed under suspension pending further enquiry. Petitioner submitted his explanation denying the said allegations by giving details, but the third respondent having not satisfied with the explanation, appointed an Enquiry Officer and the Enquiry Officer after conducting a farce of enquiry, submitted Enquiry Report on 28.02.1995. Based on the same, a show cause notice was issued to the petitioner asking to submit his explanation as to why he should not be removed from service, to which petitioner submitted his explanation on 18.03.1995. After obtaining approval from the Commissioner of Collegiate Education, on 29.05.1995, under the provisions of Section 79 of the Andhra Pradesh Education Act, 1982 (for short, 'Education Act'), the Special Officer, who was appointed to manage the affairs of the 3rd respondent-College, passed the impugned order of termination on 01.06.1995. Questioning the same, petitioner filed W.P.No.11328 of 1995 before this Court challenging the termination order. This Court by order dated 09.09.1999 quashed the impugned order of termination giving liberty to the respondents to proceed against the petitioner from the stage anterior to the impugned orders of termination, in accordance with law. The Commissioner and Director of Collegiate Education, Hyderabad, vide proceedings in RC No.1877/PC.3-2/95 dated 02.11.1999 directed the third respondent-College to reinstate the petitioner into service as Senior Assistant at the first instance and thereafter to initiate disciplinary proceedings as per

the orders of the Court. Again the Commissioner and Director of Collegiate Education, Hyderabad, after referring to the letter dated 09.11.1999 of the 3rd respondent-College, passed orders on 28.03.2000 directing to take the petitioner into service and report compliance by 05.04.2000. The Commissioner and Director of Collegiate Education, issued proceedings dated 29.11.2000 calling the petitioner and Secretary and Correspondent of the 3rd respondent-College to attend for hearing, along with necessary material and records. Petitioner attended the enquiry on 06.12.2000, along with his counsel. The Commissioner remanded the matter to the second respondent. When the 2nd respondent failed to pass any orders, petitioner submitted letters on 28.03.2001 and 09.04.2001 along with relevant documents, requesting to pass suitable orders, but in vain. Being aggrieved by the action of the respondents in not reinstating the petitioner to duty and pay salaries, even though his termination order was set aside by this Court by order dated 09.09.1999 in W.P.No.11328/1995, the present Writ Petition came to be filed.

The third respondent filed a counter affidavit mainly stating that this Court while setting aside the termination order dated 01.06.1995 given liberty to the respondents to proceed against the petitioner from the stage anterior to the impugned orders of termination in accordance with law. In obedience to the said orders, as per the resolution of the third respondent, the petitioner was terminated from service by proceedings No.AKNWC/285/99 dated 05.10.1999. Aggrieved by the same, petitioner filed C.C.No.1578/1999, which was dismissed by this Court on 01.02.2000 giving liberty to the petitioner to assail the order of the

third respondent dated 05.10.1999. The first respondent vide proceedings dated 28.03.2000 directed the third respondent to admit the petitioner to duty and to take further action, for which, the third respondent submitted a suitable reply expressing inability to implement the orders of the first respondent. Notwithstanding the same, the first respondent by proceedings dated 29.06.2000 threatened the third respondent to initiate action under Section 24 of the Education Act, for not reinstating the petitioner into service and also for passing second termination orders dated 05.10.1999. As per the orders of this Court dated on 09.09.1999 passed in W.P.No.11328 of 1995, the petitioner is not entitled for reinstatement and payment of wages/arrears.

The first respondent also filed a counter affidavit mainly stating that the petitioner while working as a Senior Assistant in the 3rd respondent-College was placed under suspension w.e.f.01.06.1995 by the Special Officer of the College, pending enquiry. Thereafter on enquiry, the petitioner was terminated by the Special Officer vide order dated 01.06.1995. Petitioner filed Writ Petition No.11328 of 1995 before this Court seeking to set aside the termination order. Pursuant to disposal of said writ petition, the first respondent by proceedings dated 02.11.1999 and 28.03.2000 directed the third respondent-College to reinstate the petitioner in the first instance and then initiate disciplinary proceedings against him. However, the Correspondent of the third respondent-College vide letter dated 28.09.1999 informed that in pursuance to the orders of this Court dated 09.09.1999 passed in W.P.No.11328 of 1995, action has already been initiated. In view of the same, the petitioner was informed, by letters dated

02.11.1999 and 28.03.2000, to approach appropriate Forum against termination order dated 05.10.1999 passed afresh by the third respondent-Management.

Sri M.Surender Rao, learned counsel appearing for the petitioner, would contend that initially the petitioner was terminated by proceedings dated 01.06.1995 without properly considering the explanation of the petitioner to the charges stating that as he was suffering from diabetes, hypertension and spondylosis, as per the advice of the Doctor, he availed leave on medical grounds and same was sanctioned by the Principal and Correspondent of the College and the petitioner was also paid salary for the leave period. He would further submit that even though the Superintendent was available, he had not handed over the relevant cash books and vouchers in proper form to the petitioner to complete the accounts. Hence, he was unable to write the cash book and complete it by 31.12.1994. Due to subsequent management meetings in the College, the preparation of the accounts and submission of the UG report could not be completed. The third respondent without considering the explanation of the petitioner to the charges got conducted a farce of enquiry. The Enquiry Officer submitted Enquiry Report behind the back of the petitioner. The Enquiry Report was not given to the petitioner for submitting his comments. A show cause notice of removal was issued for which the petitioner has submitted his explanation, but the third respondent without considering the explanation of the petitioner and solely based on the Enquiry Officer's report removed the petitioner from service by order dated 01.06.1995. Petitioner challenged the said termination order before this Court in

W.P.No.11328 of 1995. This Court by order dated 09.09.1999 allowed the Writ Petition by setting aside the termination order giving liberty to the respondents to pass fresh orders as per law. Pursuant to the same, the first respondent directed the third respondent to take the petitioner into duty at the first instance and then to proceed further. In spite of the same, petitioner was not reinstated into service and was paid any salaries. Thereafter, the third respondent-College passed a resolution and consequently another termination order dated 05.10.1999 was passed terminating the petitioner from service, without obtaining prior approval of the competent authority under Section 79 of the Education Act. Having reached the age of superannuation, vexed with the attitude of the 3rd respondent-Management and due to health problems, petitioner could not challenge the second termination order dated 05.10.1999.

Learned counsel would further contend that this Court set aside the first termination order dated 01.06.1995 and had left open to the respondents to proceed against the petitioner from the stage anterior to the impugned order of termination. This Court while setting aside the termination order dated 01.06.1995 only given liberty to the respondents but not remanded the matter for fresh consideration to the respondents and hence the petitioner is deemed to have reinstated into service as per the orders of this Court. At best, from the date of his termination on 01.06.1995 up to the orders of this Court passed on 09.09.1999 in W.P.No.11328 of 1995 he is entitled for the salary and all other attendant benefits considering that period as in service as the termination order is set aside.

Per contra, Sri P.Srinivasa Rao, learned counsel appearing for the third respondent, would contend that the petitioner was removed from service on 01.06.1995 after conducting departmental enquiry with prior approval of the competent authority as required under Section 79 of the Education Act. However, on being challenged by the petitioner, this Court by order dated 09.09.1999 set aside the order in W.P.No.11328 of 1995 giving liberty to the respondents to pass fresh orders. Hence, the third respondent passed fresh orders dated 05.10.1999 terminating the services of the petitioner and the said order has become final as the petitioner has not preferred any appeal instead the petitioner filed the present writ petition. In view of the subsequent termination order passed on 05.10.1999, in pursuance to the orders of this Court dated 09.09.1999 in W.P.No.11328 of 1995, the petitioner is not entitled for any reinstatement and salaries. The orders of the first respondent are not binding on the third respondent in view of the subsequent termination of the petitioner by proceedings dated 05.10.1999 and third respondent-Management also filed W.P.No.2127/2006 before this Court questioning the proceedings issued by the first respondent. Hence, the petitioner is not entitled for any reinstatement and salaries for the period from 01.06.1995 to 05.10.1999 i.e. the date of passing of fresh termination order.

Learned Government Pleader appearing for the first and second respondents fairly contended that the petitioner was terminated on 01.06.1995 and in spite of the proceedings of the first respondent, he was not reinstated into service. However, the third respondent passed fresh termination orders dated 05.10.1999, in pursuance to the orders of this Court dated

09.09.1999 in W.P.No.11328 of 1995. As the petitioner was not reinstated into service and has not worked, he is not entitled for any salaries for the period for which he was out of service in view of the principle of 'no work no pay'. Further, she would contend that while setting aside the termination order dated 01.06.1995 in W.P.No.11328 of 1995 dated 09.09.1999 this Court has given liberty to the third respondent-College to pass fresh orders as per law. Since fresh termination order was passed on 05.10.1999, petitioner was not reinstated into service. Hence, he is not entitled for payment of any salaries.

Having considered the rival contentions of the learned counsel and in the facts and circumstances of the case, it is not in dispute that termination of the petitioner vide proceedings dated 01.06.1995 was set aside by this Court on 09.09.1999 in W.P.No.11325 of 1995 on being challenged by the petitioner before this Court. It is apt to extract the operative portion of the said order, which reads as under:

“In the circumstances, the impugned order dated 1.6.95 is invalid and is accordingly quashed. It would be open to the respondents to proceed against the petitioner from the stage anterior to the impugned orders of termination, in accordance with law. In the light of the fact that the order of termination dated 1.6.95 has been invalidated on the short ground of non-recording of reasons, it would also be open to the petitioner to raise such objections as he may desire to or be advied to, against the substance and procedure of the enquiry proceedings or any other proceedings that may be initiated against him in the context of the said enquiry either before the management/ disciplinary authority or in such other for a as are available to him.”

Thus, the order clearly states that the termination order dated 01.06.1995 was set aside and the respondents were given liberty to proceed against the petitioner from the stage anterior to the impugned order of termination dated 01.06.1995, in accordance with law. By virtue of this Court's order dated 09.09.1999, the course left open to the third respondent was to reinstate the petitioner into service at the first instance and thereafter to proceed against him from the stage anterior to passing of the termination order dated 01.06.1995. Instead of reinstating the petitioner, the third respondent straight away passed another termination order on 05.10.1999, even ignoring the proceedings of the first respondent dated 02.11.1999 and 28.03.2000 in this regard wherein the first respondent directed the third respondent to admit the petitioner to duty in the first instance and thereafter to proceed against him in accordance with law. Further, the termination order passed by the third respondent on 05.10.1999 is passed without prior approval of the competent authority as required under Section 79 of the Education Act. Hence, the termination order is *non est* in law. When the termination order dated 01.06.1995 itself was set aside by this Court on 09.09.1999, the petitioner is entitled for reinstatement and payment of salaries. Petitioner was made to suffer by not admitting him to join duty even after this Court set aside the termination order dated 01.06.1995. It is to be seen that while setting aside the termination order dated 01.06.1995, this Court has not remanded the matter to the third respondent for fresh consideration but it was left open to the third respondent to proceed against the petitioner from the stage of anterior to the termination order dated 01.06.1995, as per law. Hence, the action

of the third respondent in not reinstating the petitioner into service and not paying salaries, is illegal, as contended by the learned counsel for the petitioner. The contention of the learned Government Pleader and the learned counsel for the third respondent that the petitioner was terminated by passing fresh proceedings dated 05.10.1999 as per the orders of this Court dated 09.09.1999 in W.P.No.11328 of 1995 and as per the principle of 'no work no pay', the petitioner is not entitled for salaries, merit no consideration.

Considering these circumstances, to meet the ends of justice, the respondents are directed to pay salaries and allowances to the petitioner from 01.06.1995 to 05.10.1999 during which period he was kept out of service illegally. The respondents are further directed to complete the exercise of payment of salaries and allowances to the petitioner, as directed above, within a period of two months from the date of receipt of a copy of this order.

Accordingly, the Writ Petition is allowed.

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

(M.GANGA RAO, J)

7th September, 2018
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