

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO**

WRIT PETITION Nos.6853 of 2003, 11914 OF 2006 and 1188 of 2011

COMMON ORDER : (per Hon'ble Sri Justice M.Ganga Rao)

Chintalapalem Gram Panchayat is the respondent in the Original Applications Nos.834 of 2003, 4878 of 2003 and 5709 of 2006 filed by N.Koteswara Rao before the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'Tribunal'). He filed OA Nos.834 of 2003 and 5709 of 2006 for continuing him as Turn Cock of the Gram Panchayat and for payment of arrears of salaries and the same were allowed. Assailing the same, the Gram Panchayat is before this Court by way of W.P.Nos.6853 of 2003 and 1188 of 2011. O.A.No.4878 of 2003 filed by N.Koteswara Rao to continue him as Turn Cock but the same was dismissed holding that a second O.A. seeking the very same relief to continue him as Turn Cock and for payment of arrears of salaries was not maintainable. Aggrieved by the same, he is before this Court by filing W.P.No.11914 of 2006.

For the sake of convenience, the petitioner in W.P.No.6853 of 2003 and 1188 of 2011 is referred to as 'Gram Panchayat' and the applicant in the OAs and petitioner in W.P.No.11914 of 2006 is referred to as 'contesting respondent'.

All these writ petitions are considered and disposed of by this common order as the cause of action, relief sought for and the parties to the writ petitions are common.

Heard Sri M.V.Ravindranath Reddy and Sri P.V.Ramana learned counsel for both the parties.

Brief facts of the case are that the contesting respondent was initially appointed as Pump Shed Watchman on 12.06.1981 in the pay of Rs.150/- per month. The said post was sanctioned by the District Collector for a period of two years from 16.10.1980 to 16.10.1982 and the same was extended from time to time. The Government issued G.O.Rt.No.1420 Panchayat Raj & Rural Development (Estt.IV) Dept. dated 05.09.1989 wherein sanction was accorded to the Gram Panchayat for conversion of the post of Pumpshed Watchman-cum-Engine Driver into a full time post of Turn Cock-cum-Watchman in the pay scale of Rs.740-1150 with allowances from 18.10.1988 to 28.08.1990, subject to the condition that the expenditure should be met from the income derived by the Gram Panchayat from water tax levied only. The District Collector sanctioned increments on 18.05.1995 to the contesting respondent. Consequently, the contesting respondent's pay was fixed at Rs.1745/- on 01.10.1996. The District Panchayat Officer, Ongole, vide proceedings dated 30.07.1999, regularized the services of the contesting respondent w.e.f.18.10.1988 and his probation was also declared w.e.f.17.10.1990. On 01.10.1998, he was allowed the pay scale of Rs.1875-3650. Later, on 01.10.1999, his pay was fixed at Rs.3750/- and the same was entered in his Service Register. When he was not paid salaries from December, 1998 to 16.12.2002, *in spite* of his representation dated 01.08.2002, he filed O.A.No.11687 of 2002 for payment of arrears of salaries. During the pendency of the said O.A., an amount of Rs.50,000/- was paid on 16.12.2002 towards part of arrears of salary. The said O.A. was disposed of on 07.01.2003 directing the Gram Panchayat to pay balance of the arrears of salaries.

Accordingly, an amount of Rs.17,083/- was paid to him through cheque No.A002697 dated 11.07.2005.

Thereafter, when the services of the contesting respondent as Turn Cock were discontinued orally by the Gram Panchayat without following due process of law, he filed O.A.No.834 of 2003 and the same was disposed of at the admission stage on 07.02.2003 directing the Gram Panchayat and other respondents therein to permit the contesting respondent to attend to his official duties. However, the authorities were given liberty to take action against him by following due process of law. Aggrieved by this order, the Gram Panchayat filed W.P.No.6853 of 2003 and obtained interim stay on 18.04.2003 in WPMP No.8920 of 2003. While the matter was *sub judice* before this Court, the Gram Panchayat passed order dated 19.03.2003 discontinuing the services of the contesting respondent as Turn Cock. Assailing the order dated 19.03.2003, the contesting respondent filed O.A.No.4878 of 2003 and consequently sought a direction to continue him in service w.e.f. 17.12.2002. The said O.A. was dismissed by the Tribunal vide order dated 04.08.2005 holding that the earlier oral termination of the contesting respondent was the subject matter of O.A.No.834 of 2003 and for the same set of facts, a second O.A. was not maintainable. Challenging the said order dated 04.08.2005, the contesting respondent filed W.P.No.11914 of 2006. He filed another O.A.No.5709 of 2006 questioning the legality of the order dated 22.04.2006 passed by the Panchayat Secretary of the Gram Panchayat denying him payment of salaries from 01.11.1998 to 31.03.2003 *in spite of* extracting his services. The said O.A. was disposed of on 16.12.2009 with the following directions:

In view of the above circumstances, as the facts with respect to continuing the applicant after expiry of the term of the post i.e. 31.03.2003 are disputed, the applicant is directed to approach the District Collector i.e. the 1st respondent by giving a detailed representation and the 1st respondent shall examine as to why the post which has been in existence for two decades has not been extended and pass appropriate orders with respect to the continuation of the applicant and payment of salaries within a period of eight weeks from the date of receipt of the representation of the applicant.”

Aggrieved by the above order, the Gram Panchayat approached this Court by filing W.P.No.1188 of 2011 wherein this Court granted interim suspension on 28.01.2011 in WPMP No.1450 of 2011.

Learned counsel appearing for the Gram Panchayat would contend that the contesting respondent was appointed as Pumpshed Watchman for a prescribed period and the same was extended from time to time. His continuation in the converted post of Turn Cock-cum-Watch man was illegal as he did not possess the requisite qualifications. Finally, his services were discontinued as the extended period expired on 31.03.2003 and also taking note of the fact that he was irregular in attending to his duties. Thereafter, the Gram Panchayat engaged the services of one Sri Palle Venkata Ravi Kumar on contract basis with the prior permission of the District Panchayat Officer. Hence, the orders passed by the Tribunal in O.A.No.834 of 2003 and O.A.No.5709 of 2006, at the admission stage without issuing notice and affording opportunity, are against the principles of natural justice and liable to be set aside by allowing W.P.Nos.6853 of 2003 and W.P.No.1188 of 2011. He would further contend that W.P.No.11914 of 2006 filed by the contesting respondent against the dismissal order dated 04.08.2005 passed by the Tribunal in O.A.No.4878 of 2003

is liable to be dismissed as the order dated 04.08.2005 does not suffer from any illegality.

Learned counsel for the contesting respondent would contend that initially he was appointed as a Pumpshed Watchman-cum-Engine Driver against a sanctioned post on 12.06.1981. Later, the said post was converted into Turn Cock-cum-Watchman on permanent basis and he was allowed to draw pay scale of Rs.3,750/-. His oral discontinuance from service and non-payment of salaries are illegal. When he approached the Tribunal, the Tribunal had rightly passed orders in O.A.Nos.834 of 2003 and 5709 of 2006 directing the Gram Panchayat to continue the contesting respondent and pay arrears of salaries to him and the same did not suffer from any irregularity, warranting interference of this Court under Article 226 of the Constitution of India. He would further contend that the services of the contesting respondent were illegally discontinued by the Gram Panchayat vide memo dated 19.03.2003 without following the due process of law, which was challenged in O.A.No.4878 of 2003. But the Tribunal, on erroneous appreciation of facts and law, dismissed the said O.A. Being aggrieved by the same, the contesting respondent filed W.P.No.11914 of 2006. Thus, he prayed to set aside the memo dated 19.03.2003 of the Gram Panchayat and allow the said Writ Petition.

Having heard the learned counsel for the parties and having perused the material on record, we find that the contesting respondent was appointed as a Pumpshed Watchman on 12.06.1981. He was paid Rs.150/- per month as per the orders of the District Collector and he was continued as such as per the orders issued by the District Collector from time to time.

Thereafter, the post of Pumpshed Watchman was converted to Turn Cock-cum-Watchman with the pay scale of Rs.740-1150 and allowances as per G.O.Rt.No.1420 dated 05.09.1989. Accordingly, he was allowed to draw salary as per the pay scale sanctioned to the said post. Somehow, he attained the status of permanent employee of the Gram Panchayat. He was drawing pay in the pay scale of Rs.3750/- as per the orders of the District Collector at the time of his oral termination. Thereafter, he was issued a memo dated 17.07.2002 by the Secretary of the Gram Panchayat alleging that he had not supplied water in the Village on 16.07.2002 and 17.02.2002 and thereby caused inconvenience to the villagers, for which, he submitted an explanation. An enquiry was ordered. After several adjournments, finally, date of enquiry was fixed on 22.02.2003 vide proceedings in RC No.B/257/2002 dated 17.02.2003, but the same was deferred for the reasons best known to them.

In the facts and circumstances of the case and in our considered view, the troubles of the contesting respondent started after assumption of charge by one Smt.Bollam Nirmala as the elected Sarpanch of the Gram Panchayat from August, 2001. Thereafter, she started to seek permission of the District Panchayat Officer, Ongole, to appoint a person on contract basis to continue supply of water under 'Protected Drinking Water Supply Scheme'. One Sri Palle Venkata Ravi Kumar was engaged on contract basis from 08.12.2002 as per the proceedings of the District Panchayat Officer. She had not submitted any proposal for further continuance of the contesting respondent as Turn Cock of the Gram Panchayat. Thereby, the contesting respondent was put to trouble, he was not paid salaries and his services were

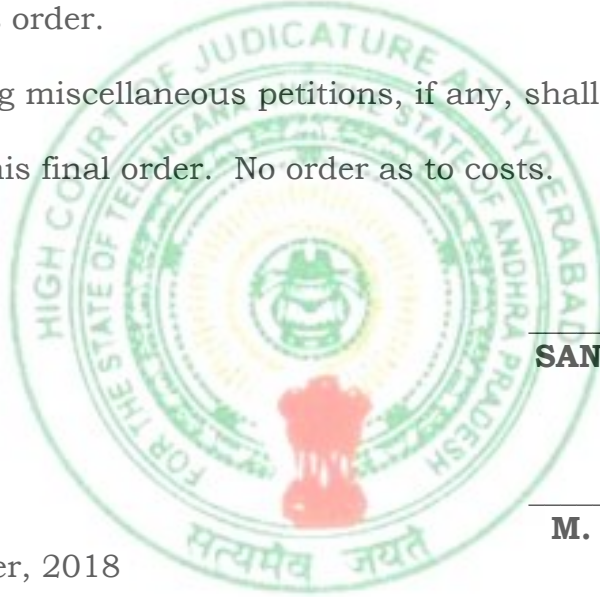
discontinued illegally and without following the due process of law. Now, the same has become the order of the day in Gram Panchayats and Societies. He was driven to a Court of Law. The law is well settled that no employee, who attained the status of permanency, can be terminated without notice and without following the due process of law. Hence, discontinuance of the contesting respondent as Turn Cock of the Gram Panchayat and non-payment of his salaries amount to blatant violation of Articles 14, 16 and 21 of the Constitution of India. Hence, we find no illegality in the orders passed by the Tribunal in O.A.No.834 of 2003 dated 07.02.2003 and O.A.No.5709 of 2006 dated 16.12.2009. Therefore, W.P.Nos.6853 of 2003 and 1188 of 2011 filed by the Gram Panchayat against the orders passed in said OAs are liable to be dismissed and are accordingly dismissed.

As regards W.P.No.11914 of 2006, wherein challenge was made to the order dated 04.08.2005 passed in O.A.No.4878 of 2003, it may be noted that the Tribunal dismissed the said O.A. holding that the oral termination of the contesting respondent was the subject matter of O.A.No.834 of 2003 and for the same set of facts, a second O.A. was not maintainable. However, it is to be seen from the facts of the case that in first O.A.No.834 of 2003, the contesting respondent had challenged his oral termination by the Gram Panchayat whereas in the second O.A.No.4878 of 2003 he challenged the memo dated 19.03.2003 issued by the Gram Panchayat discontinuing his services. Hence, for two different causes of action two separate OAs were filed and the same were maintainable. Hence, the dismissal of O.A.No.4878 of 2003 by the Tribunal is held to be illegal. Therefore, W.P.No.11914 of 2006 is allowed setting aside the order dated 04.08.2005 passed in

O.A.No.4878 of 2003 and also the proceedings dated 19.03.2003 issued by the Gram Panchayat, as the same were illegal having been passed without following the due process of law.

The respondent authorities in the OAs and the Gram Panchayat are directed to reinstate the contesting respondent as Turn Cock of the Gram Panchayat with continuity of service and all attendant benefits but without any backwages or monetary benefits. In other words, he is held entitled for notional benefits only. The above exercise should be completed as expeditiously as possible, but not later than eight weeks from the date of receipt of a copy of this order.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.



SANJAY KUMAR, J

M. GANGA RAO, J

27th December, 2018
sur/anr