

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.35015 of 2015

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed requesting to issue a writ of mandamus declaring the termination order, dated nil and posted in the website, on 01.10.2015, against the petitioner, as illegal, arbitrary, discriminatory and violative of the provisions of the Constitution of India and consequently declare that the petitioner is entitled to continue in service as District Manager, Arogyasri Health Care Trust (AHCT), Khammam.

2. I have heard the submissions of *Sri Srinivasa Rao Madiraju*, learned counsel appearing for the petitioner, of the learned Government Pleader for Medical, Health and Family Welfare (TS) appearing for the respondents 1 & 3; and of the learned Government Pleader for Revenue (TS) appearing for the 2nd respondent. I have perused the pleadings.

3. The case of the petitioner and the submissions made on his behalf, in brief, are as follows:

The petitioner is a Master of Business Administration. He is experienced as he worked in several private organizations. An online notification was issued by Arogyasri Health Care Trust (hereinafter, 'the Trust', for brevity) inviting applications for filling up the posts of District Manager, Divisional Team Leader etcetera. The petitioner applied for the post of Divisional Team Leader. He was selected and appointed as Divisional Team Leader in the Trust and was later promoted as District Manager and was posted in Mahabubnagar District. He worked honestly with devotion and dedication without giving any scope for anybody from making any comments on his work. While so, the Chief Executive Officer of the Trust and other higher officials including the Vigilance Officer, M.Venkateswarlu, conducted a surprise visit in the District of Mahabubnagar. They appreciated the work done by the petitioner. However, it appears that

the said Vigilance Officer was not happy about the appreciation of the petitioner's work by the officers. He abused the petitioner in filthy language and tried to defame the petitioner. The petitioner questioned him for abusing him. Instead of replying to the petitioner, the said officer, who got offended, became violent. Hence, the petitioner complained to the Chief Executive Officer. It appears that the Chief Executive Officer informed the Vigilance Officer to say sorry to the petitioner. The next day, the Vigilance Officer said sorry. But, he developed grudge against the petitioner. Subsequently, the petitioner was transferred to Khammam. The Vigilance Officer felt that the petitioner should be put to trouble. Hence, he wanted to see that certain complaints are received against the petitioner. And, accordingly he planted certain persons to lodge complaint against the petitioner to the effect that the petitioner along with two private persons is demanding and collecting money from the managements of the hospitals, who applied for empanelment with the Trust. On the basis of the said alleged false complaint, the Vigilance Officer conducted a preliminary enquiry and recommended for a detailed enquiry. Hence, an enquiry committee was constituted to enquire into the allegations made against the petitioner. The enquiry committee had given a questionnaire to the petitioner. The petitioner answered all the questions. The petitioner was not given an opportunity to cross-examine any witnesses, if any, examined. It appears that the enquiry committee submitted a report to the Chief Executive Officer stating that the allegations made against the petitioner are proved. The Chief Executive Officer addressed a letter, dated 29.09.2015, to the District Collector, Khammam, requesting to terminate the services of the petitioner with immediate effect and take necessary action to appoint a new District Manager at Khammam. It appears that on the basis of the said letter, the District Collector instructed the 5th respondent to terminate the service of the petitioner and accordingly, the 5th respondent terminated the services of the petitioner. The alleged enquiry report has not been communicated to the

petitioner. The termination order cast a stigma on the petitioner as the termination was on the basis of certain allegations made against him to the effect that he is demanding and collecting money from the managements of hospitals in Khammam, who applied for empanelment with the Trust. The committee conducted the enquiry without affording an opportunity to the petitioner and thereafter the termination order was passed. The petitioner who is 39 years of age is barred for applying for employment in any Government service. The petitioner is with the fond hope that he will be absorbed into the Trust at any time, as he has been working for the past more than five years without any adverse remarks. Had a full-fledged enquiry been conducted and the petitioner had been afforded an opportunity to meet the allegations levelled against him, which are false and motivated, the petitioner would have successfully established that the allegations are false and that he became a scapegoat on account of the action of the Vigilance Officer, M.Venkatewarlu. In the said circumstances, the writ petition is filed.

4. The case of the respondents, as stated in the counter affidavit of the 3rd respondent Trust and as per the submissions made before this Court, in brief, is this:

The material allegations in the affidavit of the petitioner filed in support of the writ petition are false. The petitioner deliberately suppressed few facts and approached this Court with unclean hands. The petitioner has no privity of contract and hence, cannot challenge the termination from the contractual service. There is no employer and employee relationship between the petitioner and the 3rd respondent. The petitioner was terminated from service by the 4th respondent, who actually engaged the petitioner's services on outsourcing basis. The allegation that the alleged termination order was put on the website of the 3rd respondent is false. The petitioner has no right to challenge the letter addressed by the 3rd respondent to the District Collector. The petitioner has not actually challenged the termination order passed by the

4th respondent, which is an outsourcing agency, which has engaged the services of the petitioner. There is no vested right to the petitioner to impugn the order of termination. The Trust was founded by the erstwhile state of Andhra Pradesh, *vide* registered Trust Deed, dated 24.08.2007, to establish a health insurance scheme for the benefit of the families living below the poverty line, that is, white card holders. The scheme was formulated for implementation on a pilot basis initially in three Districts; that is, Ananthapur, Mahabubnagar and Srikakulam. The Trust was set up to act as a State Level Nodal Agency for the implementation of the scheme. The scheme was later extended to other Districts in the State in a phased manner. Initially, the name of the scheme was 'Rajiv Aarogyasri Community Health Scheme'. M/s. Star Health and Allied Insurance Company Limited was initially selected through a competitive bidding process to implement the scheme; and, the then State Government agreed to pay the insurance premium. More than 70 corporate hospitals and Government Hospitals joined the network to provide treatment to the beneficiaries of the scheme. Subsequently, the then Government proposed to implement the scheme by itself from 17.07.2012. For implementation of the project, the Chief Executive Officer of the Trust outsourced employees through approved outsourcing agencies. The petitioner was one of such outsourced employees. He was initially engaged by M/s. Golden Enterprises, a Chennai based company, to one M/s. Star Health & Allied Insurance Company Limited and the petitioner rendered services as appointed by M/s. Golden Enterprises as Regional Coordinator, Field Operations. The Government issued guidelines through several Government Orders, circulars extending the areas of operation of the scheme. Guidelines were also issued for identifying the outsourcing agencies, which depute required staff for the operations of the Trust. The District Collectors were requested by the Chief Executive Officer of the Trust to enter into agreement with the Outsourcing agency for outsourcing the field staff from time to time at the District Level and the petitioner is one of such employees.

After division of the erstwhile State of Andhra Pradesh into two states, two different portals for both the schemes were developed duly mapping districts of the respective states. Guidelines were framed for selection of outsourcing agencies by the District Collectors for implementation of Aarogyasri Scheme in relation to the staff requirement and other incidental matters including shuffling of the outsourced employees. The petitioner despite being fully aware that his service is a contractual service has mischievously filed this writ petition by suppressing the material facts and obtained an interim order from this Court. In the year 2010, M/s. Star Health Allied Insurance Company Limited, on its own, appointed the employees including the petitioner. The respondents 1 to 3 do not have any proceedings in the matter of appointment of the petitioner by the said Insurance Company. It is true that the petitioner applied to the said insurance company and was selected as Divisional Team Leader and rendered service. He was promoted as District Manager, on 18.09.2013, by the Trust is false. He was selected as District Manager for Mahabubnagar District and through the outsourcing agency, the petitioner worked in the said capacity at Mahabubnagar. The 3rd respondent, through Notification, dated 18.03.2013, notified vacancies for District Managers of Aarogya Sri Health Care Trust at Nizamabad, Mahabubnagar and Prakasam Districts for filling up three posts on outsourcing basis and the eligibility criteria was also mentioned. It was notified in the official website of the 3rd respondent Trust. Pursuant to the notification, several candidates have applied including the petitioner herein. On the basis of the academic record and percentage of marks secured, the petitioner stood at the second place in the selection. His name was referred to the District Collector, Mahabubnagar, for selection through the outsourcing agency at the District. Accordingly, the petitioner was recommended to be appointed as District Manager by the District Collector, Mahabubnagar. M/s. Spoorthi women Mutually Aided Cooperative Society Limited, Mahabubnagar, which is a recognised society by

the District Selection Committee has recommended the petitioner, through letter, on outsourcing basis, with effect from 18.09.2013, and the petitioner was instructed by the outsourcing agency to join duty within seven days of the said letter. The petitioner while referring to the appointment letter, dated 18.09.2013, by M/s. Spoorthy Women's Mutually Aided Cooperative Society Limited, Mahabubnagar, reported to the District Coordinator of the Trust, Mahabubnagar on 24.09.2013. The petitioner was paid fixed monthly emoluments by the outsourcing agency, which deployed him. Under the transfer policy of the Trust, the petitioner was transferred to Khammam District by proceedings, dated 26.06.2014. Without the involvement of the outsourcing agency at the District, no employee can directly report to duty at the transferred place. The petitioner has to draw salary from the outsourcing agency only and is accordingly drawing his fixed monthly remuneration from the outsourcing agency. The petitioner reported at District Coordinator, Aarogya Sri Health Care Trust, Khammam, through M/s. SSV Creations, the 4th respondent, an approved outsourcing agency selected by the District Selection Committee headed by the District Collector and joined duty at Khammam, on 28.06.2014, as District Manager. He was drawing his fixed monthly remuneration from the Contractor, that is, M/s. SSV Creations. The petitioner worked honestly without giving any scope to anybody for making comments on his work is false. An inspection was made in the month of February, 2014, as stated by the petitioner is true. It is a routine inspection. The averment that the 5th respondent was not happy as the Chief Executive Officer and other officials appreciated the petitioner is false. The 5th respondent abused the petitioner is false. The petitioner complained to the 3rd respondent and that on that the 3rd respondent instructed the 5th respondent to tender apologies are all false. The 5th respondent developed grudge against the petitioner on account of the alleged complaint against the 5th respondent is false. The other allegations that the Vigilance Officer felt that the petitioner should be put to

troubles, and that, therefore, he planted some persons to lodge complaints against the petitioner with regard to demanding and collecting money from the management of the Hospitals in Khammam District, who applied for empanelment with the Trust, are all false. The 5th respondent conducted preliminary enquiry and recommended for a detailed enquiry is true. The 3rd respondent received a complaint from Dr. Ramana Chary alleging demand of money for empanelling the hospitals in the panel of approved hospitals, that is, network hospitals. Basing on the complaint received by email, on 20.08.2015, the 3rd respondent ordered for enquiry through the 5th respondent. The 5th respondent conducted preliminary enquiry and submitted a report, on 31.8.2015, to the 3rd respondent. An enquiry committee was constituted, on 01.09.2015, to enquire into the allegations against the petitioner and the Committee consisted of Executive Officer (Admn) AHCT, General Manager (Foss), AHCT, Vigilance Officer, AHCT and Legal Officer, AHCT. The enquiry committee submitted a questionnaire to the petitioner and sought answers. The petitioner submitted his answers to the questions posed. In the written answers, among other things, the petitioner stated that the MD of KVR Hospital, has given Rs.6 lakhs for fire equipment and NOC and stated that in Abhaya Hospital, he met Dr. Ravi Kumar Goud along with Mr. Srinivas for fire NOC. Later, the Enquiry Committee, submitted a report, dated 15.09.2015, to the 3rd respondent in regard to the serious allegations made against the petitioner. Basing on the enquiry report and the recommendations of the Committee, the 3rd respondent addressed letter, dated 29.09.2015, to the District Collector, Khammam, requesting him to terminate the services of the petitioner with immediate effect and take necessary action to appoint a new District Manager at Khammam. In the larger interests of the organization and in public interest, the enquiry was got conducted and a decision was taken by the 3rd respondent and the same was informed to the District Collector, Khammam; and, in turn, the District Collector, informed the same to the 4th

respondent which deployed the petitioner. The 4th respondent, in turn, informed the same to the petitioner. And, while informing the petitioner, no reasons have been assigned by the 4th respondent for termination. Since the 2nd respondent/ District Collector instructed the 4th respondent to terminate the services of the petitioner, the 4th respondent terminated the services of the petitioner and in the letter addressed by the 4th respondent to the petitioner there is no reference to any reasons for termination. In the circumstances, even without assigning any reasons, the petitioner's services can be dispensed with. It is false to allege that the termination order casts a stigma on the petitioner. It is not necessary to communicate the enquiry report to the petitioner. Since the petitioner was engaged through an outsourcing agency, and as he was drawing salary through the outsourcing agency, there is no rule or regulation applicable to the petitioner. He was engaged purely on contract basis by the 4th respondent on outsourcing basis. Notwithstanding the full-fledged enquiry, the services of the petitioner can be dispensed with and the petitioner cannot assail his termination. As per the Government orders relevant to the matter of engaging the persons on outsourcing basis through empanelled agencies, the District Collector was authorised to empanel the eligible societies or other concerns to supply man power whenever required. Though the 3rd respondent notified the requirement of personnel, all such persons were appointed and deployed by the outsourcing agency and in the case of the petitioner; there is no exception to the said procedure. Neither the petitioner was employed by the Government nor were his services dispensed with by casting a stigma; though it was found *prima facie* that he demanded money from private hospitals, he cannot challenge the proceedings impugned in the writ petition. Hence, the writ petition may be dismissed.

5. I have given earnest consideration to the facts & submissions.

6. The issue is not with regard to the nature of the employment of the petitioner. The question is not whether the petitioner's services were engaged

on temporary basis or on contractual basis or on outsourcing basis or whether he is a probationer. The vital question is as to whether the termination of the services of the petitioner is to be treated as based or founded upon misconduct and will be punitive and if so, the same would affect the rest of his career. This is so because if the findings as to misconduct of a definitive nature are arrived at after an enquiry and the termination order is issued based on such an enquiry and report, the same would cast a stigma, which would attach to the rest of his career. In which event, such termination, being punitive since based on such foundation, would affect the future career and opportunities of employment of the person who suffered such termination.

7. It is profitable to first refer to the settled legal position. In *Radhey Shyam Gupta v. U.P. State Agro Industries Corporation Ltd., & Ors.*¹, having referred to the catena of decisions, the Supreme Court while dealing with the legal aspect, which, in the considered view of this Court, is relevant to the case on hand, held as follows:

34. It will be noticed from the above decisions that the termination of the services of a temporary servant or one on probation, on the basis of adverse entries or on the basis of an assessment that his work is not satisfactory will not be punitive inasmuch as the above facts are merely the motive and not the foundation. The reason why they are the motive is that the assessment is not done with the object of finding out any misconduct on the part of the Officer, as stated by Shah, J. (as he then was) in *Ram Narayan Das's case* [(1961)ILLJ552SC]. It is done only with a view to decide whether he is to be retained or continued in service. The position is not different even if a preliminary inquiry is held because the purpose of a preliminary inquiry is to find out if there is prima facie evidence or material to initiate a regular departmental inquiry. It has been so decided in *Champaklal's case* [(1964)ILLJ752SC]. The purpose of the preliminary inquiry is not to find out misconduct on the part of the Officer and if a termination follows without giving an

¹ AIR 1999 SC 609

opportunity, it will not be bad. Even in a case where a regular departmental inquiry is started, a charge-memo issued, reply obtained, and an enquiry Officer is appointed -- if at that point of time, the inquiry is dropped and a simple notice of termination is passed, the same will not be punitive because the enquiry Officer has not recorded evidence nor given any findings on the charges. That is what is held in Sukh Raj Bahadur's case [(1970)ILLJ373SC] and in Benjamin's case (1967 Lab LJ 718) (SC). In the latter case, the departmental inquiry was stopped because the employer was not sure of establishing the guilt of the employee. In all these cases the allegations against the employee merely raised a cloud on his conduct and as pointed by Krishna Iyer, J. in Gujarat Steel Tubes case [(1980)ILLJ137SC], the employer was entitled to say that he would not continue an employee against whom allegations were made the truth of which the employer was not interested to ascertain. In fact, the employer, by opting to pass a simple order of termination as permitted by the terms of appointment or as permitted by the rules was conferring a benefit on the employee by passing a simple order of termination so that the employee would not suffer from any stigma which would attach to the rest of his career if a dismissal or other punitive order was passed. The above are all examples where the allegations whose truth has not been found, and were merely the motive.

35. But in cases where the termination is preceded by an inquiry and evidence is received and findings as to misconduct of a definitive nature are arrived at behind the back of the Officer and where on the basis of such a report, the termination order is issued, such an order will be violative of principles of natural justice inasmuch as the purpose of the inquiry is to find out the truth of the allegations with a view to punish him and not merely to gather evidence for a future regular departmental inquiry. In such cases, the termination is to be treated as based or founded upon misconduct and will be punitive. These are obviously not cases where the employer feels that there is a mere cloud against the employees conduct but are cases where the employer has virtually accepted the definitive and clear findings of the Inquiry Officer, which are all arrived at behind the back of the employee -- even though such acceptance of

findings is not recorded in the order of termination. That is why the misconduct is the foundation and not merely the motive, in such cases.

The Supreme Court in a recent decision in Director, Aryabhatta Research Institute of Observational Sciences (ARIES) and ors. V. Devendra Joshi and ors.², referred to the above legal position which was followed in Ratnesh Kumar Choudhary v. Indira Gandhi Institute of Medical Sciences, Patna, Bihar & Ors. [AIR 2016 SC 467].

8. In the case on hand, the termination letter dated Nil addressed by SSV Creations, Khammam, to the petitioner states as follows:

‘It is to inform you that as per the instructions of the District Collector, Khammam, you are hereby terminated from services of District Manager, AHCT, Khammam, with immediate effect and you have to submit the SIM Card of the Trust at Khammam office, H.No.5-1-281/1, in Church compound.’

This letter is issued as a sequel to the letter, dated 15.10.2015, addressed by the District Coordinator of the Trust to SSV Creations Outsourcing Agency, Khammam. The said letter which refers to the approval of a note by the District Collector, Khammam, reads as under:

‘With reference to the above subject cited, the District Collector, Khammam instructed to terminate the services of Sri Parvathapu Srinivas, District Manager, Khammam.

Hence, you are hereby directed to terminate the services of Sri Parvathapu Srinivas, District Manager, Khammam, immediately and hand over the assets (SIM and Handset) of AHTC to the office of the District Co-ordinator, AHTC, Khammam.’

9. Having regard to the events that preceded the termination, the petitioner contends that the alleged misconduct was the foundation for the order of termination and that therefore, the termination is punitive and that it

² AIR 2018 SC 1493

casts a stigma and it would affect the rest of his career. However, the respondents while admitting the events that preceded the termination contend that at best, the said events constitute a motive but not foundation for termination and that in any event, the termination letter does not contain any allegations of misconduct imputing stigma and that the termination letter does not show that it is punitive and that a plain reading of the termination order reflects that the termination is a termination simpliciter and, therefore, the writ petitioner is not entitled to contend that the termination is stigmatic and punitive and it would, therefore, affect rest of his career.

10. Though the letter of termination reflects that the termination is a termination simpliciter, yet, the fact of the matter is that based on a complaint, a preliminary enquiry was undertaken and that thereafter, a report was submitted and that afterwards, an enquiry committee was constituted to enquire into the allegations related to demand of money for empanneling the hospitals in the panel of approved hospitals, that is, Network hospitals, and that during the course of such enquiry answers were obtained from the petitioner after supplying a questionnaire to him and finally, findings were recorded that the serious allegations were proved and accordingly, an enquiry report was submitted with the recommendations of the committee and eventually, the services of the petitioner were terminated, as directed by the District Collector.

11. Having regard to the facts & legal position and since the termination is preceded by a preliminary enquiry and an enquiry & findings as to misconduct of a definitive nature arrived at after obtaining answers to a questionnaire served upon the petitioner and that thereafter the termination order is issued, this Court finds that the termination in the case on hand is to be treated as based or founded upon misconduct and will be punitive. Admittedly, after a preliminary enquiry and a preliminary enquiry report, an enquiry was ordered and an enquiry committee consisting of Executive Officer, General Manager

(FOSS), Vigilance Officer, AHCT and a Legal Officer, AHCT was constituted to enquire into the allegations against the petitioner and the committee merely served a questionnaire on the petitioner and obtained his answers and arrived at findings that the serious allegations levelled against the petitioner are true and accordingly submitted a report. Neither a charge memo was issued nor an explanation was called for from the petitioner. Further, he was not given an opportunity to participate in the enquiry and cross examine the witnesses, if any, examined. Thus, the enquiry was held in gross violation of principles of natural justice is a fact borne out by record. Therefore, the termination in the case on hand, which is based or founded upon the report, which is a result of such an enquiry, is unsustainable.

12. In the result, the Writ Petition is allowed, as prayed for. However, it is made clear that this order shall not preclude the authority concerned from taking necessary action as per the procedure established by law for the termination of the services of the petitioner, if the said authority so desires and is so advised.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

16.07.2018
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