

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.38255 of 2018.

ORDER :

In this Writ Petition, the petitioner assails the order Rc.No.1/Spl/B2/APSSA/KGBV/2018 dt.13-04-2018 passed by the 5th respondent terminating the service of the petitioner as Special Officer of KGBV, Chilamathur.

2. Petitioner contends that she was appointed as Special Officer on 09-12-2013 on contract basis and has been working as such since then till suddenly she received a notice from the 5th respondent on 16-03-2018 making certain allegations against her and proposing to take action. She contended that on 19-03-2018 she made a detailed explanation denying the allegations against her. She stated that again on 02-04-2018, 5th respondent issued another show cause notice making some more allegations, to which she had submitted an explanation on 04-04-2018 denying the same.

3. Petitioner contended that 5th respondent then issued the impugned order dt.13-04-2018 terminating her services with immediate effect without considering the explanation submitted by petitioner. She also contended that it was passed on the basis of the report of 6th respondent which was not furnished to the petitioner.

4. She contended that the impugned order is therefore liable to be set aside on the ground of violation of natural justice on both counts.

5. It is also contended that there is no enquiry conducted by the 5th respondent particularly when one of the reasons for termination mentioned in the impugned order is an adverse news item published in a local news paper with regard to providing during breakfast to the students 'Ravva Upma' instead of 'Poori'.

6. The petitioner contended that the impugned order is stigmatic and would come in the way of the petitioner in securing employment at any other place also and so the impugned order of termination is required to be set aside.

7. A perusal of the impugned order issued by the 5th respondent states that there was an enquiry report submitted by the 6th respondent on the basis of which note orders were issued by the 4th respondent to terminate petitioner's services as Special Officer on the ground that her service was unsatisfactory.

8. The impugned order only mentions about the show cause notice dt.16-03-2018 and does not refer to petitioner's explanation to the show cause notice at all. It places reliance in clause No.7 of the agreement signed by the petitioner permitting the 5th respondent to terminate her service without any notice and compensation for improper conduct or unsatisfactory performance.

9. The non-supply to the petitioner of the report of the 6th respondent, on the basis of which the impugned order has been passed, has resulted in grave prejudice to the petitioner and this is vitiates the impugned order.

10. In **Union of India v. S.K. Kapoor**¹, the Supreme Court declared :

“5. It is a settled principle of natural justice that if any material is to be relied upon in departmental proceedings, a copy of the same must be supplied in advance to the charge-sheeted employee so that he may have a chance to rebut the same.

*6. Mr Qadri, learned counsel for the appellant submitted that the copy of the report of the Union Public Service Commission was supplied to the respondent employee along with the dismissal order. He submitted that this is valid in view of the decision of this Court in **Union of India v. T.V. Patel**². We do not agree.*

*7. In the aforesaid decision, it has been observed in SCC para 25 that “the provisions of Article 320(3)(c) of the Constitution of India are not mandatory”. We are of the opinion that although Article 320(3)(c) is not mandatory, if the authorities do consult the Union Public Service Commission and rely on the report of the Commission for taking disciplinary action, then the principles of natural justice require that a copy of the report must be supplied in advance to the employee concerned so that he may have an opportunity of rebuttal. Thus, in our view, the aforesaid decision in **T.V. Patel case**(2 supra) is clearly distinguishable.*

*8. There may be a case where the report of the Union Public Service Commission is not relied upon by the disciplinary authority and in that case it is certainly not necessary to supply a copy of the same to the employee concerned. However, if it is relied upon, then a copy of the same must be supplied in advance to the employee concerned, otherwise, there will be violation of the principles of natural justice. This is also the view taken by this Court in **S.N. Narula v. Union of India**³.”(emphasis supplied)*

¹ (2011) 4 SCC 589

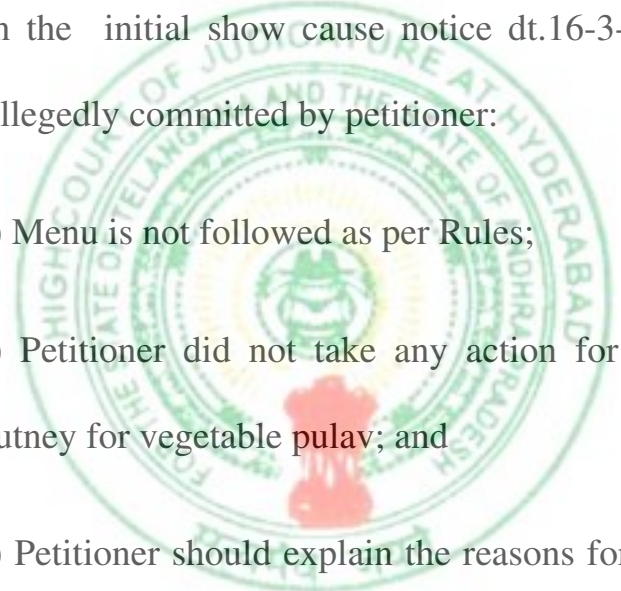
² (2007) 4 SCC 785

³ (2011) 4 SCC 591

11. Non consideration of explanations of petitioner given in response to the show cause notices also vitiates the impugned order since it is the bounden duty of the 5th respondent to consider it after seeking it from the petitioner. There is thus violation of principles of natural justice. It would render the order as one passed by predetermination on part of 5th respondent to terminate the services of petitioner.

RE: INITIAL SHOW CAUSE NOTICE DT.16-3-2018

12. Also in the initial show cause notice dt.16-3-2018 mentions three lapses allegedly committed by petitioner:

- 
- (1) Menu is not followed as per Rules;
 - (2) Petitioner did not take any action for preparation of chutney for vegetable pulav; and
 - (3) Petitioner should explain the reasons for permitting the Teaching staff along with their children for class room teaching hampered class room teaching.

13. In her explanation thereto petitioner stated that she was following the Menu daily and there was no deviation; there was no electricity for three days and so chutney could not be prepared for giving with vegetable pulav; and she had given repeated instructions to the staff not to bring their children, but they are not heeding her words and ignored her words.

14. In my considered opinion, Charge No.1 that Menu was not followed as per Rules, is vague since there is no specific allegation as to which portion of the Menu was not followed on what date.

15. As regards Charge No.2 alleging that petitioner did not give chutney to the students along with vegetable pulav, it cannot be said to be a serious charge warranting termination of service of petitioner and such punishment would be grossly disproportionate to even if the reason given by petitioner for not supplying chutney along with vegetable pulav was not correct. However, no finding has been recorded as to the correctness of plea of petitioner on this aspect in the impugned order. On the contrary new allegation about publishing of a news item in local news paper that petitioner provided rava upma instead of poori, was mentioned, which allegation is not contained in the show cause notice.

16. Coming to Charge 3, if the staff of the school are bringing their children without heeding the words of petitioner to stop bringing them, the 5th respondent should have taken action against the said staff and not the petitioner for disobeying the instructions of petitioner. Strangely, 5th respondent seems to be unconcerned about the disobedience by the staff of the instructions of the petitioner while being unduly harsh on petitioner. This renders the impugned order perverse.

RE: ADDITIONAL CHARGE MEMO DT.02-04-2018

17. In the additional charge memo dt.02-04-2018, four more charges were made on the basis of a statement which appeared in Andhra Prabha daily news paper on 30-03-2018. These are:

- (a) Petitioner did not attend the school regularly every day within school time;
- (b) She failed to serve proper Menu as per instructions of the State Project Director APSSA, Amaravathi;
- (c) There is difference between physical stock available and entries made in the stock register; and
- (d) Classes were not conducted as per Rules during SSC Examinations, 2018.

18. Petitioner replied to the same on 04-04-2018 stating with regard to:

- (i) charge (a) that she is attending to the school regularly everyday and promptly monitoring all the academic and other activities of the school;
- (ii) with regard to charge (b), that she had taken utmost care to provide food to the students of the school and instructions were also issued to cooking staff to act accordingly;
- (iii) during the day of visit on 01-04-2018 and 02-04-2018, it was Sunday and Monday, petitioner had attended to the Special Officer's

Review Meeting at APSSA, Ananthapuramu and she was also on leave on 02-04-2018 due to ill-health;

(iv) and as regards charge (d), she stated that every day classes were conducted in School but due to drafting of SSA Students to the examinations, there was some interruption for conduct of classes.

19. This explanation of the petitioner was not adverted to anywhere in the impugned order.

20. Also, in my opinion, charges (a), (b), (c) and (d) are vague and not specific. Therefore, the same cannot be the basis for terminating the services of petitioner ignoring the explanation given by petitioner.

21. In Supreme Court in **Management of Northern Railway Co-operative Society Ltd. vs. Industrial Tribunal, Rajasthan, Jaipur and Others**⁴ held that if the charges mentioned in the charge sheet served on employee are vague and do not contain any details which would enable him to give any explanation, there would be violation of principles of natural justice and no punishment can be imposed thereon even if he did not attend the enquiry.

22. Similar view has been taken in **Surath Chandra Chakrabarty Vs. State of West Bengal**⁵ and **Sawai Singh Vs. State of Rajasthan**⁶.

⁴ 1967 AIR 1182

⁵ (1970) 3 SCC 548

⁶ (1986) 3 SCC 454

23. More importantly, in the impugned order, new facts have been stated which are not contained in the show cause notices as under:

“(i) Classes were not conducted regularly from 15-03-2018 to 27-03-2018 as per the time table. Evidences are submitted for kind perusal.

(iii) The Special Officer has not monitored anything properly in the school and also not guiding the CRTs and other staff to work properly in the KGBV. As a result the entire school administration collapsed.

(iv) As per the instructions of the A.P. Government, every staff & children have to make their attendance in Bio-metric System only. Hence, the Special Officer failed to fix the Bio-metric System in the school premises and not provided awareness among the staff as well as inmates of KGBV Chilamathur.

(v) All the inmates and staff of KGBV, Chilamathur have submitted their options in written on maintaining of MENU as per the norms. They are facing much hardship in this regard.

(vi) As per the news items published on 30-03-2018 it is found that the Special Officer has provided the rice Rava for Upma instead of Poori deviating the menu on 30-03-2018.

(vii) It is a fact that the Special Officer is not providing the material for making Breakfast, Lunch and Dinner affluently every day.

(viii) Not providing the fruits to the inmates daily as per the reports she is providing fruits once in 02 months. But she noted the entries daily in Stock & issue Register.

(ix) As per the entries made in the Stock Register, the Special Officer has purchased 30 liters of Milk every day but as per the complaint from inmates, the Special Officer is providing a small cup of Butter Milk once in a day.

(x) She has not taken the minimum care for providing Lights and Fans and hygienic conditions in the entire building of KGBV Chilamathur.”

24. The 5th respondent could not have relied on new allegations not contained in the show cause notices issued to petitioner and terminate her service.

25. The legal position is clear that an order of termination of a temporary employee or of probationer or a tenure employee, if it casts a stigma, is liable to be interfered with by the Court if proper procedure has not been followed.

26. In **A.P. State Federation of Coop. Spinning Mills Ltd. and Ors. Vs. P.V. Swaminathan**⁷, the Supreme Court held:

“3. The legal position is fairly well-settled that an order of termination of a temporary employee or probationer or even a tenure employee, simpliciter without casting any stigma may not be interfered with by Court. But the Court is not debarred from looking to the attendant circumstances, namely, the circumstances prior to the issuance of order of termination to find out whether the alleged inefficiency really was the motive for the order of termination or formed the foundation for the same order. If the Court comes to a conclusion that the order was, in fact, the motive, then obviously the order would not be interfered with, but if the Court comes to a conclusion that the so called inefficiency was the real foundation for passing of order of termination, then obviously such an order would be held to be penal in nature and must be interfered with since the appropriate procedure has not been followed. The decision of this Court relied upon by Mr. K. Ram Kumar also stipulates that if an allegation of arbitrariness is made in assailing an order of termination, it will be open for the employer to indicate how and what was the motive for passing the

⁷ (2001) 10 SCC 83

order of termination, and it is in that sense in the counter-affidavit it can be indicated that the unsuitability of the person was the reason for which the employer acted in accordance with the terms of employment and it never wanted to punish the employee. But on examining the assertions made in paragraphs 13 and 14 of the counter-affidavit, in the present case. it would be difficult for us to hold that in the case in hand, the employer Appellant really terminated the services in accordance with the terms of the employment and not by way of imposing the penalty in question.”

27. Similar view has been taken in **State of Haryana and Others Vs. Satyender Singh Rathore**⁸ wherein it was held that whether an order of termination is *simpliciter* or punitive has to be decided with due regard to facts and circumstances of each case.

28. In the instant case since the order of termination is founded on the allegations of misconduct, and since findings as to misconduct were arrived at in 6th respondent's enquiry conducted behind the back of petitioner were relied on by 5th respondent without supplying it to petitioner, and there is no regular departmental enquiry, and it casts a stigma on petitioner, the order of termination is bad in law.

29. Therefore, for all the reasons, the Writ Petition is allowed; the impugned order of termination passed by 5th respondent on 09-12-2013 is set aside; and respondents are directed to reinstate the petitioner into service forthwith and pay her wages from 13-04-2018 till date and treat her as having been in service from 13-04-2018 till her reinstatement and grant all other consequential benefits. No costs.

⁸ (2005) 7 SCC 518

30. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 27-11-2018

Vsv

