

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

WRIT PETITION No.38294 of 2018

ORDER:

In this Writ Petition, the petitioner has assailed the endorsement dt.10-10-2018 of the Associate Dean, College of Food Science and Technology, Acharya N.G. Ranga Agricultural University, Bapatla, Guntur District (3rd respondent), and his further action in not permitting the petitioner to do his duty as Physical Director in the said College. Petitioner also seeks a direction to the 3rd respondent to continue him as Physical Director in the said College.

2. It is not in dispute that the 2nd respondent College was established in 2003 at Bapatla in Guntur District. A memo dt.30-07-2003 was issued to the 3rd respondent to induct part time Physical Director (Physical Education).

3. The 3rd respondent issued proceedings dt.04-11-2003 appointing the petitioner as part time Physical Director in the 2nd respondent College on a salary of Rs.4,000/- p.m., which was being enhanced from time to time and was Rs.30,000/- p.m. just before the impugned endorsement was made on 10-10-2018.

4. According to the petitioner, whenever there was any cultural / sports / games programmes conducted by the Acharya N.G.Ranga Agricultural University (1st respondent) or whenever any sports or competitions are held by other Universities/Colleges at State or

National level, the 1st respondent University would direct the 3rd respondent to depute the Physical Director to accompany the contingent of the participants and it had also directed the Associate Deans of the host Universities to provide free accommodation to the Physical Directors.

5. Petitioner contended that in January, 2018, he accompanied the contingent from the 2nd respondent College on being nominated by 1st respondent for conduct of coaching camp at an event in University of Agricultural Sciences, Bangalore held from 24-01-2018 to 29-01-2018.

6. Petitioner contends that 1st respondent University issued proceedings dt.26-09-2018 to conduct Inter Collegiate Sports, Games, Cultural and literacy competitions for its students for 2018-19 in three phases at its colleges at Bapatla, Naira and Tirupati between 03-10-2018 and 24-10-2018; that the 1st respondent directed all the Associate Deans of associate colleges of 1st respondent University to depute Physical Directors to the said events; that the petitioner had accompanied the contingent participants to the sports meet held in Agricultural College, Bapatla campus from 03-10-2018 to 06-10-2018; that II phase was to be held at Naira; so the petitioner requested the 3rd respondent on 10-10-2018 to permit him to proceed to Naira to participate in the said event, but the 3rd respondent made the impugned endorsement on the same day to the following effect “not permitted to proceed as his services are no more required for the

students and the college as students are unhappy with his performance”.

7. Petitioner contends that this endorsement of the 3rd respondent removing the petitioner from service is illegal, arbitrary and violative of principles of natural justice; that petitioner did not contravene any provisions of the Act or regulations of the 1st respondent or behaved in such a manner bringing disrepute to the Institution; that no show cause notice was ever issued to him for any breach of any regulation of the 1st respondent University; and the 3rd respondent cannot terminate petitioner's service according to his whims and fancies in a casual manner since petitioner has been working for the last 16 years as Physical Director.

8. It is contended that 3rd respondent is desirous of inducting a person belonging to his community in the place of petitioner and for the said reason, he has made the impugned endorsement. It is also contended that 3rd respondent is not allowing the petitioner to perform his duty as Physical Director and for all intents and purposes he has terminated the services of petitioner.

9. Learned counsel for petitioner relied on judgment of the Supreme Court in **State Bank of India and others Vs. Palak Modi and another¹**, **NMDC Ltd., Hyderabad and others Vs. Sagar Pani²** and **S.Zabeda Parveen Vs. A.P. Women's Co-operative Finance**

¹ (2013) 3 SCC 607

² 2018(2) ALD 154 (DB)

Corporation, Hyderabad and another³ and contended that if misconduct is the foundation for terminating petitioner's service, it would cast a serious stigma on the petitioner and therefore respondents ought to have conducted regular departmental enquiry.

10. According to the learned counsel for petitioner, terminating petitioner's service without conducting such departmental enquiry would render such termination as illegal and therefore the impugned endorsement is liable to be set aside.

11. Counter-affidavit was filed by respondents refuting the above contentions.

12. In the Counter affidavit, it is contended that petitioner was informed to prepare the list of student participants contingent for all the three phases of Inter collegiate events scheduled at Bapatla, Naira and Tirupati colleges, but he did not prepare any list by selection process as on 01-10-2018. It is contended that petitioner was in the habit of including non-players in the list based on his whims and fancies without conducting any selection to prepare the students list of contingent team players for each event; that petitioner is in the habit of doing the same practice every year in spite of instructions from the Associate Dean in the previous year; and he did not change his ways and the Associate Dean therefore instructed the Officer-in-Charge of Student Activities to prepare the selection list of players to be included in the contingent team for the Inter Collegiate meet. It is

³ 2015(6) ALD 675

stated that the student participants of the first phase of events held at Bapatla made a written and oral complaint to the Associate Dean through letter dt.06-10-2018 that they were dissatisfied with the services of petitioner in the first phase of events; that petitioner discourages and scolds the students instead of giving encouragement and guidance to them; and that he demoralizes the students while competition was going on and so they were losing their games. It is also alleged that the students complained that petitioner was not accompanying the student contingent at the events, courts and grounds when the competitions are held, and his presence is of no use for them.

13. It is also contended that there is no permanent sanctioned post of Physical Director in the 2nd respondent college; that petitioner's services were engaged purely on temporary basis on part time hourly basis and contract and therefore they were liable to be terminated at any time without assigning any reasons and without prior notice based on his performance evaluation. It is contended that his appointment did not confer any rights on him for future appointment in the University in any manner.

14. It is contended that knowing fully well his lapses, he has made false allegations against the 3rd respondent. It is also stated that a questionnaire was prepared and given to each and every student to express his/her response and opinion on the complaints given and on the performance of the petitioner regarding coaching, training and

conducting games and sports to the students, and on the said basis, his services were terminated and no stigma would attach to him. It is also contended that there is no need to conduct any enquiry against petitioner.

15. Along with counter affidavit, copies of certain complaints leveled by the students against the petitioner have been filed. One such complaint is dt.26-02-2018. The contents thereof will be referred to later in this order.

16. Reply affidavit has been filed by petitioner denying the allegations made by respondents as well as the contents of the complaints leveled by students against him. Petitioner contended that 3rd respondent had obtained the said complaints by intimidating the students only for the purpose of sustaining his illegal action and preconceived decision to send the petitioner out of service. He pointed out that petitioner had been working without any break for 15 years and had involved in all events of sports and games conducted at the College, University, State, Zonal and National levels and several students have won laurels. He also stated that through out his service, petitioner was never issued a memo regarding any act or omission and since his removal from service by the 3rd respondent is by casting aspersions on his work and character, which would cast stigma depriving of opportunity to get employment elsewhere, such action cannot be taken without conducting disciplinary enquiry. He contended that he has been working full time for the past 15 years and

without any blemish and cannot be termed as part time contract employee and the post of Physical Director involves perpetual work.

17. I have noted the contentions of petitioner and respondents.

18. The fact that the petitioner was appointed vide proceedings No.A2/465/2003 dt.04-11-2003 by the 3rd respondent as part time Physical Director on contract basis temporarily is not in dispute. It is also not in dispute that he reported to duty on 10-11-2003 and continued to work as Physical Director from that date till the date the impugned endorsement was issued to him on 10-10-2018 i.e. for almost 15 years.

19. It is not the case of respondents that during this period, at least upto 25-02-2018 there was any complaint against the petitioner by the students with regard to discharge of his duties as Physical Director. Also, it is not the case of respondents that any memo or show cause notice had been issued to the petitioner during the period from 10-11-2003 till date pointing out any omission or commission or misconduct or violation of regulations by the petitioner.

20. A look at the complaint dt.26-02-2018 given by the students against the petitioner, which is filed along with the counter-affidavit, mentions the following reasons:

“Regarding Sports and College Grounds:-

There is no proper ground for the college to play any kind of sports.

In fact the small space left behind the college is being utilized to play cricket, football, volley ball, Ball badminton without any proper courts.

The construction of basket ball court is stopped and not yet completed.

Quotation is being prepared before the purchasing of sports material which is limiting us to buy sports material of low quality.

The students travelled without any reservation whereas the staff and faculty travelled with reservation during train journey for inter-college sports meet held in December, 2017.

The Physical Director does not take care about any kind of sport activities in the college.

We humble request you to appoint a new Physical Director for the development of students regarding sports and games.

The Gym room is not being maintained properly and not a single equipment is in working condition.”

21. Among the 8 reasons mentioned in the said letter, only one pertains to the petitioner and states “the Physical Director does not take care about any kind of sport activities in the college”, and the rest of the allegations refer to lack of proper ground to play any kind of sports in the 2nd respondent College etc. No doubt more allegations are leveled against the petitioner in the complaint dt.06-10-2018 by the students.

22. From the above, it is clear that the termination of the services of the petitioner is founded on alleged misconduct, negligence and inefficiency and visits him with evil consequences apart from casting aspersions on his character and integrity.

23. When the petitioner has been in employment for almost 15 years, the question is “Whether his service can be terminated by alleging that students were unhappy with his performance as Physical Director”?

24. It may be that the appointment order of the petitioner said that he was a temporary employee, but the fact that he had continued for almost 15 years, would not support the temporary nature of his appointment.

25. Also, the mention in the impugned endorsement that students were unhappy with his performance as Physical Director clearly casts a stigma on the petitioner that his performance was bad and somehow disapproved by the students. When the respondents seek to support the impugned endorsement by referring to complaints dt.26-02-2018 and 06-10-201, it is clear that the allegations leveled by students are the foundation for the termination order.

26. In **Radhey Shyam Gupta Vs. U.P.State Agro Industries Corporation Limited and another**⁴ the appellant was appointed as Branch Manager on 17-07-1973 and there was a condition in his appointment order stating that his service could be terminated at any time, after giving one month’s notice or one month’s pay in lieu thereof. On 23-01-1976, a simple order of termination was passed referring to the said condition and stating that his services were terminated with immediate effect and he can obtain one month salary from the General Manager, Lucknow. The appellant then approached

⁴ (1999) 2 SCC 21

the Administrative Tribunal, Lucknow stating that though the termination order appeared to be innocuous, it was still punitive in nature inasmuch as it was based on an *ex parte* report of the enquiry by another Official and that there was an allegation that he accepted a bribe of Rs.2000/- which was not merely the motive but the very foundation of the order of termination. The Administrative Tribunal on 31-12-1980 accepted his contention and quashed the termination order and held it violates principles of natural justice and hence void. The respondent-Corporation challenged it in High Court at Lucknow by way of Writ Petition, which was allowed on 10-12-1997. The High Court held that it was only a simple order of termination and it did not cause any stigma since it did not refer to any disciplinary enquiry. Challenging the same, the appellant approached the Supreme Court. The Supreme Court reviewed the case law on the point and held that in certain cases of temporary servants and probationers, the Supreme Court has taken the view that if the *ex parte* inquiry or report are the motive for the termination order, then the termination is not to be called punitive merely because principles of natural justice have not been followed. On the other hand, there is another line of cases, where it had held that the facts revealed in the inquiry are not the motive but the foundation for the termination of the services of the temporary servant or probationer, and hence punitive as principles of natural justice have not been followed, and such orders are to be declared void. It further held that for finding out whether a given case falls in which of these two categories, it is

permissible for the High Court to go behind the order and look into the record of the proceedings, the antecedent and attendant circumstances culminating in the order of termination. In para-34, the Supreme Court observed:

“34. 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 Court then referred to the facts of that case and held that the findings were the foundation of the termination order and not merely the motive and set aside the order of the High Court and restored the order of the Tribunal.

27. The above decision in **Radhey Shyam Gupta** (4 supra) has been applied by this Court in **S.Zabeda Parveen** (3 supra) and at para-19 it observed:

“19. Applying these principles to the present case, a mere look at the impugned order shows that the misconduct was the

foundation and not merely the motive behind the termination of the petitioner's services and a serious stigma is cast on the petitioner by rendering a finding that she has given a wrong certificate of receipt and installation of original software without actually receiving the same and therefore she is a party to the fraud and thereby responsible for causing loss of Rs. 84,760/-. Therefore, the order being not only stigmatic, but also punitive, the stand of the respondents that there was no need to conduct a regular departmental enquiry is contrary to the settled legal principles discussed above."

28. This principle was again reiterated in **NMDC Ltd.** (2 supra) in relation to case of a probationer.

29. In the instant case, it is clear from the impugned endorsement itself that the alleged 'unhappiness of the students' with petitioner's performance as Physical Director was the ground for his termination. The said conclusion was drawn on the basis of the two complaints given by the students on 26-02-2018 and 06-10-2018 against the petitioner as per the Counter of the respondents. Though no enquiry was conducted, it is clear that 3rd respondent has accepted the allegations leveled by the students as gospel truth and proceeded to terminate the services of the petitioner on the said pretext. Thus, the alleged misconduct/negligence/ inefficiency of petitioner is the foundation for termination of his services and not merely the motive.

30. Therefore in my considered opinion, it was incumbent on the part of respondents to conduct disciplinary enquiry after issuing charge memo to the petitioner asking the petitioner to submit explanation to the same, and thereafter conduct an enquiry by leading evidence to

prove the charge and then only take action against petitioner, but not otherwise.

31. For the above said reasons, the Writ Petition is allowed and the impugned endorsement dt.10-10-2018 issued by the 3rd respondent terminating the service of petitioner is set aside; the respondents are directed to reinstate the petitioner into service forthwith; and pay him wages from 10-10-2018 till date of his reinstatement. However opportunity is given to initiate disciplinary action as indicated above and then only take further against petitioner, if the respondents so desire. No costs.

32. As a sequel, miscellaneous applications pending, if any, shall stand closed.



JUSTICE M.S.RAMACHANDRA RAO

Date: 20-12-2018
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