

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

WRIT APPEAL NO.1940 OF 2017

JUDGMENT: (Per Hon'ble Sri Justice M.Ganga Rao)

This Writ Appeal under clause 15 of the Letters Patent is filed against the order dated 30.11.2017 passed in Writ Petition No.40565 of 2017, whereby a learned Judge of this Court dismissed the writ petition filed by the petitioner-appellant questioning the order dated 14.11.2017 passed by the third respondent terminating him from services without conducting enquiry as illegal, arbitrary and contrary to the principles of natural justice.

Brief facts of the case are that in pursuance to the recruitment notification issued by the third respondent for appointment to the post of District Child Protection Officer on contract basis for a period of three years which is extendable by another two years based on performance, appellant herein applied for the same and was successful in the written examination as well as the interview. Thus, the appellant was appointed as District Child Protection Officer (for short 'DCPO') vide proceedings No.35/A/ICPS/2010-9 dated 01.01.2014, for a period of one year on contract basis. However, the appellant was continued as such till the impugned termination from service. Performance appraisal for the period 2015-2016 was submitted in the month of December, 2016, thereafter, no further appraisal was done.

While the appellant was working as DCPO, Sisuvihar, Nalgonda, the third respondent-District Collector and Magistrate,

Nalgonda, vide letter No.1753/A/2017 dated 14.11.2017 passed orders terminating him from service for the following reasons:

1) Behaving rudely with CWC Members since he is a permanent employee and CWC Member's tenure is only for 3 years.

2) He is misappropriating ICPS funds by drawing TA & DA without attending the field visits.

3) He is not coordinating with CWC Members in implementation of the ICPS programmes in the field and also not furnishing the required & requested information to CWC members showing negligence in performing the duties.

4) He is misguiding the parents to get Adoption illegally through registration.

5) He is doing negative propaganda against the Department.

The termination was also said to be based on the Child Welfare Committee's recommendations. In respect of the news item with regard to death of children in the Sisuvihar, an enquiry was conducted against the appellant by the Project Director, who recommended for dropping of charges. However, the same was not accepted by the District Collector and a further enquiry was ordered by the District Collector on 21.05.2015 and without waiting for the further enquiry report, the District Collector passed the termination order, which was the subject matter of the writ petition.

Heard Sri M.Venkat Ram Reddy, learned counsel for the appellant, and the learned Government Pleader for Women Development & Child Welfare, State of Telangana, for the respondents.

Learned counsel for the appellant would contend that termination of the appellant from service through the impugned order

dated 14.11.2017 of the 3rd respondent is based on allegations which were not proved by conducting a fair and proper enquiry adhering to the principles of natural justice and as the impugned order is stigmatic in nature, the future prospects of the appellant were curtailed. He relied on the judgment reported in ***B.Nandeswar Rao vs. A.P. Tourism Development Corp. Ltd., Hyderabad***¹ to buttress his contention that as the termination of the appellant was not preceded by an enquiry, principles of natural justice were not followed and the impugned order was stigmatic in nature, it is liable to be set aside.

Learned counsel would further contend that the learned single Judge, without going into the said legal aspect, opined that that the petitioner-appellant was appointed on contract basis, the contract was not renewed and as such there was no contract governing the services of the appellant. He would further contend that the learned single Judge, while distinguishing the ratio laid down in ***Nandeswar Rao (1 supra)***, erred in holding that the ratio held therein that *'an action was taken to terminate the services of the petitioner therein, when findings were arrived in an enquiry with regard to the misconduct behind back of the employee, even though it is a simple order of termination, since it is based on allegations it would be bad'* is not applicable to the case on hand since there is no contract subsisting in favour of the petitioner herein. In the present case also, the appellant was terminated on the allegations enumerated in the termination order without conducting any enquiry, contrary to the principles of natural justice and in violation of the principles of fair play in action enshrined in Article 14 of the

¹ 2014 (4) ALD 695

Constitution of India. Hence, the impugned order is liable to be set aside and the appellant is entitled to reinstatement in service as a DCPO.

Per contra, the learned Government Pleader, while reiterating the averments in the counter affidavit filed by the fourth respondent on behalf of the other respondents in this appeal, would contend that the appellant was appointed as DCPO for a period of one year on contract basis and thereafter his services were not legally renewed and extended. However, he was continued in service. As the appellant was suspected of being involved in sale of children and basing on the news telecast by NDTV media on 21.04.2015 with regard to sale of children in the Sisuvihar, disciplinary action was initiated against the appellant as the said Sisuvihar was functioning under the control of the appellant. With regard to the allegations in the termination order a discreet enquiry was conducted by the authorities and the appellant was terminated based on the recommendations of the Child Welfare Committee. Appellant, being a contract employee, is not entitled for any notice or opportunity before termination of his services. The termination order is not stigmatic and does not prejudice his future prospects.

In the facts and circumstances of the case, we are of the considered opinion that the termination of the appellant from service by way of the impugned order based on allegations of malfeasance and misfeasance, which were not proved through a proper enquiry and were only based on the enquiry reports submitted behind his back, was in utter violation of the basic principle of *audi alteram partem*. Further, the termination order, being stigmatic in nature, prior notice was required and the charges/allegations had to be

proved by conducting an enquiry in accordance with the principles of natural justice, even though the appellant was a contract employee.

In ***Governing Council of Institute of Kidwai Memorial Institute of Oncology, Bangalore v. Dr.Pandurang Godwalkar and another***², the Hon'ble Supreme Court held as follows:

“ It is settled law that if an employee who is on probation or holding an appointment on temporary basis is removed from the service with stigma because of some specific charge, then a plea cannot be taken that as his service was temporary or his appointment was on probation, there was no requirement of holding any enquiry, affording such an employee an opportunity to show that the charge levelled against him is either not true or it is without any basis.

Further held that whenever the service of an employee is terminated during the period of probation or while his appointment was on temporary basis, by an order or termination simpliciter after some preliminary enquiry, it cannot be held that as some enquiry had been made against him before the issuance of order of termination it really amounted to his removal from service on a charge as such penal in nature.”

In W.P.Nos.17685 and 31180 of 2016, vide order dated 07.04.2017, a Division Bench of this Court, consisting of one of us Sri Justice Sanjay Kumar also, held that the principles of natural justice would be applicable even in the case of a NMR worker/employee, but the extent to which the principles of natural justice would have to be adhered to in such a case would depend upon the individual facts of each case.

² (1992) 4 SCC 719

In ***A.P. Tourism Development Corporation Limited vs. B.Nandeswar Rao***³, a Division Bench of this Court held that though it is true that unlike an employee appointed on regular basis, the services of an employee appointed for a fixed tenure can be brought to an end without the necessity of conducting a detailed departmental enquiry, but if the employer intends to brand such an employee as inefficient or attribute misconduct to him, the conducting of an enquiry becomes essential.

In view of the ratio laid down by this Court as well as the Hon'ble Supreme Court in the judgments referred to supra, in our considered view, the impugned termination order is liable to be set aside and the same is accordingly set aside.

The Writ Appeal is accordingly allowed directing the third respondent to reinstate the appellant in service within four weeks from the date of receipt of a copy of this order. However, this order shall not preclude the third respondent from taking appropriate action in accordance with law against the appellant, if found necessary.

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

11th April, 2018
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³ 2014 (4) ALT 211 (D.B.)