

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

Writ Petition No.1887 of 2019

ORDER:

This Writ Petition is filed seeking a Writ of Mandamus to declare the Final Order of Termination passed against the petitioner, vide Proceedings No.1112/HRM(G)/APO Narsampet/2016, dated 22.01.2019, issued by the 2nd respondent, without supplying copies of relevant documents supporting the charges framed and the statements of witnesses, without giving opportunity of cross-examining the witnesses and without affording reasonable opportunity as contemplated under Article 311(2) of the Constitution of India, as illegal, arbitrary and contrary to the provisions of Disciplinary Rules for Fixed Tenure Employees of Society for Rural Development Services, 2012, and violative of Articles 14, 16 and 21 of the Constitution of India.

2. Heard Sri Swaroop Oorilla, learned counsel for the petitioner and Ms.R.Padma Rekha, learned Standing Counsel for the 2nd respondent.

3. It has been contended by the petitioner that the respondents have placed her under suspension, vide proceedings, dated 30.10.2018, and thereafter, no further action was initiated by them. The petitioner submits that challenging the said suspension order, she filed W.P.No.47643 of 2018 before this Court and this Court, vide order, dated 22.01.2019, disposed of the said Writ Petition observing that an enquiry has been contemplated and that the disciplinary authority has to pass final

order basing upon the enquiry report and that, therefore, placing the petitioner under suspension is unwarranted and, accordingly, directed the respondents to reinstate the petitioner into service, however, with a liberty to the respondents to pass final orders, pursuant to the enquiry report. The petitioner contends that pursuant to the said order, she has submitted a representation to the respondents to reinstate her into service in compliance of the orders passed by this Court in W.P.No.47643 of 2018, dated 22.01.2019, but the respondents, instead of reinstating her into service, have straightaway passed Final Order of Termination, dated 22.01.2019, terminating her from service. The petitioner further contends that she was served with a show-cause notice on 30.10.2018 for which, she submitted an explanation on 08.11.2018, and upon such explanation, the respondents, instead of passing final orders, collected certain material and recorded the statements of some witnesses behind her back and basing on the same, passed the impugned order terminating her services.

4. The learned counsel for the petitioner would submit that the action of the respondents in collecting some material, examining some witnesses and recording their statements behind the back of the petitioner after issuance of final show-cause notice to her and terminating her services basing upon the same, is arbitrary and violative of the principles of natural justice and as such, the impugned termination order is liable to be set aside. The learned counsel would further submit that passing of the impugned termination order by the respondents is nothing but wilful and deliberate disobedience to the order passed by this Court on

22.01.2019 in W.P.No.47643 of 2018 and as such, the present Writ Petition deserves to be allowed.

5. On the other hand, the learned Standing Counsel for the 2nd respondent would submit that based upon the enquiry conducted, the respondents have issued a show-cause notice, dated 30.10.2018, to the petitioner by placing her under suspension and the petitioner also submitted her explanation to the said show-cause notice on 08.11.2018. In order to confirm the statements of the witnesses, who were examined earlier, the respondents have re-called them, examined them and recorded their statements on 30.11.2018, but no new material was collected in the said course on that day. Since no new material was collected and no new witness was examined, the respondents felt that the petitioner need not be summoned to the said enquiry and basing upon the earlier enquiry report only, the respondents have passed the impugned order terminating the services of the petitioner, for her proven misconduct. The learned Standing Counsel, therefore, contends that there is nothing for this Court to interfere with the impugned order and sought to dismiss the Writ Petition.

6. This court, having considered the rival submissions, is of the view that the respondents cannot rely upon any statement(s) of the witness(es) that were recorded behind the back of the petitioner, that too, after conclusion of enquiry against her on 30.10.2018. Admittedly, the respondents re-called the witnesses and recorded their statements on 30.11.2018, but the petitioner was not summoned on that day. The statements of the witnesses

recorded by the respondents behind the back of the petitioner are against the principles of natural justice and are not valid and basing upon the same, the services of the petitioner cannot be terminated. Therefore, the impugned order terminating the services of the petitioner is liable to be aside.

7. In the result, the Writ Petition is allowed, setting aside the impugned Final Order of Termination, vide Proceedings No.1112/HRM(G)/APO Narsasmpet/2016, dated 22.01.2019, issued by the 2nd respondent. The respondents are directed to reinstate the petitioner into service, forthwith, with all consequential benefits. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

25th February, 2019
Bvv

ABHINAND KUMAR SHAVILI, J