

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.10190 of 2019

ORDER:

This writ petition is filed seeking the following relief:

“...to issue a proper writ, order or orders, particularly one in the nature of Writ of Mandamus declaring the action of respondent No.1 in passing resolution dated 01.05.2019 and issuing consequential proceedings No. CESS/Estt/D.No.162/2019 dated 01.05.2019 to relieve the petitioner from the services of Managing Director of 4th respondent without taking into consideration the resolution dated 03.11.2018 and proceedings No. CESS/Estt/D. No.389/2018 dated 16.11.2018 extending the term for year which ends in the month of November, 2019 and also without any prior notice of terminating the services and without application of mind as arbitrary and illegal and against the principles of natural justice and without taking approval from respondent No.2 as per bylaw No.11 and also against the principle of promissory estoppels and set aside the resolution dated 01.05.2019 and consequential proceedings No.CESS/Estt/D.No.162/2019 dated 01.05.2019 and consequently direct the respondents to continue the petitioner in service as Managing Director and to pass such any other order or orders appropriate in the case.”

2. Heard Mr. M.Rama Rao, counsel for the petitioner, and the Advocate General for the State.

3. It has been contended by the petitioner that he worked as Chief Engineer in Telangana State Northern Power Distribution Company Limited (TSNPDCL), Warangal. The petitioner also stated that after

his retirement in TSNPDCL, he was appointed as Managing Director of the 4th respondent Institution i.e., Co-operative Electric Supply Society Limited on 15.11.2017 and since then, he was discharging the duties of the Managing Director to the best satisfaction of his superiors and every one concerned.

4. The petitioner further submitted that the 4th respondent Institution was pleased to pass a resolution dated 03.11.2018 extending the services of the petitioner up to November, 2019, and by virtue of the said extension orders, the petitioner is being continued in service. While the petitioner was discharging duties as the Managing Director of the 4th respondent Institution, the 4th respondent Institution has passed a resolution on 11.03.2019 terminating the services of the petitioner without giving any notice and without following the due process of law. Pursuant to the said resolution, the Chairman of the 4th respondent Society issued proceedings No.CESS/Estt/D.No.107/2019 on the same day i.e., on 11.03.2019 directing the petitioner to handover the charge to one Syed Khursheed, Accounts Officer. However, on the same day, the very same Chairman of the 4th respondent, having realized that the resolution passed on 11.03.2019 is without issuance of any notice to the petitioner, has kept the resolution dated 11.03.2019 in abeyance and issued another proceedings No.CESS/Estt/D.No.108/2019, dated 11.03.2019, canceling the earlier proceedings No.CESS/Estt/D.No.107/2019 dated 11.03.2019.

5. The petitioner further contended that challenging proceedings No.CESS/Estt/D.No.108/2019 dated 11.03.2019, one B. Srinivas, Member of the Co-operative Electric Supply Society Limited, has filed W.P.No.5892 of 2019 and this Court was pleased to pass an interim order in the said writ petition on 20.03.2019 to the effect that the 5th respondent therein may continue as Managing Director (FAC) till respondents 4 and 5 therein file their counters. However, the 5th respondent therein was directed not to take any policy decision except day-to-day issues. By virtue of the said interim orders, the petitioner herein, who was the 5th respondent in the said writ petition, was continued in service and finally the said writ petition was dismissed as withdrawn on 01.05.2019. Thereafter, the 4th respondent Institution has once again passed a resolution on 01.05.2019 terminating the services of the petitioner and issued consequential proceedings dated 01.05.2019 directing the petitioner to handover charge of Managing Director to Syed Khursheed. Challenging the same, the present writ petition is filed.

6. Counsel for the petitioner contended that when the services of the petitioner were extended for a period of one year vide resolution dated 03.11.2018, the respondents could not have terminated the services of the petitioner even before expiry of one year and that too without following due process of law and without giving any notice to the petitioner, therefore, the action of the respondents in terminating the services of the petitioner is arbitrary and illegal and the impugned

order terminating the services of the petitioner are liable to be set aside.

7. To strengthen his arguments, learned counsel appearing for the petitioner has relied upon the judgment rendered by this Court in **Neyveli Lignite Corporation Limited v. M/s. Lohman Castings Private Limited**¹, wherein it was held that whenever the respondents pass any orders, they must give reasons to minimize chances of arbitrariness and induce clarity. In the case on hand, since the respondents have not given any reasons for terminating the services of the petitioner and also no opportunity was given to the petitioner, the impugned orders terminating the services of the petitioner are liable to be set aside.

8. Learned counsel for the petitioner further relied upon the judgment of the Honourable Supreme Court in **Whirlpool Corporation v. Registrar of Trade Marks**², wherein at para 15 it was held as under:

“Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the

¹ 2018 (6) ALT 3

² (1998) 8 SCC 1

Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

Relying on the aforesaid judgment of the Honourable Supreme Court, learned counsel for the petitioner contended that the writ petition is maintainable and since no opportunity was given to the petitioner, the impugned order is liable to be set aside.

9. Learned Advocate General appearing for the respondents had contended that as per the Regulations of the 4th respondent Institution, at the time of appointment, the prior approval of the Registrar has to be taken for appointment to the post of Managing Director. Admittedly, in the instant case, no approval of the Registrar was taken at the time of appointment of the petitioner and hence, the services of the petitioner were terminated, as his appointment was contrary to the Regulations.

10. Learned Advocate General had further contended that it is the case of termination simplicitor and admittedly, the petitioner was appointed on contract basis and the tenure of the contract was extended from time to time. Advocate General further contended that termination simplicitor can be passed at any time without giving any notice to a contract appointee. If the termination is stigmatic, then the question of following the principles of natural justice would arise.

Advocate General also submitted that as the appointment of the petitioner is contrary to the Regulations of the 4th respondent Institution, no procedure has to be followed before terminating the services of the petitioner. There are no merits in the writ petition and the writ petition is liable to be dismissed.

11. This Court, having considered the rival submissions of learned counsel for respective parties, is of the considered view that admittedly, the petitioner was appointed on contract basis and the tenure of the contract was extended from time to time. This is a case of termination simplicitor. Even the appointment order does not disclose that a show cause notice has to be given before terminating the services of the petitioner. Therefore, the question of giving show cause notice before terminating the services of the petitioner would not arise. Further, the respondents have passed the resolution terminating the services of the petitioner and the respondents have got every power to terminate the services of the petitioner by way of resolution. Hence, the question of following the principles of natural justice while imposing termination simplicitor would not arise and there are no merits in the writ petition and the writ petition is liable to be dismissed.

12. The writ petition is accordingly dismissed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

8th November, 2019

v v