

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILU

WRIT PETITION No.11074 of 2019

ORDER:

This writ petition is filed seeking the following relief :-

“.....to issue an appropriate Writ, Order or Direction, more particularly one in the nature of Writ of Mandamus, to declare the action of the 1st respondent in issuing the impugned G.O.Rt.No.420, Home (Courts.A) Department, dated 21.05.2019, wherein issued orders for termination of services of the petitioner without any notice in violation of the principles of natural justice and set aside the same as illegal, improper, unjust, contrary to law and further directing the respondents to continue the Petitioner as Additional Public Prosecutor for the court of I Addl District Judge, Nalgonda, till completion of his tenure with all consequential benefits”.

Heard Mr.B.Krishna, learned counsel for the petitioner and the learned Government Pleader for Home.

It has been contended by the petitioner that he was appointed as Additional Public Prosecutor vide G.O.Rt.No.1238, dated 20.10.2016 for a period of three years for the Court of First Additional District Judge, Nalgonda, and he has taken charge on 22.10.2016 and ever since then, he has been discharging his duties to the best satisfaction of his superiors and every one concerned and he was also given letters of appreciation by the respondents for the work done by him. While so, the respondents have terminated his services vide G.O.Rt.No.420 dated 21.05.2019 alleging that one Smt.Chirra Lakshmi Kalpana lodged a complaint against him alleging that he is not properly prosecuting the case in Cr.No.191 of 2007 and also on the ground that the Additional Director General of Police complained that he is not showing any interest and he was reluctant to represent the matters relating to

Akshaya Gold cases before the Hon'ble Court and he has intentionally and deliberately went against the interest of State by denying the services and he was supposed to discharge professional duties to represent the State. The petitioner further submits that when he was terminated from service alleging stigma to his character stating that he was arrogant, inefficient and unproductive in his work, the respondents ought to have given an opportunity to him before terminating him from service. The petitioner, therefore, contends that the action of the respondents in terminating his services vide G.O.Rt.No.420 dated 21.05.2019 is arbitrary, illegal and violative of the principles of natural justice and hence, the impugned termination order is liable to be set aside.

Learned counsel for the petitioner submits that series of appreciation letters were given by the respondents to the petitioner, which includes the letter of appreciation given by the Directorate of Prosecution on 15.04.2019 i.e., one month before the date of termination of the petitioner. He further submits that in fact, the respondents have recommended the name of the petitioner for second term for appointment as an Additional Public Prosecutor. In spite of all these facts, merely acting on the complaint made by the Additional Director General of Police and also the remarks of Smt.Parimala H.Nutan, IPS, SP, EOW, CID, the respondents have initiated the impugned drastic action against the petitioner.

Learned counsel for the petitioner further submits that the Hon'ble Supreme Court in a catena of decisions held that whenever allegations are made while terminating the services of an employee, the employer must give a reasonable opportunity by

conducting an enquiry and after conducting enquiry only, the employer can terminate the services of an employee.

Learned counsel for the petitioner has relied upon the case reported in *RADHEY SHYAM GUPTA Vs. U.P. STATE AGRO INDUSTRIES CORPORATION LIMITED AND ANOTHER¹*, wherein the Hon'ble Supreme Court held as follows:-

“..... But in cases where the termination is preceded by an enquiry 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 the principles of natural justice inasmuch as the purpose of the enquiry 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 enquiry. 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 employee's conduct but are cases where the employer has virtually accepted the definitive and clear findings of the enquiry 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....”.

He also relied upon another decision reported in *RATNESH KUMAR CHOUDHARY Vs. INDIRA GANDHI INSTITUTE OF MEDICAL SCIENCES, PATNA, BIHAR²*, wherein the Hon'ble Supreme Court held as follows:-

“.....In the facts of the case, the Court proceeded to state that there is a marked distinction between the concepts of satisfactory completion of probation and successful passing of the training/test held during or at the end of the period of probation, which are sine qua non for confirmation of a probationer and the Bank's right to punish a probationer for

¹ (1999) 2 Supreme Court Cases 21

² AIR 2016 SUPREME COURT 467

any defined misconduct, misbehaviour or misdemeanour. In a given case, the competent authority may, while deciding the issue of suitability of the probationer to be confirmed, ignore the act(s) of misconduct and terminate his service without casting any aspersion or stigma which may adversely affect his future prospects but, if the misconduct/misdemeanour constitutes the basis of the final decision taken by the competent authority to dispense with the service of the probationer albeit by a non-stigmatic order, the Court can lift the veil and declare that in the garb of termination simpliciter, the employer has punished the employee for an act of misconduct.

Therefore, learned counsel for the petitioner submits that when the respondents allege stigma to the character of the petitioner, the respondents are bound to give a fair opportunity to the petitioner to prove his innocence. But, in the instant case, no such opportunity is given to the petitioner and straight away the respondents have terminated his services. The tenure of the petitioner as Additional Public Prosecutor is only upto the end of October, 2019. Had the respondents imposed the punishment of termination simpliciter, the petitioner would not have challenged the same. Since the termination is on the allegation of stigma to his character that too without giving any opportunity to him, the petitioner is challenging the said termination order.

Learned counsel for the petitioner, therefore, contends that appropriate orders be passed in the writ petition setting aside the impugned termination order issued vide G.O.Rt.No.420, dated 21.05.2019 and directing the respondents to continue the petitioner as Additional Public Prosecutor till completion of three years period i.e., end of October, 2019.

The learned Government Pleader appearing for the respondents contended that since the petitioner is discharging the duties of Additional Public Prosecutor, there should be trust and confidence between the client and his counsel and when the respondents lost confidence on the petitioner, the question of continuing him upto the end of October, 2019 would not arise. He further submits that the petitioner is working on contract basis and the tenure of the said contract appointment was also specifically stated in the appointment order itself i.e., G.O.Rt.No.1238 dated 20.10.2016 and, therefore, the petitioner cannot equate his case to that of a regular employee and as the petitioner is not a regular employee, he cannot contend that the respondents are bound to conduct enquiry before terminating his services. Therefore, there are no merits in the writ petition and the same is liable to be dismissed.

This Court, having considered the rival submissions, is of the considered view that the impugned termination order issued vide G.O.Rt.No.420, dated 21.05.2019 admittedly causes certain stigma touching upon the competence of the petitioner, as the respondents have used expressions such as arrogant, inefficient and unproductive in his work. However, it is to be seen that before issuing the impugned termination order, the respondents have issued appreciation letters to the petitioner, which go to show that the said stigmatic observations are made at the instance of the complaint made by the defacto-complainant and the remarks of one IPS Officer. When the respondents are causing stigma on the competency of the petitioner, they ought to have conducted an

enquiry, atleast by giving a reasonable opportunity to the petitioner to defend his case. But, no such effort is made by the respondents and hence, the action of the respondents in terminating the services of the petitioner without giving any opportunity to him is contrary to law as held by the Hon'ble Supreme Court in the cases, referred to supra.

If the respondents intend to terminate the services of the petitioner, they ought to have terminated in the form of termination simplicitor. But, in the instant case, the respondents have terminated the services of the petitioner causing stigma to his character. Therefore, the impugned termination order issued vide G.O.Rt.No.420 dated 21.05.2019 is liable to be set aside and it is accordingly set aside with a direction to the respondents to continue the petitioner as Additional Public Prosecutor with all consequential benefits till completion of his tenure i.e., the end of October, 2019.

With the above observations, the writ petition is allowed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVIL, J

Date:04-09-2019
Prv

