

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.39657 OF 2014

ORDER

This writ petition is filed seeking the following relief:

“.....to issue any writ, order or direction more particularly one in the nature of writ of Mandamus declare the action of 2<sup>nd</sup> respondent termination of the petitioner by his letter dated 27.11.2014 is null and void and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

Heard Sri V.H.V.R.R.Swamy, learned counsel appearing for the petitioner, learned Government Pleader for School Education appearing for respondent No.1 and learned Standing Counsel appearing for respondent Nos.2 and 3.

It is the case of the petitioner that he was appointed as School Assistant and since 2007, he is working in the 2<sup>nd</sup> respondent-School. While so, during November, 2014, the 2<sup>nd</sup> respondent has levelled certain allegations against the petitioner and *vide* proceedings dated 27.11.2014 terminated him from service without conducting any enquiry and without obtaining prior approval from the competent authority, which is in violation of the Andhra Pradesh Education Act, 1982.

Learned counsel appearing for the petitioner submits that without conducting any enquiry and without obtaining any prior permission from the competent authority, the 2<sup>nd</sup>

respondent has passed the impugned termination order. It is prayed that appropriate orders be passed in the writ petition by setting aside the impugned termination order and directing the respondents to reinstate the petitioner into service. In support of his contention, he placed reliance on Section 79 of the Andhra Pradesh Education Act, 1982, which reads as under:

“Section 79: Dismissal, removal or reduction in rank or suspension etc., of employees of private institutions: (1) No teacher or member of the non-teaching staff employed in any private institution (hereinafter in this Chapter referred to as ‘the employee’) shall be dismissed, removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(Provided that no order of dismissal, removal or reduction in rank shall be passed under this sub-section against an employee other than an employee of a minority educational institution without the prior approval of such authority or Officer as may be prescribed for different classes of private institutions.

Provided further that the management may prefer an appeal against any order of the Officer or authority refusing approval under this sub-section to such authority or officer and within such period as may be prescribed.)

Learned Government Pleader as well as learned Standing Counsel appearing for respondents submitted that

since the petitioner misbehaved with the girl students, their parents made serious allegations against him and hence, the State Commission for Protection of Child Rights was constituted. The State Commission for Protection of Child Rights conducted enquiry and opportunity was given to the petitioner and the petitioner participated in the enquiry. As per the recommendations of the State Commission for Protection of Child Rights, action was initiated against the petitioner and his services were terminated. It is also submitted that an efficacious alternative remedy of appeal is available to the petitioner and without exhausting the alternative remedy, the petitioner has straight away filed the present writ petition and hence, the writ petition is not maintainable.

Having considered the rival submissions made by the learned counsel on either side, this Court is of the view that when there is an efficacious alternative remedy of appeal available to the petitioner under Section 80 of the Andhra Pradesh Education Act, 1982, the petitioner ought to have availed the same.

Therefore, the Writ Petition is disposed of directing the petitioner to approach the appellate authority within a period of four weeks from the date of receipt of a copy of this order.

On receipt of such appeal, the appellate authority shall entertain the same without raising the issue of limitation and pass appropriate orders within a period of six months thereafter, in accordance with law. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

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JUSTICE ABHINAND KUMAR SHAVILI

*Date: 7.11.2019*  
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