

HIGH COURT FOR THE STATE OF TELANGANA

WRIT PETITION No.5141 of 2013

Between:

G. Sabitha, D/o. Narayana, formerly Helper(T) ALMU,
NIMS WORKSHOP, Presently residing at H.No.6-3-93/1/D,
Premnagar, Chintalbasti, Khairtabad,
Hyderabad.

.. Petitioner

Vs.

A.P.Vikalangula Co-operative Corporation,
Ground and 2nd Floor,
B.R.K.R.Building,
Rank Band Road, Saifabad,
Near Secretariat,
Hyderabad & 2 others.

.. Respondents

DATE OF THE ORDER PRONOUNCED: 20-06-2023

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| 1. Whether Reporters of Local newspapers may be allowed to see the judgment? | No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals | Yes |
| 3. Whether his Lordship wish to see the fair copy of the judgment? | Yes |

*** HON'BLE SRI JUSTICE J. SREENIVAS RAO**

+ WRIT PETITION No.5141 of 2013

% DATED 20th June, 2023

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.. Respondents

<Gist:

>Head Note:

! Counsel for the Petitioners : Sri A. Rajendra Babu, Advocate

^Counsel for Respondents : Smt A. Sunitha(AGP to Addl. AG Office)

Sri A. Sanjeev Kumar, Advocate

? CASES REFERRED:

1. 2016 (5) ALD 497
2. (1993) 4 SCC 727

HON'BLE SRI JUSTICE J. SREENIVAS RAO**WRIT PETITION No.5141 of 2013****ORDER:**

This writ petition is filed seeking following relief:

“....to issue writ of *Mandamus* to declare that the impugned proceedings dated 25.11.2012 issued by the 2nd respondent as arbitrary non-est, illegal and opposed to principles of natural justice; reinstate the petitioner with back wages, order pay and allowances to be paid to the petitioner for the period of her absence to which she should have been entitled has she not been removed from service by the 2nd respondent and treat the said period as period spent on duty...”

2. Heard Sri A. Rajendra Babu, learned counsel for the petitioner and learned Assistant Government Pleader appearing on behalf of learned Additional Advocate General office.

3. Brief Facts of the case:

3.1 The petitioner submits that she was appointed as helper in NOH workshop unit from November 1982 on daily wages and continued in the same post on consolidated pay with effect from 01.11.1986 through proceedings issued by respondent No.2 *vide*

RC No.EE18/D dated 05.11.1986 and her services were regularized as Helper(Technical) with effect from 01.11.1988 and she is physically handicapped person with fifty five(55) percent disability. She is discharging her services since last thirty(30) years without any adverse remarks.

3.2 The petitioner further submits that on 27.03.2010 respondent No.1 issued proceedings *vide* Memo No.488/APVCC/Estt/2010-D-65 directing the unit officers of the twin cities to furnish the date of birth, education qualification, service register and other particulars of the employees working in their units. Pursuant to the same, the unit officers directed the petitioner to furnish proof of her date of birth. In pursuance of the same, the petitioner submitted her school transfer certificate dated 09.10.1984 issued by the Headmaster, Central Primary School, Maheshwaram, Ameerpet, R.R.District.

3.3 The petitioner further submits that on 17.07.2012, respondent No.1 issued a show cause notice directing the petitioner to submit her explanation on the ground that the certificate produced by her was found not genuine as per the report of the Headmaster. The petitioner sought time to submit her explanation which was not granted by respondent No.1 on the ground that respondent No.2 issued charge memo *vide* RC.No.1052/2012/Estt. dated 04.08.2012

3.4 On 07.08.2012, respondent No.2 appointed one Sri P.V.Ramana Murthy, Project Officer as an enquiry officer to conduct enquiry into the charges framed against the petitioner and directed him to submit report along with his findings by 25.08.2012. The petitioner further submits that on 14.08.2012 she submitted her explanation denying the charges leveled against her.

3.5 On 16.08.2012 enquiry officer had issued notice to the petitioner to attend before him and to submit explanation along with supporting evidence. She further submits that on 25.09.2012 the enquiry officer submitted his report to respondent No.2 and found the petitioner guilty of the charge and further opined that the petitioner has committed an offence in producing false school certificate which is considered to be a major misconduct and criminal breach of trust, as per Cr.P.C and is liable for prosecution.

3.6 The petitioner further submits that on 25.11.2012 respondent No.2 passed the impugned order removing the petitioner from the services, without giving proper opportunity and without following procedure laid down under the Service Regulations of the respondent Corporation and the same is clear violation of principles of natural justice and contrary to law.

3.7 Respondent No.2 filed counter contending that the respondent corporation after following due procedure under law and also after giving opportunity to the petitioner passed the impugned order, especially after conducting enquiry. He further submitted that the petitioner has submitted false school certificate and the school authorities have also confirmed the same. The petitioner has committed offence by producing false transfer school certificate which comes under a major misconduct and there is no illegality or

irregularity in the impugned order and the petitioner is not entitled to the relief claimed in the writ petition.

4. Sri A. Rajendra Babu, learned counsel for the petitioner submits that the respondent Corporation has not given sufficient opportunity to the petitioner to submit her explanation. He vehemently contended that the petitioner studied upto fifth (5th) standard from 1970-75 at the Central Primary School, Ameerpet(V), Maheswaram(M), Rangareddy District and obtained transfer certificate from the school in the year 1984 and the said certificate is having signature of the Headmaster and stamp of the school. He further submits that the petitioner was not given sufficient opportunity to submit her explanation before enquiry officer nor was provided with any legal assistance to defend herself. He also contended that the enquiry officer did not supply any material to the petitioner, basing on which, the charge was framed and she was not given reasonable opportunity to defend the charges framed against her nor the respondent corporation furnished any list of witnesses to the petitioner.

4.1 Learned counsel further submits that respondent Corporation has not furnished enquiry report or proceedings of the enquiry officer calling for remarks of the petitioner nor issued any show cause notice before passing impugned punishment removal order dated

25.11.2012, admittedly which is imposing major punishment and the same is clear violation of Regulation 74 of Service bye-Laws of the Employees of A.P.V.C.C (hereinafter referred to as 'Regulations' for brevity) apart from violation of the principles of natural justice. He further submits that enquiry officer submitted enquiry report solely basing upon the report furnished by the Headmaster dated 20.06.2012. Respondents have not examined the Headmaster to prove the charges leveled against the petitioner. He further submits that punishment imposed by the respondent Corporation is a major one though the petitioner has not committed any offence or irregularity while discharging her services, on the other hand, the petitioner worked more than thirty (30) years without any adverse remarks. Learned counsel for the petitioner submits that respondent corporation has not examined any witnesses, especially the Headmaster of the school who issued the letter dated 20.06.2012 which is the basis for initiation of the disciplinary proceedings against the delinquent employee.

4.2 In view of the same, the impugned order passed by respondent No.2 dated 25.11.2012 is contrary to law and the same is liable to be set aside and the petitioner is entitled to all the consequential benefits under law. In support of his contentions he

relied upon the Judgment in ***G.Satyanarayana Vs. Eastern Power Distribution Company, Visakhapatnam and another***¹.

5. *Per contra*, learned Assistant Government Pleader appearing for respondents vehemently contended that the petitioner has produced false school transfer certificate and the respondent corporation after following the due procedure as contemplated under the Regulations and also under the law after conducting detailed *de-novo* enquiry by giving reasonable opportunity to the petitioner passed the impugned order removing the petitioner from the services by exercising powers conferred under Regulations No.75(a) IX & 2 of the Corporation as well as Rule 20 of T.S.C.S(A.P.C.S)(CC&A) Rules and there is no illegality and irregularity in the impugned order passed by respondent No.2.

6. During the course of hearing, learned counsel for the petitioner as well as learned Assistant Government Pleader submits that the petitioner has crossed the age of superannuation during the pendency of the writ petition.

7. Having considered the rival submissions made by the respective parties and upon perusal the material available on record, the following points would arise for consideration:

¹ 2016 (5) ALD 497

i. Whether the impugned removal order passed by respondent No.2 dated 25.11.2012 is in accordance with the Service Regulations of the respondent Corporation and also on law?

ii. Whether the petitioner is entitled to the relief sought in the writ petition?

iii. To what relief ?

Point Nos.i to iii

8. It is undisputed fact that the petitioner was appointed as helper in respondent No.3 unit in the year 1982 on daily wage basis and continued in the said post on consolidated pay with effect from 01.08.1985. Respondent No.2 issued proceedings RC No.EE18/D dated 05.11.1986 appointing the petitioner in the scale of Rs.280-5-355-10-435 with effect from 01.11.1986 and the petitioner services were regularized as helper(technical) with effect from 01.11.1988 and since then she is discharging her services without any remarks. It also appears from the physical disability certificate, issued by the concerned authority, that the petitioner is a physically handicapped person suffering with fifty five percent (55%) disability.

9. It further reveals from the records that on 27.03.2010 respondent No.1 issued proceedings vide Memo No.488/APVCC/Estt/2010-D-65 directing the unit officers of the twin cities to furnish the date of birth, educational qualification, service register and other particulars of the employees working in their units. Pursuant to the said memo the unit officers directed the

petitioner to submit her date of birth certificate proof. In pursuance of the same, the petitioner submitted her transfer school certificate dated 09.10.1984 issued by Headmaster, Central Primary School, Maheshwaram, Ameerpet, R.R.District to the respondent authority to show her date of birth.

10. It further reveals from the records that to ascertain the genuineness of the certificate produced by the petitioner, the respondent authorities issued letter vide Lr.No.488/Estt/E3/2011/D-196, dated 02.04.2012 directing the Head master to submit the report. Pursuant to the same, the Headmaster of the School addressed a letter to respondent No.2 on 20.06.2012 wherein he stated as follows:

With above reference to subject cited that I under signed hereby submit the report of Smt G. Sabitha D/o Narayana, her study particulars during the period of 1974-75 etc., verified with our school records and found not correct and when I was not worked here.

11. Basing on the said report, respondent No.1 issued a show cause notice dated 17.07.2012 directing the petitioner to submit her explanation. The petitioner requested respondent No.1 to grant time for submission of her explanation. Subsequently, respondent No.2 issued charge memo invoking the powers conferred under Rule 74 of Regulations R/w Rule 20 of C.C.&A Rules 1991 with the following charge :

That Smt. G. Sabitha Helper (T), Almu, NIMS, Hyderabad as submitted false school certificate and get employment in A.P.V.C.C.

Thus the behavior of Smt. G. Sabitha helper(T) Almu, NIMS, Hyderabad is unbecoming on the part of a Corporation employee and warrants severe action. Hence the charge.”

12. Thereafter, respondent No.2 appointed Sri P.V. Ramana Murthy, Project Officer of respondent No.2 office as enquiry officer to conduct enquiry into the above charge and directed him to submit the report along with findings. It further reveals from the records that on 14.08.2012 the petitioner submitted her explanation to the enquiry officer denying the charge. The enquiry officer submitted report on 25.09.2012 and opined that the petitioner committed an offence in producing the false school certificate which is to be considered as a major misconduct and criminal breach of trust and is liable for taking major penalty. Pursuant to the said enquiry report respondent No.2 passed the impugned removal order on 25.11.2012 exercising the powers conferred under Regulation 75(a) IX & 2 as well as Rule 20 of Rules removing the petitioner from services of respondent Corporation, even without issuing any notice and without furnishing the enquiry report to the petitioner which are required under the Regulations of the respondent Corporation.

13. It is very much relevant to extract Clause 74(e) of Regulations relating to the service conditions of the employees of the respondent Corporation which reads as follows:

“On receipt of this report of the enquiry officer, the person charged shall be supplied with a copy of the report and proceedings of the enquiry officer calling for remarks and on receipt of such remarks the person charged shall be issued a show cause notice on the penalty to be proposed calling the delinquent employee to submit reply. The person charged shall be given a reasonable opportunity time not ordinarily exceeding 15 days. Any representation made in this regard by the person charged shall be duly taken into consideration by the competent authority before final orders are passed; provided that such representation shall be based only on the evidence already adduced before the enquiry officer during the enquiry.”

14. The above said rule clearly envisages that as soon as the respondent Corporation received the enquiry report from the enquiry officer, the person charged shall be supplied with the copy of the report and proceedings and a show cause notice has to be issued to the delinquent employee on the penalty to be imposed, to submit his reply and calling for her remarks and the above rule further says that the delinquent employee shall be given reasonable opportunity to submit his explanation within 15 days and on such representation the competent authority has to consider the same and pass orders.

15. In the instant case on hand respondent No.2 passed the impugned order removing the petitioner from the services of the respondent corporation straight away even without issuing any notice and without furnishing the enquiry report submitted by the enquiry officer. The non issuance of the show cause notice and non furnishing of the enquiry report before imposing the punishment is

clear violation of clause 74(e) of the Regulations and also contrary to the settled principles of law.

16. In *Managing Director, ECIL, Hyderabad and Others Vs. B. Karunakar and others*², the Hon'ble Apex Court held as follows in paragraph No.31:

31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and

² 1993 4 SCC 727

depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.

17. In the above said judgment the Hon'ble Apex Court specifically held that non furnishing of the enquiry report to delinquent employee before imposing punishment is clear violation of the principles of natural justice.

18. It is also relevant to mention here that the respondent corporation initiated the disciplinary proceedings against the petitioner solely basing on the report furnished by the Headmaster dated 20.06.2012 without conducting any other enquiry and the respondent corporation has not examined the genuinity of the certificate produced by the petitioner by examining the person who issued a particular certificate. They are not disputing the signature of the person who issued the particular certificate and the respondent corporation has not summoned the original record from the School. Learned counsel for the petitioner has rightly contended that in the absence of any enquiry, contra evidence, imposed major punishment solely basing on the letter furnished by the Headmaster dated 12.06.2012 and the same is contrary to law.

19. In *G.Satyanarayana (supra)* case this Court after taking into consideration the judgments of the Apex Court and other Courts held as follows:

21. Let me consider the facts of the case on hand in the light of the above legal principle. The petitioner was kept under suspension on 12.4.2003. The final order was passed on 31.8.2004. In normal course, the petitioner attains the age of superannuation on 31.10.2004. The petitioner would not have deprived of the legitimate salary and the retiral benefits if no disciplinary proceedings were initiated against him. Because of the suspension, the petitioner was deprived of his legitimate salary with effect from 12.4.2003 to 31.8.2004. The petitioner was also deprived of the retiral benefits having served the respondent Corporation for a period of more than 35 years. It is not brought to the notice of this Court that the petitioner was subjected to any departmental enquiry followed by imposing of any punishment in his entire service except the present one. A perusal of the record reveals that one R. Srinivasa Rao also faced the similar type of enquiry and was found guilty. Whereas the respondents imposed punishment of reduction of one stage of pay for three years besides treating the period of suspension as suspension only and the period will not be counted for any purpose. This also clearly demonstrates the discrimination shown by the respondents towards the petitioner while imposing the punishment, even if the enquiry is sustainable. The petitioner cannot be penalised for the fault of the respondents who framed a defective charge and forced the petitioner to face the rigour of enquiry at the fag end of his service.

22. It is a known fact that at the fag end of service, every employee may be shouldered with a responsibility to perform the marriages of his children. Due to stoppage of retiral benefits, the petitioner might have faced lot of financial constraints and social problems to discharge his domestic responsibilities. The mental agony undergone by the petitioner, while facing the enquiry, cannot be compensated in any manner whatsoever. Facing enquiry by an employee, would certainly, gives a scope to his colleagues and relatives to make comments on him. In such circumstances, granting retiral benefits to the petitioner is only a solace and not a substitute for the mental agony and torture faced not only by him or his family members. Having regard to the facts and circumstances of the case and also the

principle enunciated in the cases cited supra, I am of the considered view that it is a fit case to exercise power under Article 226 of the Constitution of India and set aside the impugned proceedings i.e. dismissal order dated 31.08.2004 passed by the first respondent.

23. In the result, the Writ Petition is allowed and the rule nisi is made absolute, setting aside the dismissal order dated 31.08.2004 passed by the first respondent. The respondents are hereby directed to pay all the monetary benefits to the petitioner as if he continued in service with effect from 12.04.2003 till the date of his retirement, including his retiral benefits. No order as to costs. As a sequel, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

20. In the above judgment this Court specifically held that when the employer failed to follow the procedure laid down in their own Rules and Regulations and imposes major punishment/penalty, it amounts to clear violation of the principles of natural justice and the writ Court can exercise the powers conferred under Article 226 of Constitution of India to set aside the punishment order imposed by the respondent organization and also issue consequential directions.

21. It is already stated supra that, in the instant case on hand, the respondent corporation without following the due procedure as contemplated under the Regulations and also law laid down by the Apex Court as well as this Court, passed the impugned order imposing the major punishment removing the petitioner from the services and the same is liable to be declared as illegal and clear violation of the principles of natural justice apart from contrary to the Regulations and also law. Accordingly, set aside.

22. In view of the foregoing reasons, the writ petition is allowed setting aside the impugned proceedings vide RC.No.1052/2012/Estt dated 25.11.2012 issued by the respondent No.2 and respondents are

directed to pay all the service benefits including salary to the petitioner, within a period of three (3) months from the date of receipt of a copy of this order.

23. Accordingly, the writ petition is allowed. No costs.

JUSTICE J. SREENIVAS RAO

Dated: 20th June, 2023

Note:

L.R.copy to be marked: 'Yes'

BO.

PSW

HON'BLE SRI JUSTICE J. SREENIVAS RAO

WRIT PETITION No.5141 of 2013

20th June, 2023

Note:

L.R.copy to be marked: 'Yes'

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PSW