

THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO*+W.P. No.22223 OF 2020**

% 20-01-2023

Panugothu Raju

....petitioner

Vs.

\$ The State of Telangana, rep. by its Special Chief Secretary, Irrigation & CAD
Department, Hyderabad and another

.... Respondents

!Counsel for the petitioner : Siva Raju Srinivas

Counsel for the Respondents : G.P. for Services-II

<Gist :

>Head Note:

? Cases referred:

1. (2015)15 SCC 151
2. (1999) 2 SCC 21

IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD

* * * *

WP. No.22223 OF 2020

Between:

Panugothu Raju

....petitioner

Vs.

The State of Telangana, rep. by its Special Chief Secretary, Irrigation & CAD
Department, Hyderabad and another

.... Respondents

ORDER PRONOUNCED ON: 20.01.2023**THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : Yes

NAMAVARAPU RAJESHWAR RAO, J

HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO
WRIT PETITION No. 22223 OF 2020

ORDER:

This writ petition is filed for the following relief:

“...to issue Writ of Mandamus declaring the action of the respondents in terminating the services of the petitioner vide orders in proceedings no.RC/ENC/H2/18051123/2018 dt.05.09.2020 passed by the 2nd respondent as illegal, and violative of Articles 14, 16 and 311 of the Constitution of India, apart from Telangana State and Service Subordinate Rules, 1996 and consequently, set aside the proceedings No. RC/ENC/H2/18051123/2018 dt.05.09.2020 issued by the 2nd respondent and consequently direct the respondents to reinstate the petitioner into service as Assistant Engineer, I.B. Section, Narayanpur, I.B Sub – Division, Choutuppal, Yadadri Bhuvanagiri District and pass...”

2. It has been contended by the petitioner that he was initially appointed as Assistant Engineer in Irrigation & CAD Department vide proceedings dt.26.05.2016 and reported to duty on 06.06.2016 in IB Sub-Division Nalgonda of IB Division Nalgonda of Irrigation Circle, Nalgonda. While the petitioner was working in I.B. Section, Narayanpur, as Assistant Engineer, on 06.04.2018, he was meeting one of his relatives who offered financial help by way of a loan to meet expenses of his sister's

engagement, but he was arrested by the Officers of Anti Corruption Bureau at around 5.30 p.m. and he was informed that based on F.I.R vide No. 02/RCT-NLG/2018 dated 06.04.2018 ACB Police Station, Nalgonda Range, the ACB laid a trap on the complaint of his relative Udavath Rajesh, who is said to have stated that the petitioner demanded a bribe amount for clearing the pending payment to his father,.

2.1 It is further contended by the petitioner that the allegation against him is that, he demanded and accepted a bribe of Rs.1.25 lakhs, is false. It is a matter of record that as on the date of the trap, from out of the total amounts of Rs.71.33 lakhs, being the amounts due to the father of the complainant, more than Rs.69.50 lakhs was already released and there was nothing to be done any more. Pursuant to the arrest of the petitioner, he was placed under deemed suspension w.e.f.07.04.2018 vide G.O.Rt.No.640 dt.30.04.2018 and the suspension was extended from time to time and vide G.O.Rt.No.271 dt.06.07.2019 the suspension was extended till further orders. Though the petitioner made several representation to the respondents, but in vain.

2.2 It is further contended by the petitioner that he was served with show cause notice by the 2nd respondent vide SCN No. RC/ENC/H2/18051123/2018 dt.08.04.2020 wherein he was informed that the 1st respondent had directed to terminate his services vide Memo No.3573/Vig.I/A1/2018-2, dt.19.03.2020 and explanation from the petitioner was called for as to why he should not be discharged from service in terms of Rule 17(a) (ii) and 10(e) of the Telangana State & Subordinate Service Rules, 1996 as he is a direct recruit in the initial cadre and cannot be reverted, and the petitioner vide letter dt.11.05.2020 submitted his explanation and requested the respondents to drop the proposed action of discharging him from service.

2.3 It is further contended by the petitioner that the 2nd respondent vide proceeding No.RC/ENC/H2/18051123/2018 dt.05.09.2020 terminated the petitioner from service with immediate effect. Accordingly, prayed to allow the Writ Petition.

3. The respondents filed counter denying the material contention of the petitioner and contended that the petitioner joined duty on 06.06.2016 in IB Sub-Division Nalgonda of IB Division Nalgonda of Irrigation Circle, Nalgonda. Later, he was

transferred to I.B. Sub-Division, Choutupal of I.B. Division, Bhongir, and reported to duty on 01.12.2016. On 09.04.2018, the Anti Corruption Bureau, Nalgonda Range, through a radio message informed that the petitioner while working in I.B. Section, Bhongir, was trapped on 07.04.2018 at 17:30 by the ACB authorities when he demanded and accepted the bribe amount of Rs.1,00,000/- from the complainant. A case was registered against him and the ACB authorities have informed that the petitioner was remanded to judicial custody on the same day and was in the custody for a period exceeding 48 hours.

3.1 It is further contended by the respondents that the petitioner was trapped in the ACB case on 07.04.2018 which was within the period of his probation and his probation was not declared, as such, the petitioner was a temporary employee. As per existing rules, the services of a temporary Government servant can be terminated in accordance with the rules and sanction is not required under section 19 of the Prevention of Corruption Act, if the public servant is no longer in service at the time the Court takes cognizance of the offence. Therefore, the Government decided to take action for termination. As per

Rule 10(e) of A.P. and Subordinate Service Rules, 1996 the appointing Authority shall have the right to terminate the service of a person who has been appointed under Sub-Rule (a) of Rule 10 of Telangana State and Subordinate Service Rules, 1996 at any time without assigning any reason and without any notice, if appointed by direct recruitment, revert to a lower category or grade, if promoted, or revert to the post from which such appointment by transfer was made, if appointed by transfer. Hence, the petitioner was terminated under Rule 10(e) as he was appointed purely on temporary basis vide Engineer-in-Chief (AW) proceedings No.RC/ENC/A1/110/Zone-VI/2015 PSC dt.26.05.2016. As per Rule 17 a(ii) the appointing authority may at any time, before or after the expiry of the prescribed period of probation either extend by nor more than one year, whether on duty or otherwise, the period of probation of a probationer in case the probation has not been extended under sub-rule (b) of this rule or terminate the probation and discharge him from the service after giving him the one month notice or one month pay in lieu of such notice, on account of unsatisfactorily performance or progress during training or unsatisfactory of duties or unsatisfactorily conduct or for any

other sufficient reason to be recorded. Hence, the contention of the petitioner is not correct.

3.2 It is further contended by the respondents that, a show cause notice was issued to the petitioner as to why he should not be discharged from service in terms of the Rule 10(e) & Rule (17)(a)(ii) TS Rules, 1996. The petitioner has submitted his explanation on 11.05.2020 and the same was submitted to the Government vide Engineer-in-Chief (AW) I & CAD Department Lr.No.RC/ENC/H2/18051123/2018 dt.30.06.2020, and the Government after careful examination, have instructed Engineer-in-Chief (AW) I & CAD Department to take necessary action duly terminating the services of the petitioner as ordered vide Government Memo No.3573/Vig.1/A1/2018-2 dt.19.03.2020 and as per Rules. The authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry. The misconduct alleged against the petitioner is that he entered the service through T.S.P.S.C. in the year 2016 and as per Rule 10(e) of TS Rules, 1996 discharging him from service would not lead to legal issues.

3.3 It is further contended by the respondents that being in the rank of Assistant Engineer, the petitioner involved in a moral turpitude case on his own private action, due to which, he was placed under suspension and terminated subsequently and the ACB case is still pending and after careful examination of the explanation of the petitioner, Government have directed Engineer-in-Chief to take action as ordered vide Govt. Memo dated 19.03.2020 duly terminating the services of the petitioner as he was trapped by the ACB Authorities on 07.04.2018, i.e. within the period of probation and the employee who is facing serious charge i.e criminal/ACB cases that too under the Prevention of Corruption Act, cannot seek for revocation of termination. However, it is an admitted fact that petitioner was a temporary employee and since it was a temporary appointment, he is liable to be terminated at any point of time without prior notice and without assigning any reason thereof as per rule 10(e) and 17 a (ii), the petitioner has been terminated.

4. Heard Sri Sivaraju Srinivas, learned counsel for the petitioner and learned Government Pleader for Services-II appearing for respondents. Perused the record.

5. It is submitted by the learned counsel for the petitioner that the termination of services of the petitioner was without conducting any enquiry and is in gross violation of Article 311 of the Constitution and the respondents have failed to record reasons for coming to the conclusion of unsatisfactory conduct which creates a stigma on the petitioner and is sufficient for discharge of a probationer in terms of Rule 17(a)(ii) if the State and Service Subordinate Rules, 1996 and no proper enquiry was conducted or reasons given but the reason was merely that upon careful examination of the entire matter, the respondents decided to terminate the services of the petitioner.

5.1 It is further submitted by the learned counsel for the petitioner that the termination order was passed only with a view that the ACB/Government tackle section 19 of the P.C Act that prior sanction of the government was required to launch prosecution against a public servant in service and only to evade such procedure, that the petitioner was terminated from service, the above said sanction would not be necessary and as such, the 1st respondent, for the sake of convenience, ordered that the

petitioner be terminated from service for the ACB to launch prosecution. Accordingly, prayed to allow the Writ Petition.

6. On the other hand, learned Government Pleader for the respondents argued that as per Rule 10(e) of the A.P State and Subordinate Service Rules, 1996, the appointing authority shall have the right to terminate the service of a person at any time without assigning any reason and without any notice and was hence terminated under Rule 10(e) as he was appointed purely on temporary basis and the 2nd respondent also issued one month's prior notice to the petitioner under Rule 17(a)(ii) of the Rules, 1996 calling for explanation and after due chance given, the 2nd respondent after careful examination terminated the services of the petitioner in accordance with law.

6.1 Learned Government Pleader for the respondents further argued that the Director General, ACB, Telangana Stat, vide Lr.dt.14.12.2020 has informed the respondents that pursuant to the termination of the petitioner from the service, the ACB authorities filed charge-sheet against the petitioner before the Court of I Addl. Special Judge for SPE & ACB cases,

Hyderabad, on 13.11.2020 and no relief can be granted to the petitioner as the case is pending before the trial Court and prayed to dismiss the Writ Petition.

7. The point for determination is, whether the impugned proceedings issued by the 2nd respondent upon the direction of the 1st respondent is liable to be set aside?

8. It is necessary to first extract the concerned rules and provisions for adjudication of the matter at hand. Looking into the rules of the Telangana State and Subordinate Service Rules, 1996;

Rule 10 (e): *“The appointing authority shall have the right to terminate the service of a person who has been appointed under sub-rule (a), at any time, without assigning any reason and without any notice, if appointed by direct recruitment, revert to a lower category or grade, if promoted, or revert to the post from which such appointment by transfer was made, if appointed by transfer.”*

Rule 17(a)(ii): *“The appointing authority may, at any time, before or after the expiry of the prescribed period of probation either extend by not more than one year, whether on duty or otherwise, the period of*

probation of a probationer, in case the probation has not been extended under sub-rule (b) of this rule or terminate his probation and discharge him from service after giving him one month's notice or one month's pay in lieu of such notice, on account of unsatisfactory performance or progress during training or unsatisfactory performance of duties or unsatisfactory conduct or for any other sufficient reason to be recorded in writing."

And section 19 of the Prevention of Corruption Act, 1988 which provides for

Previous sanction necessary for prosecution. —

"(1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,—

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office."

9. It is an undisputed fact that the petitioner was under probation period at the time of the alleged offence. The 2nd respondent gave an opportunity to the petitioner to explain his version and the petitioner submitted his explanation. Upon careful examination of the matter, the 2nd respondent passed the impugned proceedings, terminating the services of the petitioner. The petitioner's contention is that, he was not given a chance to explain himself is not correct.

10. Learned counsel for the petitioner placed reliance on the judgments of the Apex Court in ***Ratnesh Kumar Choudhary Vs. Indira Gandhi Institute of Medical Sciences, Patna***¹; and in ***Radhey Shyam Gupta v. U.P. State Agro Industries Corporation. Ltd.***,². Going through the first judgment relied by the petitioner, it is observed that the Hon'ble Supreme Court held that when an enquiry commenced and thereafter without framing of charges or without holding an enquiry the delinquent employee was dismissed, there would be clear violation of natural justice. The above case would not

¹ (2015) 15 SCC 151

² (1999) 2 SCC 21

apply to the present case as no enquiry was conducted by the respondents herein, for which reasons were also given.

11. Whereas in **Radhey Shyam Gupta** (supra) which is the second judgment relied by the counsel for the petitioner, the relevant para is as follows:

“34. 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.”

12. The counsel for the petitioner further relied upon an order of this Hon'ble Court in **W.P. No. 3465 of 2021**³ wherein a similar issue fell for consideration and this Hon'ble Court observed as follows:

³ Sattu Anil Vs. State of Telangana, decided on 16.02.2021

“5. Since petitioner is a probationer, the conduct and performance of petitioner is subject to more strict scrutiny and conduct, disobedience, dereliction of duty can result in termination of his probation. However, ordinarily it has to be termination simplicitor and not to reflect the misconduct. Termination simplicitor must be preceded by notice of one month or pay of one month without indicating reasons for termination. In the instant case, order refers to alleged trap laid by Anti Corruption Bureau on demand and acceptance of bribe for doing official favour. Therefore, it is clear that termination of petitioner is not on account of assessment of suitability as Sub-Inspector of Police, but because of his involvement in the allegation of demand and acceptance of bribe. Thus, as order is stigmatic on the face of it, Rule 17(a) (ii) of Telangana State and Subordinate Service Rules, 1996 is not complied as it was not preceded by notice and opportunity. Thus, order is not sustainable and accordingly set aside. Matter remanded to the appointing authority to take appropriate course of action as warranted by law.”

13. It is difficult to understand as to how the above referred judgments would support the contentions of the petitioner as the facts speak otherwise. In the case on hand, the petitioner was duly given a chance to explain himself subsequent to the issuance of one months' prior notice as contemplated under the above discussed rules and the petitioner has submitted his explanation as well. Further, the respondents have clearly assigned the reason for not holding

enquiry stipulated under Rule 17(a)(ii) of the Telangana State and Subordinate Service Rules with the reason that it is not feasible to conduct enquiry by the respondents as the petitioner is involved in ACB case and the truth would be unearthed only upon trial before the competent Court of Law.

14. The respondents have critically analysed the issue of the petitioner and upon careful examination, have come to the conclusion that the petitioner's conduct was unsatisfactory and could not hold and enquiry and the reasons were recorded to that effect was with the petitioner's involvement in the ACB case. It is also clear that there being many precedents which hold that putting a stigma to a delinquent employee behind the back of the employee cannot sustain. It is clear from the record that the respondents have not gone into the guilt of the petitioner but have just not taken the risk to continue the petitioner due to the involvement of above said ACB case. The actions of the respondents are not punitive and it is clear that the petitioner was merely discharged from his duty, which amounts to termination simpliciter which would mean that no stigma is casted upon the petitioner. The petitioner was aware of every step of the respondents through proper channel and the

respondents rightly disclosed their steps to the petitioner. The respondents have kept in mind the rule position and the exigency in the issue at hand and have passed the impugned order.

15. It is pertinent to mention here that this Court is not expressing any view as to merits *vis-à-vis* the alleged involvement of the petitioner in the said criminal case. The respondents submitted that the ACB case against the petitioner is pending adjudication before the I Addl. Special Judge for SPE & ACB cases, Hyderabad, and as rightly contended by them, relief sought by the petitioner cannot be granted at this juncture in absence of outcome of the trial. As such, the Writ Petition fails and is liable to be dismissed.

16. Accordingly, the Writ Petition is dismissed. It is needless to say that if the petitioner is acquitted in the said criminal case, the respondents shall consider reinstating him into service in accordance with Law. No costs.

As a sequel thereto, miscellaneous applications, if any, pending in this writ petition, shall stand closed.

NAMAVARAPU RAJESHWAR RAO,J

20th day of January, 2022

BDR