
(2014) 06 AP CK 0187

In the Andhra Pradesh High Court

Case No : Writ Appeal Nos. 499, 694 and 695 of 2004

Anwarul-Uloom College

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 19-06-2014

Acts Referred:

Andhra Pradesh Education Act, 1982 — Section 80, 81

Citation : (2014) 06 AP CK 0187

Hon'ble Judges : L.N. Reddy, J;Challa Kodanda Ram, J

Bench : Division Bench

Advocate : B. Nalin Kumar, Advocate for the Appellant; A. Ahemed, P. Vinod Kumar and Sriaijaz Ahmed, Advocate for the Respondent

Judgement

L. Narasimha Reddy, J.—These three writ appeals are inter-related. Hence, they are disposed of through a common judgment.

2. The appellant in all the three writ appeals is a Private Aided Educational Institution. It initiated disciplinary proceedings against various employees. Two such are - Mr. K.M. Wasif Ali Khan, Lecturer in Economics (for short "the 1st respondent"), who is since died and is represented by L.Rs., and Mohd. Abdul Jabbar, Office Superintendent (for short "the 2nd respondent"). Show cause notices alleging acts of misconduct were issued and not satisfied with the explanation submitted by the respondents, the appellant appointed one Mr. Anandam, Chartered Accountant, as an Enquiry Officer. The respondents did not participate in the enquiry and for the most part of it, they were submitting one representation or the other. The Enquiry Officer submitted separate reports, dated 26.10.1984, holding that the charges framed against the respondents, are proved. The Management of the Institution accepted the reports through resolution, dated 11.11.1984. Thereafter orders of dismissal, dated 03.01.1995, were issued to the respondents and some other employees.

3. The respondents approached the Commissioner of Collegiate Education, Hyderabad, by filing an appeal under Section 80 of the Andhra Pradesh Education

Act, 1982 (for short "the Act"). The Government in Higher Education Department has withdrawn the appeals in exercise of power under Section 81 of the Act. The appeal preferred by the 1st respondent herein was allowed by the Government, vide its orders in G.O. Ms. No. 53, Education (C.E.II-2) Department, dated 06.03.1993. Similarly the appeal preferred by the 2nd respondent was allowed through orders in G.O. Rt. No. 892 Education (C.E.-II) Department, dated 03.08.1996.

4. The appellant filed W.P. Nos. 2973 of 1993 and 2851 of 1997 respectively, challenging the said G.Os. The 2nd respondent on the other hand, filed W.P. No. 28162 of 1996 for enforcement of the G.O. While W.P. No. 2973 of 1993 was allowed through judgment, dated 20.01.2004, W.P. Nos. 28162 of 1996 and 2851 of 1997 were dismissed through a common judgment, dated 09.01.2004. Hence, these writ appeals.

5. Sri B. Nalin Kumar, learned counsel for the appellant, submits that the principal ground on which the Government allowed the appeals, was that the appointment of a Chartered Accountant as an Enquiry Officer is contrary to the A.P. Private Educational Institutions Employees (Disciplinary, Control) Rules, 1989 (for short "the Rules") and that the view taken by the Government is contrary to the judgment of this Court in Vivek Vardhini Education Society, Hyderabad v. State of Andhra Pradesh. He submits that the Appellate Authority i.e. the Government, did not advert to any other contention, and in that view of the matter, the impugned G.Os., cannot be sustained in law.

6. Sri P. Vinod Kumar, learned counsel for the respondents, on the other hand, submits that not only the appointment of the Enquiry Officer is contrary to the Rules, but also the procedure adopted in the enquiry, is totally untenable. He submits that on its part, the Management did not frame any charges at all, and straight away, an Enquiry Officer was appointed. He submits that the Enquiry Officer made a semblance of framing of charges and even while issuing notice, had formed an opinion as to the acts of alleged misconduct. He submits that the learned Single Judge, who has dealt with the respective writ petitions, has analysed the facts with reference to the decided cases and granted the relief and that the said orders do not warrant interference.

7. The subject-matter of these writ appeals is the disciplinary proceedings initiated against two employees, one non-teaching and the other teaching side; of the appellant-institution. Since the institution as well as the posts held by the respondents were admitted to grant-in-aid, the procedure prescribed under the Act and the Rules made thereunder, is applicable. Though the Management of an Aided Educational Institution is competent to initiate disciplinary proceedings against its employees, it is subject to certain riders. The procedure prescribed in the Rules must be followed and the order of dismissal came into force only when approved by the competent authority.

8. In the instant case, the record is not clear as to what charges, the appellant

has framed. No such documents are filed. Straight away an Enquiry Officer, who is not from the Institution, was appointed. The notices issued by the Enquiry Officer make a curious and surprising reading. It is mentioned that he proposes to make the charges and allegations. Even before the notice was issued to the respondents, he recorded the statements of some witnesses. In the notice of enquiry, he just required the respondents herein to appear before him, so that they can peruse the statements that were already recorded.

9. The ground of attack on the proceedings was two-fold. The first is about the very legality of the appointment of the Enquiry Officer and second is about the procedure adopted by him. It is, no doubt, true that the first ground alone was treated as sufficient to allow the appeals. In view of the judgment of this Court in Vivek Vardhini Education Society, Hyderabad's case (supra), we are satisfied that the objection raised by the respondents, as to the legality of the appointment of the Enquiry Officer for the first time before the Appellate Authority, cannot be sustained, unless such an objection was raised during the course of enquiry. That, however, does not put an end to the issue.

10. Assuming that the appointment of Enquiry Officer did not suffer from any infirmity, it needs to be seen as to whether he has complied with the basic tenets, that too, which are incorporated in the Rules.

11. The question of appointing an Enquiry Officer would arise, if only the employer issued charge sheet or charge memo to a delinquent employee and the explanation submitted by the latter is found to be not satisfactory. In the instant case, the appellant did not choose to issue any charge memo to the respondents. The Enquiry Officer was appointed and straight away he proceeded to issue notice indicating a semblance of charges. For instance, the notice, dated 16.03.1984, issued to the 1st respondent reads:

"Whereas by proceedings of the Anwarul Uloom College Executive Board in its meetings held on 22.11.1983, the Hon"ble Chairman has been authorised to appoint an Enquiry Officer, to hold a Departmental Enquiry.

Whereas in pursuance of the said proceedings, I.M. Anandam, Chartered Accountant, has appointed as the Enquiry Officer.

Whereas I have gone through the audit reports and also made an examination of some of the witnesses in this connection.

Whereas consequent to this, I find that certain serious irregularities/misappropriation have been noticed. I hereby charge you with the following:--

1) I have with me a statement given by Mr. Mohd. Abdul Jabbar that a sum of Rs. 20,000/- (Twenty thousand only) has been paid to you (Mr. K.M. Wasif Ali Khan, Lecturer in Economics, A.U. College) during the last 4 years and that you have yet to submit vouchers for the same. If the vouchers and or the explanations are not forth coming, I may have to draw an adverse inference. You are called upon to appear before me on 23.03.1984 at 3:00 p.m. at the office of M. Anandam

and company, 6549 Rashtrapati Road, Secunderabad to explain the above allegation, with necessary documents and other evidence.

2) It appears from the oral testimony made by (1) Mr. Mahboob Alam Khan, Member, Executive Board, (2) Mr. Faizur Rahim Quraishi, Accounts Officer, A.U. College and (3) Mr. Allaudin, Lecturer in History and various others that you have to properly account for a sum of Rs. 65,000/- (sixty five thousand only) thorough ultimately you seem to have agreed that you should account for Rs. 20,000/- (Twenty thousand only) I am making a through scrutiny of the accounts. In the meanwhile, I would call upon you to explain the irregularities noticed to the extent at least of Rs. 20,000/-.

3) I hereby give you notice to appear before me on 23.3.1984 to 3:00 p.m. at the address mentioned above, if you have any explanation to offer. If you don't appear on the said date and time, I may be constrained to take an adverse view of the matter. The relevant records and witnesses would be present, if needed."

12. From this, it becomes clear that the Enquiry Officer formed an opinion that the 2nd respondent committed serious irregularities or misappropriation and that he has already recorded the statements of the witnesses. Similar notice was issued to the other respondent. This is contrary to the basic tenets of the departmental enquiries. Ultimately, the Enquiry Officer submitted individual reports, holding that the charges are proved. Even the reports do not accord with the prescribed procedure, or the norms of domestic enquiry.

13. In the ordinary course, the writ appeals and writ petitions need to be allowed, setting aside the impugned G.Os., on the ground that the sole basis for allowing the appeals filed by the respondents becomes non-existent, in view of the judgment of this Court in Vivek Vardhini Education Society, Hyderabad's case (supra). Thereafter, the matters must be remanded to the Appellate Authority for fresh consideration and disposal. As of now, one of the employees died and the other not only attained the age of superannuation, but also crossed 75 years. We are of the view that undisputed facts in the case need to be taken into account, and the finality be given to the proceedings.

14. The charges levelled against the employees were, no doubt, a bit grave, but at the same time, the prescribed procedure was not followed. Even if the matter is remanded to the Appellate Authority, they, in turn, must remand it to the Management for appointment of a new Enquiry Officer and conduct the enquiry afresh. That, in fact, was the procedure adopted in the impugned G.O. itself. We are of the view that setting aside of the order of punishment and directing the notional reinstatement exclusively for the purpose of enabling the employees or their legal representatives to draw 50% of back wages, would meet the ends of justice.

15. Hence, the writ appeals are disposed of, directing that,

a) G.O. Ms. No. 53, dated 06.03.1993 and G.O. Rt. No. 892, dated 03.08.1996

are set aside, since they are opposed to the law laid down by this Court in Vivek Vardhini Education Society, Hyderabad v. State of Andhra Pradesh;

b) Instead of remanding the matter to the Government or to the Management of the College, as the case may be, and since there is no possibility of directing their reinstatement, much less conducting of enquiry, it is directed that the respondents -- employees or their legal representatives, shall be entitled to be paid back wages from the date of dismissal, till the date on which they attained the age of superannuation, to the extent of 50% and death-cum-retirement benefits in accordance with the relevant rules of the Government; and

c) The payments, if any, made in this behalf shall be taken into account. This exercise shall be completed within a period of two months from today.

16. There shall be no order as to costs.

17. The miscellaneous petition filed in this writ appeal shall also stand disposed of.