
(1962) 07 AP CK 0004
In the Andhra Pradesh High Court
Case No : Writ Petition No. 540 of 1961

B. Seshacharyulu	Vs	APPELLANT
The State of Andhra Pradesh and Others		RESPONDENT

Date of Decision : 23-07-1962

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : AIR 1963 AP 450 : (1963) 1 LLJ 777

Hon'ble Judges : Seshachalapati, J

Bench : Single Bench

Advocate : J.V. Suryanarayana, for the Appellant; 2nd Govt. Pleader and P. Ramachandra Reddy, for the Respondent

Final Decision : Allowed

Judgement

Seshachalapati, J.—This is a petition under Article 226 of the Constitution of India for the issue of a Writ of Certiorari to quash the order of the 2nd respondent, the Director of Public Instruction, Andhra Pradesh, Hyderabad dated 24-7-1959. In D. Dis. No. 1513 of 1959, as confirmed by the order of the Government (1st respondent) dated 10-11-1960.

2. The principal facts are not in dispute in this case. The petitioner is a Telugu Pandit, who holds the Oriental title of "Vidwan" and also a certificate of Pandit's training. By resolution dated 10-9-1954, of the Appointment Committee of the Ongole Municipality the petitioner was appointed as a Junior Telugu Pandit in the Municipal High School, Ongole in the scale of Rs. 45-2-75. By a resolution dated 9-2-1955, of the Appointment Committee, the petitioner was placed in the grade of Rs. 60-4-100, in conformity with G.O. Mis. 2229/Edu. dated 23-9-1952, with effect from the date of his appointment. By resolution No. 15 dated 31-12-1956 the petitioner was declared as an approved probationer with effect from 15-9-1956. The purport of the resolution was duly communicated by the Commissioner to the petitioner on 31-12-1956. By resolution No. 10 dated 10-7-1957, the Appointment Committee confirmed the petitioner as Grade I

Telugu Pandit with effect from his joining his substantive post on 15-9-1954. In his letter dated 12-7-1957, addressed to the petitioner the Commissioner directed him to produce the fitness certificate and also informed him that he was eligible for provident fund subscription. The petitioner was from that date functioning as a permanent Grade I Telugu Pandit. It is not in dispute that he had drawn three increments.

3. One V. Ramamurthy, was appointed as Grade I Telugu Pandit in P. V. R. M. S. School which is also under the management of the Ongole Municipality on 31-8-1955. He was reverted back as Secondary Assistant with effect from 4-5-1956 during the summer recess of the year 1955-58. He was again re-appointed in the municipal school with effect from 31-6-1956 till 5-5-1958, when he was reverted as Secondary Assistant. At that stage Sri V. Ramamurthy, filed an appeal dated 7-5-1958 to the Regional Deputy Director, Public Instruction, Guntur. Therein he stated that in addition to the Oriental title of "Bhasha Praveena", he had a general educational qualification of being an Intermediate, that he had put in a continuous service of 2 years and 8 months in Grade I and complained that his reversion to the post of a Secondary Grade Assistant in the summer vacation was improper and unjust. He also pointed out that Sri P. Seshacharyulu (the writ petitioner herein) who did not have the necessary qualifications had been confirmed as Grade I Pandit in the scale of Rs. 60-4-100. The second respondent considered the representation of Sri V. Ramamurthy contained in his appeal and passed the following order on 27-4-1959;

"The appeal is admitted. The appellant is referred to the Municipal Commissioner, Ongole, for orders.

2. The appointment of Sri B. Seshacharyulu as Telugu Pandit Grade I from 15-9-1954, is irregular as he is not in possession of requisite general education qualification (viz., S.S.L.C.). The action of the council in having allowed him the scale of pay Rs. 60-4-100 from the date of his appointment is also irregular as no such scale existed then. Under the rules in force, he ought to have been appointed as a Pandit to handle higher forms and allowed the scale of Rs. 40-11-70 (or 45-2-75) if Government scales were adopted. He cannot be designated as Grade I Pandit for any purpose. Further there has been continuous justification for the existence of the two posts of Grade I Telugu Pandits in the School. The reversion of the appellant during the Summer vacations of 1955-56, 57-58, 58-59, on the ground of retrenchment was not called for especially when the appellant was fully qualified and promoted as such, with rights of probation etc. and when Sri B. Seshacharyulu whose very appointment was irregular was continued in preference to the appellant. In view of these facts the Director is convinced that the appellant is put to grave hardship on account of the irregular actions of the council. The Director, therefore, directs that the appellant should be restored as Grade I and should be treated, for all purposes, as continuous from 31-8-1955 irrespective of the breaks, he further directs that the pay of Sri B. Seshacharyulu should be refined in the scale of pay Rs. 40-14-70 (or Rs.

45-2-75) if Government scales should be adopted, and that resultant excess payment so far made should be made good. If by any means retrenchment comes, Sri V. Ramamurthy who is fully qualified and drawing Grade I scale of pay should be preferred to Sri B. Seshacharyulu."

4. Pursuant to the above order, the Commissioner of the Ongole Municipality issued a notice dated 8-10-1959 to the petitioner that his services were not required with effect from 7-1-1960. The petitioner thereupon filed an appeal dated 2-11-1959 before the Secretary to Government Education Department, against the orders of the Director contained in his order dated 24-7-1959. On 20-5-1960, the Appointment Committee of the Municipality passed the following resolution on the petitioner's appeal:

"Appeal may be forwarded for favourable consideration."

On 10-11-1959, the Government of Andhra Pradesh passed a brief and peremptory order in these terms:

"Sri B..V. Seshacharyulu, Telugu Pandit, P.V.R.M. High School, Ongole, is informed that the Government see no reason to interfere in the matter."

5. The present writ petition was filed on 30-4-1961 praying that the aforesaid order of the Government dated 10-11-1960, affirming the proceedings of the second respondent dated 24-7-1959 be quashed.

6. The principal contention of the petitioner is that in the events that have happened the order of the 2nd respondent, the Director of Public Instruction, dated 24-7-1959 as confirmed by the Government order dated 10-11-1960 and the consequent action of the Municipal Commissioner, constitute a reduction in rank and are opposed to the procedure laid down in the statutory rules and principles of natural justice.

7. The learned Government Pleader does not dispute that where the appropriate authority proposes to take punitive action against a municipal employee, like the petitioner, by way of dismissal, removal, or reduction in rank, a reasonable opportunity for showing cause against the proposed action should be given to the employee concerned. But what he contends very strenuously is that when under appropriate Government orders governing conditions of employment and prescribing qualifications of Telugu Pandits in municipal schools, including the scales of pay, the petitioner is found not to possess the necessary educational qualifications and as a consequence thereof he is placed in a cadre and a scale of pay to which he is legitimately entitled, the petitioner could have no grievance whatever. It is also contended by him that in such a situation the action of the authority does not partake of a punishment in the nature of a reduction in rank requiring notice to show cause being given to him and the usual procedure be applied, in support of that contention he placed reliance upon a decision of this Court in *M. Bhaskara Rao Vs. State of Andhra Pradesh and Others*, and a decision of the Madras High Court in *N. Devasahayam Vs. The State of Madras* and

Others, . Neither of those cases in my opinion has any direct bearing on the question I have to decide.

8. I conceive it as no part of my duty in this case to interpret the various G. Os. which have been issued by the Government from time to time prescribing the qualifications of Grade I Telugu Pandits and to determine whether the interpretation put by the petitioner thereon is correct or not. According to the 2nd respondent, the Director of Public Instruction, the educational qualifications of the petitioner do not justify his retention as a Pandit in Grade I in the context of the relevant rule, I assume without deciding that the Director of Public Instruction is right is the construction he has placed upon the relevant G. Os. and holding that the petitioner does not possess the general educational qualifications required for appointment as Grade I Telugu Pandit. But, that, in my judgment, does not by any means conclude the matter. The question still is whether the action based upon the interpretation of the service rules has resulted in a penal consequence to the petitioner. In the leading case on the subject *Parshotam Lal Dhingra Vs. Union of India (UOI)*, their lordships of the Supreme Court observed as follows:

"A reduction in rank likewise may be by way of punishment or it may be an innocuous thing. If the Government servant has a right to a particular rank, then the very reduction from that rank will operate as a penalty, for he will then lose the emoluments and privileges of that rank. If, however, he has no right to the particular rank, his reduction from an officiating higher rank to his substantive lower rank will not ordinarily be a punishment. But the mere fact that the servant has no title to the post or the rank and the Government has, by contract, express or implied, or under the rules, the right to reduce him to a lower post does not mean that an order of reduction of servant to a lower post or rank cannot in any circumstances be a punishment. The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the reduction also visits the servant with any penal consequences. Thus if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstance may indicate that although in form the Government has purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality the Government has terminated the employment as and by way of penalty."

9. In this case, on an interpretation of the rules, the Director took the view that the petitioner was not entitled to be a Grade I Pandit, and the action taken by the Municipal Commissioner is in mere implementation of that direction. It is true the orders impugned do not expressly purport to be reduction in rank, but in truth and reality, to use the language of their Lordships of the Supreme Court, they are so. It is no doubt competent for the municipal Commissioner to dismiss, remove or suspend or reduce in rank an employee under the Municipality by

giving such an employee due notice and conforming to the prescribed procedure. That has not been done in this case, and for that reason the orders cannot stand.

10. It seems to me that the facts of this case are analogous to those that I had to deal in *Narasimha Rao v. State of Andhra Pradesh* 1960 2 Andh WR 218. In that case a Hindi Pandit in a Board High School was placed in Grade I in a permanent capacity. Some of the teachers affected by the appointment of the petitioner as Grade I Hindi teacher appealed to the Director of Public Instruction, who directed that the petitioner there be placed in Grade II. I held in that case that it amounted to a reduction in rank and the same having been done without due notice to the petitioner was liable to be set aside. Following that decision, I hold that in this case the orders impugned cannot stand.

11. It is next contended by the learned Government Pleader that the petitioner has accepted the situation and has reconciled himself to being treated as Grade II Telugu Pandit by seeking employment under the municipality as Grade II Telugu Pandit and offering to serve even without pay in expectation of being absorbed when posts have been sanctioned by appropriate authority. On those facts, the learned Government Pleader contends that the petitioner is estopped from challenging the impugned order. It is alternatively contended that even if the petitioner's conduct does not amount to estoppel as such his conduct must be taken into account in granting the discretionary relief under Article 226 of the Constitution. I am not impressed with this contention. It not infrequently happens under the mental stress of an impending loss of job and livelihood that a person may make statements sometimes deleterious to his own interest. I am not saying that if the law allows a party to rely upon those statements, they could not do so, on the basis of some ethical considerations. But, in this case, I am not able to say that the petitioner had given up his right to assert his claims to his position as a Grade I Pandit. In his letter dated 16-6-1961 the petitioner had expressly reserved to himself the right to challenge the orders now impugned in this petition. That letter is in these terms;

"I undertake not to claim any salary from the Municipality with reference to any present post of Telugu Pandit Grade II in case the said post is not sanctioned or approved by the Municipal Council or D. E. O.

This is without prejudice to my rights to claim appropriate reliefs with reference to my previous post or Telugu Pandit Grade I."

12. In the light of that express reservation, there is absolutely no force in the contention that the petitioner had reconciled himself to being treated as Grade II Telugu Pandit, or that he is estopped from claiming rights with reference to his previous posting as Grade I Telugu Pandit.

13. In these circumstances. I have reached the conclusion that the orders impugned in this petition must be set aside and the petitioner be restored to his post as Grade I Telugu Pandit. A writ of certiorari will, therefore, issue quashing the order of the Director of Public Instruction, Andhra Pradesh, in D. Dis. No.

1513/59 dated 24-7-1959, as far as it relates to the petitioner and the consequential order of the 3rd respondent, the Commissioner of Ongole Municipality dispensing with the services of the petitioner as Grade I Telugu Pandit. This of course, will not preclude the authorities concerned from taking such action as they are entitled to under the law after following the prescribed procedure. Since the petitioner has succeeded in this petition, he is entitled to his costs. Advocate's fee Rs. 100/-.