
(1959) 10 AP CK 0012
In the Andhra Pradesh High Court
Case No : Writ Petition No. 17 of 1957

Jalli Venkataswamy

APPELLANT

Vs

The Correspondent, Kasturiba Gandhi Basic Senior School,
Konetipuram and Others

RESPONDENT

Date of Decision : 29-10-1959

Acts Referred:

Citation : AIR 1961 AP 178

Hon'ble Judges : Basi Reddy, J

Bench : Single Bench

Advocate : A. Gangadhara Rao, for the Appellant; T. Dhanurbhanudu and 3rd Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Basi Reddy, J.—This is an application under Article 228 of the Constitution, filed by one Jalli Ven-kataswamy, a former Headmaster of the Junior Basic School, Konetipuram, Repalii Taluk, Guntur District, for the issue of an appropriate writ calling for the records relating to the order of the 4th respondent (Government of Andhra Pradesh, represented by the Secretary, Education Department) in Memorandum No. 59155-C 1/56 Education, dated 27-10-1956; the orders of the 3rd respondent (the Divisional Inspector of Schools, Anantapur) in L. Dis. No. 183-E/56 dated 18-7-1956 and in Roc. No. 384-E/56 D/- 19-11-1956; the orders of the 2nd respondent (The Basic Educational Officer, Anantapur) in Roc. No. 20-C/56 dated 2-6-1956 and in Roc. No. 200/56 dated 5-12-1956; and the notice of the 1st respondent (the Correspondent, Aided Senior Basic School, Konetipuram) dated 19-6-1954; and to quash the aforesaid order of the 4th respondent and the consequential orders of the 3rd respondent dated 19-11-1956 and of the 2nd respondent dated 5-12-1956, as also the notice of the 1st respondent dated 19-6-1954 referred to above.

2. This is an unfortunate case where a permanent Headmaster of a Basic School, who had put in seven years' service, has been deprived of his Job by reason of

the somewhat arbitrary action of the Government. A bare narration of the facts of the case will show how unjustifiable the action of the Government is.

3. The petitioner had been working as a permanent Headmaster of the Basic School Konetipuram since 19-6-1947. While so, the 1st respondent, who is the Correspondent of the school, suddenly terminated his services by issuing a notice to him on 19-6-1954. The notice ran thus:

"Notice is hereby given to you that as a lady teacher has to be appointed as the Headmistress of the Junior Basic School, and as you are not cooperating in the functioning of the school, you will be relieved of your duties on 18-9-1954; and you should treat this as three months notice computed from to-day.

Sd/- Seetharamayogini, Correspondent."

4. This action of the 1st respondent was in flagrant violation of the rules governing the termination of services of permanent members of the staff of elementary schools under private management. These rules have been framed under the Madras Elementary Education Act, 1920, and the relevant rule. Rule 13(2) (ii), (as it stood before its amendment In 1956), was in the following terms:

"13(2) (ii): The management of a school shall have power to terminate the services of any permanent member of the staff only as provided hereunder--

(a) without notice, for any or all of the following reasons: viz., wilful neglect of duty, serious misconduct, gross insubordination, mental unfitness, suspension or cancellation of 3 teacher's certificate by the Director of Public Instruction under rule 154 of the Madras Educational Rules or when action is taken against the teacher under Rule 14 of these rules and;

If the termination of the services of a teacher under this rule is held unjustified on appeal by the teacher, the management shall take back the teacher, treating the period of his absence as duly without any claim for Government grant for the period of such absence. If the teacher, having sought employment subsequent to the termination of his services, claims only compensation for the loss due to unemployment, the management shall be liable to pay to the teacher full salary and allowances for the period of his unemployment, which shall be limited to the maximum period of three months.

(b) with three months" notice or three months" salary in lieu thereof, for the following reasons viz., incompetence, retrenchment, physical unfitness or any other good cause :

Provided that in all these cases coming under (a) and (b) above, the teacher shall be informed in writing of the view of the management in the matter and shall be given a reasonable opportunity for stating his case in writing or in person and the statement made by him, if any, shall be taken into consideration before a final decision is taken by the management. For termination of the

services of teachers who have put in not less than five years" efficient service in the school for "incompetence" or "any other good cause" the previous approval of the Deputy Inspector of Schools concerned shall be obtained."

5. Having regard to the tenor of the notice issued by the 1st respondent, it is evident that the case of the petitioner was treated as one falling under Rule 13(2) (ii) (b). It was, therefore, incumbent on the 1st respondent, before terminating the services of the petitioner, to have informed him of the grounds on which action was proposed to be taken and to have given him a reasonable Opportunity to represent his case; and only after such representation had been made and considered, could a final decision have been taken by the 1st respondent.

In addition to this, there was a further requirement which had to be fulfilled before the petitioner's services could be validly terminated, since he had put in more than five years" efficient service in the school and was sought to be removed for "any other good cause" mentioned in the rule cited above. That requirement was the obtaining of the prior approval of the Deputy Inspector of Schools. Admittedly, neither of these steps was taken by the 1st respondent before issuing the notice terminating the services of the petitioner; and in fact the petitioner was discharged from service on 20-9-1954, after the expiry of the three months" period mentioned in the notice.

6. Thereupon, in exercise of his right of appeal under Rule 13(2) (vii), the petitioner preferred an appeal to the Basic Educational Officer, the 2nd respondent herein. That Officer allowed the petitioner's appeal and his order may be reproduced in full.

"Proceedings Of The Basic Educational Officer,

Anantapur.

RO.nO. 20.C/56 dated 2-6-1956.

Sub: Basic Education -- Termination of services of Sri J. Venkataswamy --Aided Senior Basic School -- Konetipuram -- appeal orders passed.

Ref.: 1. Appeal petition dated 24-4-1955 of Sri J. Venkataswami.

2. Explanation dated 18-9-1956 of the Correspondent for failure to get prior departmental approval for the termination of the teacher's service.

3. Proceedings, Re. 266.J.2/5S dated 14-5-56 of the Director of Public Instruction. Andhra State, Madras.

The Correspondent, Aided Senior Basic School, Konetipuram, terminated the services of Sri J. Venkataswami, a permanent member of the staff of the school working from 19-6-1947, with three months" notice and discharged him on 20-9-1954. She has neither taken prior departmental approval for this action as is contemplated in the proviso to Rule 15(2)(b) of the Rules for recognition

relating to Elementary Schools nor given the teacher any opportunity to explain the alleged irregularity committed by him. Further she does not seem to have consulted the other members of the managing committee in taking this drastic step.

On a careful consideration of all the issues arising in this case, the Basic Educational Officer has come to the conclusion that the termination of the services of the appellant Sri J. Venkataswami is irregular and unjustified.

Accordingly the following orders are passed :

- i. The appeal of Sri J. Venkataswami is upheld.
- ii. The Correspondent should reinstate him in his former post, retrenching the juniormost assistant in the school, within a week of receipt of these orders, and report this fact to this office and to the Deputy Inspector of Schools, Repalle, East Range.

Sd/- Basic Educational Officer, Anantapur Circle."

6. Thus the Basic Educational Officer allowed the appeal preferred by the petitioner on the grounds that no opportunity had been given to the petitioner for presenting his case and that prior departmental approval had not been obtained, as required by the proviso to Rule 13(2) (ii) (b). The Officer gave a further direction that the 1st respondent should reinstate the petitioner in his former post within a week of the receipt of the Order. Here it has to be noted that this order was passed presumably with the approval of the Director of Public Instruction as the opening part of the order referred to: "Proceedings Re. d66.J.2/55 dated 14-5-1956 of the Director of Public Instruction, Andhra State, Madras".

7. As against the order of the Basic Educational Officer, the 1st respondent preferred a second appeal -- as provided by Rule 13(2)(vii) -- to the Divisional Inspector of Schools, the 3rd respondent herein, but the appeal was dismissed by his order dated 18-7-1956 and the 1st respondent was directed to reinstate the petitioner at once.

8. The 1st respondent, however, did not carry out the order. Instead, on 25-7-1956, she appears to have made representations to the Government although the statutory rules do not provide for an appeal or a revision to the Government. The result was that the operation of the order issued by the Divisional Inspector of Schools on 18-7-1956 directing the reinstatement of the petitioner, was instantly stayed.

9. Finally on 27-10-1956, the Government passed the following order:

GOVERNMENT OF ANDHRA

Education and Endowments Department.

Memorandum No 59155 Cl/56-5, Education D/-37-10-1956,

Sub : Ele. Edn. Aided Schools - Termination of services of Sri J. Venkataswamy, teacher, Aided

Sr. Basic School, Konetipuram -- Guntur District.

Ref. From the Manager, Aided Sr. Basic

School, dated 25-7-1956.

From Sri J. Venkataswamy dated 21-8-1953. From the Director of Public Instruction Re. "No. 266 J 2/56 dated 10-9-1956.

In the circumstances stated, the Government approve the suggestion of the Director of Public Instruction that the Divisional Inspector of Schools, Anantapur, may be instructed to ratify the action of the Manager of the Aided Senior Basic School, Konetipuram, Guntur District, by giving post approval to the notice given to the teacher Sri J. Venkataswami for termination of his service.

2. He is requested to send suitable replies to the parties."

10. By this order the Government instructed the Divisional Inspector of Schools to ratify the action of the 1st respondent by giving ex post facto approval to the irregular notice given by the 1st respondent on 19-6-1954. The order says that the suggestion emanated from the Director of Public Instruction; but as noticed supra, that authority must have been fully aware of the appeal which had been filed by the petitioner before the Basic Educational Officer and the order of the latter allowing the appeal.

11. However, in obedience to this mandate of the Government, the Divisional Inspector of Schools, by his proceedings in Roc. No. 384.E/5S dated 19-11-1958, issued the following order:

"As ordered, the action of the Manager of the Aided Senior Basic School, Konetipuram, in giving notice to Sri J. Venkataswamy for termination of his service is hereby ratified.

The Basic Educational Officer is requested to give suitable replies to the Manager and the teacher."

12. Thus the irregular action of the 1st respondent was ratified by the Divisional Inspector of Schools on a directive by the Government.

13. Pursuant to that ratification, the Basic Educational Officer in his turn made the following order in Re. No. 200/56 dated 5-12-1956;

"The Correspondent should hereafter consult the Deputy Inspector whenever she wants to discharge a permanent teacher. The teacher Sri J. Venkataswamy is advised to seek service elsewhere."

14. Thus both these officers who, when exercising their statutory functions as appellate authorities, had condemned the action of the 1st respondent, now went

back on their previous decision and condoned her action because they were told to do so by the Government, So this matter, which had been hanging fire for over two years, was sought to be given a quietus by administering a warning to the 1st respondent to be more careful in future and by giving a piece of gratuitous advice to the petitioner to find employment elsewhere.

15. It is difficult to see how the action of the government and the resultant "volte face" of its departmental subordinates can, with any show of reason, be justified although in the counter-affidavit filed on behalf of the respondents, it is claimed that "the Government and the Director of Public Instruction have power in appropriate cases to give directions to their subordinates in the exercise of their official and administrative duties." It is apparent from the foregoing narrative that the petitioner has been denied the essential of justice and fair-play.

The statutory rules, designed to ensure the fundamentals of fair hearing, were disregarded; but the Government has thought fit to condone and: ratify the improper action of the 1st respondent. Those rules are as much binding on the Government as on any one else; they may not be abrogated at will by executive fiat. That indeed is one of the basic principles underlying the concept of the Rule of Law, and that principle has been lost sight of in the present case.

16. In the result, the Writ Petition is allowed and the order passed by the Government, the consequential orders made by the Divisional Inspector and the Basic Educational Officer and the notice of termination of service given by the Correspondent of the School, are all quashed. The petitioner is entitled to his costs. Advocate's fee : Rs. 100/-.