

(1996) 03 AP CK 0066
In the Andhra Pradesh High Court
Case No : Writ Petition No. 10044 of 1992

R. Akkulaiah

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 08-03-1996

Acts Referred:

Andhra Pradesh Education Act, 1982 — Section 83

Citation : (1996) 3 ALT 655

Hon'ble Judges : S. Dasaradha Rama Reddy, J

Bench : Single Bench

Advocate : M.R.K. Choudary and M. Sudheer Kumar, for the Appellant;
Government Pleader for Respondent Nos. 1 and 2 and Jogayya Sarma, for the Respondent

Final Decision : Allowed

Judgement

S. Dasaradha Rama Reddy, J.—Services of the petitioner, a former B.Ed Assistant working in the third respondent-college since 21 February 1984, were terminated on 15-6-1989 on the ground that the management was intending to close the unaided section in the High School. Alleging that the termination was done without the prior approval of the competent authority, the petitioner has filed appeal before the Regional Joint Director of School Education, who, by his order dated 20th March, 1990, allowed the same and directed the management to reinstate the petitioner forthwith and also pay salary "for the entire period of his absence from its own funds". This was carried to the Government in further appeal by the management. The Government by order dated 30th July 1992, allowed the appeal holding that the petitioner has studied M.Phil course full-time though permission was granted to study the course as part-time and that the section in which he was teaching has since been closed down and no grant-in-aid was being paid. Against this order the teacher has filed the present writ petition.

2. Mr. M. Sudheer Kumar, learned counsel, has contended that u/s 83 of the Andhra Pradesh Education Act 1982 (for short "the Act") termination of any

teacher, by whatever name called, whether retrenchment or otherwise, and for whatever reason, is bad if prior approval of the competent authority is not obtained. As admittedly no prior approval of the competent authority was obtained, the order of the Regional Joint Director is valid and the Government illegally interfered with the order of the Regional Joint Director on grounds which are not relevant. He relied on the decision of the Division Bench of this Court in Vasavi College of Engineering Vs. A. Suryanarayana and Others, . It was observed by the Division Bench in that case:

"In the view which we take that Sections 79 and 83 complement each other and exhaust the entire area of termination of service, punitive or otherwise, it is not necessary for us to consider further refinements sought to be discovered by counsel for the employer that only such retrenchment of employees consequent on "any change relating to education or course of instruction or to any other matter" fall within Section 83 of the Act We are not persuaded to accept the specious argument that any other matter" must be relatable to change relating to education or course of instruction and cannot take in termination of service or any other reason. The natural meaning to be given to the phrase "any other matter" seems to us to be exclusive of change relating to education or course of instruction. We are also of the opinion that the two preceding phrases are exhaustive and nothing is left out to be covered by the phrase "to any other matter" in relation to those two exhaustive categories" (Paragraph-25)

xxxx xxxx xxxx "In the view which we have taken that Sections 79 and 83 supplement each other and between them exhaust all terminations of service- penal or otherwise and that those provisions apply equally to regular as also temporary, non-regular employees, it is not necessary for us to consider the other aspects of mis question. We hold this view in view of the fact that in either case where the termination penal or non-penal, it is obligatory to obtain prior approval of competent or higher authority, as a condition precedent for any such action which the employer may take against the teaching or non-teaching employees of institutions covered by the Act That seems to be the proper understanding of the salutary provisions which are ameliorative in character. If we are to understand Sections 79 and 83 to apply only to some categories and not to cover the entire gamut of terminations of services of employees of educational institutions, that will leave grey area where the whims and fancies of the management will rule the roost. Such an interpretation frustrate the very purpose of the enactment." (Paragraph-28)

3. Sri Jogayya Sarma, the learned counsel for the management, has contended that the petitioner's services were terminated in view of the fact that the management decided to close down the unaided Section and that the order of termination is valid. He also submitted that the petitioner has studied M .Phil, full-time course as against the permission granted to him to study part-time in Nagarjuna University. It may be seen that these two contentions were raised before the Government, which accepted them. There was another ground which

weighed with the Government in allowing the appeal, namely, that the petitioner was misbehaving a year before leaving the institution. However, no argument was advanced by the learned counsel in that regard. The reasons now sought to be relied on by the learned counsel for the management and weighed with the Government are not relevant for the purpose of determining whether the termination is valid or not u/s 83. Whatever may be the reason, as long as prior approval of the competent authority has not been obtained, the order of termination falls to the ground as held in Vasavi College of Engineering Case (1 supra).

4. Realising this difficulty, Sri Jogayya Sarma contended that the appeal filed by the petitioner u/s 80 before the Regional Joint Director itself is not maintainable since it is not a case of removal by way of a disciplinary proceeding u/s 79 but retrenchment Under Section-83 and relied on a decision of Division Bench in Smt. P. Rama Devi Vs. The Government of Andhra Pradesh and Others, . This point was not taken either in the ground of appeal before the Government or in the counter filed in this writ petition. Hence, the management cannot be permitted to urge this contention at this stage. Apart from this, the decision in Smt. P. Rama Devi Vs. The Government of Andhra Pradesh and Others, cited by Mr. Sarma does not throw any light on this point since it dealt with the scope of appeal and revision Under Sections 89 and 90 of the Act Further it was held in that case that the appeal filed before the Director of Higher Education, against the order terminating the services of a teacher u/s 83 of the Act without obtaining the prior approval of the competent authority, was rightly transferred to the Regional Director who was the competent authority. The Division Bench further discussed the scope of the appeal filed against the order of the Regional Joint Director to the Director and the second appeal to the Government u/s 89 (1) (b) of the Act and revision that can be entertained by the Government u/s 90 of the Act. Instead of supporting Mr. Sarma's plea, this decision is against him. Even otherwise, as the petitioner is challenging now the order of termination as confirmed ultimately by the Government, he is entitled to challenge, even straight away, the order of termination passed by the management on the ground that prior permission of the competent authority was not obtained, as held by Division Bench in Vasavi College case (1 supra).

5. Here, the petitioner has filed appeal to the Regional Joint Director who allowed the same. Against that the management filed appeal to the Government. The main point canvassed by the petitioner in the appeal was that the prior approval of the competent authority was not obtained. The Government allowed the appeal of the management on merits but not on the ground that the appeal was not maintainable. Hence I cannot agree with Mr. Jogayya Sarma.

6. Mr. Sarma also raised the contention that Section 83, giving unbridled and naked power to the competent authority to give or refuse approval to the management, is arbitrary and violative of Article-14 of the Constitution. As this has not been raised in the counter, the management cannot urge this contention.

7. As admittedly the petitioner's services were terminated without obtaining the prior approval of the competent authority, the order of the Regional Joint Director setting aside the same is in accordance with law and is restored.

8. Then the next question is whether the petitioner is entitled to arrears of salary from the date of removal to the date of reinstatement. The Regional Joint Director has directed that the petitioner may be paid salary for the entire period of his absence. This order passed on 20th March, 1990 was stayed by the Government without imposing any conditions and as a result of the stay order, the petitioner could not join the service. It is well settled that the employee after obtaining order of reinstatement is not straightaway entitled to backwages unless he establishes that he was not gainfully employed elsewhere subsequent to the termination (see the decision of the Supreme Court in Lt. Governor of Delhi and others Vs. Const. Dharampal and others, . There is no averment in the affidavit that the petitioner has not been gainfully employed elsewhere after termination. Consequently, the petitioner is not entitled to direction, straightaway, for payment of arrears of salary from 15-6-1989 to the date of reinstatement. However, he may establish his claim before the Regional Joint Director, Guntur in this regard and the Regional Joint Director will decide the same after giving notice to the management and if it is found that he was not employed elsewhere subsequent to the order of termination, he will be entitled to salary arrears. If it is established that the petitioner was employed elsewhere, the management is entitled to deduct the said amount from the amount of backwages due to him.

9. Then the question is who has to pay the amount whether the management or the Government. Admittedly, the post is unaided on the date of termination of the petitioner's services. Whether the post has been subsequently admitted to grant-in-aid or not is not available from the pleadings. As such, the petitioner cannot ask the Government to pay the arrears unless he establishes that the post is admitted to grant-in-aid. If the petitioner is not already admitted to grant-in-aid, it is open to the management to approach the Government, and seek admission of the post to grant-in-aid from whatever date it is entitled to, under law.

10. The petitioner shall file the application before the Regional Joint Director within THREE WEEKS FROM TODAY. Within one month from the date of the filing, the Regional Joint Director will dispose of the matter and the management shall pay the arrears as may be determined by the Regional Joint Director within three months thereof.

11. The writ petition is accordingly allowed with costs. Advocate's fee Rs. Five Hundred.