
(2022) 11 TEL CK 0111
In the Telangana High Court
Case No : Writ Petition No. 26078 Of 2021

Rodda Mahesh

APPELLANT

Vs

District Collector BCW

RESPONDENT

Date of Decision : 29-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 311

Central Civil Services (Classification, Control & Appeal) Rules, 1965 — Rule 20

Citation : (2022) 11 TEL CK 0111

Hon'ble Judges : P.Madhavi Devi, J

Bench : Single Bench

Advocate : Santhapur Satyanarayana Rao

Final Decision : Allowed

Judgement

1. This writ petition has been filed by the petitioner seeking a writ of mandamus declaring the entire procedure adopted by the respondent No.1 by issuing the impugned order in Proceedings No. A/A1/362/2015, dated 26.03.2021, terminating the services of the petitioner without conducting regular enquiry, in terms of Rule 20 of CCA Rules and the rejection of the appeal of the petitioner by respondent No.3 vide Proceedings Rc.No.A/2841/2021, dated 12.10.2021, as illegal, arbitrary, unjust and contrary to the CCA rules and Article 311 of Constitution of India and consequently, to hold that the petitioner is entitled for reinstatement into services as Junior Assistant-cum-Typist with all consequential benefits such as seniority and other allied benefits etc., without reference to the impugned orders dated 26.03.2021 of respondent No.1 and the rejection order dated 12.10.2021 of respondent No.3 and to pass such other order or orders.

2. Brief facts leading to the filing of the present writ petition are that the petitioner's father namely Sri.R.Anjaiah, while working as a Cook at Government BC(B) Hostel, Chinmadur, was allowed to retire from service on medical invalidation grounds vide orders dated 30.06.2015. Subsequently, the petitioner made a representation by enclosing all necessary documents to the respondent

No.2, requesting to provide suitable employment to him under compassionate grounds and accordingly, the petitioner was given appointment. Thereafter, on 31.12.2020 the respondent No.1 issued a show cause notice to the petitioner calling for the explanation on the adverse news item published in local news paper under the caption of "Udhyogalakosam Addadari". Subsequently, vide orders dated 26.03.2021, the petitioner was removed from service.

3. Aggrieved by the said impugned orders dated 26. 03.2021, the petitioner filed statutory appeal before the respondent No.3 on 19.04.2021. Submitting that the respondent No.1 has not followed due procedure under Rule 20 of CCA Rules before removing the petitioner from service and therefore, the petitioner should be directed to reinstated into services.

4. It is submitted that the Hon'ble Supreme Court in the case of V.P.Ahuja Vs. State of Punjab & Others AIR 2000 SC 1080, has held that even a probationer or a temporary employee is also entitled to certain protection and his services cannot be terminated arbitrarily nor can those services be terminated in a punitive manner without complying with the principles of natural justice and without holding a regular enquiry. It is submitted that the impugned order of removal was passed attributing mis-conduct to the petitioner and therefore, same causes stigma over the petitioner and thus, the petitioner has filed W.P.No.13619 of 2021 and vide orders dated 06.08.2021 this Court directed the respondent No.3 to dispose of the appeal petition within a period of eight weeks from the date of receipt of the said order copy. It is submitted that without applying his mind to the relevant facts of the case, the respondent No.3 had passed the order rejecting the petitioner's appeal and therefore, the petitioner has filed the present writ petition.

5. Learned counsel for the petitioner submitted that petitioner's father had been sent to medical examination by the Medical Board of MGM Hospital, Warangal and has been declared as suffering from 'Mild Parkinsonism Modevati Dementia' and thereafter, he was permitted to retire and it was decided to provide employment to his son or daughter as per their eligibility and accordingly, the petitioner has been appointed on compassionate grounds.

6. It is submitted that show cause notice issued to the petitioner was in respect of adverse news published in the 'Namaste Telangana' under the caption "Udhyogalakosam Addadari" and that no enquiry was conducted by the respondents in respect of the medical certificate submitted by the father of the petitioner. It is submitted that the impugned show cause notice refers to the medical certificate issued by the Medical Board constituted by the Gandhi Medical Hospital, Secunderabad and that they were confirmed as fake certificates and that no case for check up was registered at Gandhi Medical Hospital, Secunderabad. The learned counsel for the petitioner has drawn the attention of this Court to the certificate, on the basis of which the petitioner's father was declared as medically unfit, to demonstrate that the same was issued by the MGM Hospital, Warangal and not by the Gandhi Medical Hospital, Secunderabad

and therefore, the premise on which the show cause notice was issued to the petitioner itself is wrong. It is submitted that the petitioner had submitted his representation that the petitioner's father was initially examined at Warangal and subsequently he was directed to Gandhi Medical Hospital, Secunderabad, for further medical tests where the petitioner attended and had returned to his official duties as usual. It is submitted that without there being any specific report with regard to the medical certificate of petitioner's father and without conducting any enquiry under Rule 20 of CCA Rules, the respondents ought not to have removed the petitioner from service.

7. Learned counsel for the petitioner placed reliance upon the Judgment of Hon'ble Supreme Court in the case of V.P.Ahuja (cited supra), wherein it was held that even a probationer or a temporary employee is also entitled to certain protection and his services cannot be terminated arbitrarily, nor can those services be terminated in a punitive manner without complying with the principles of natural justice and without holding a regular enquiry.

8. Learned counsel for the petitioner also placed reliance upon the decision of this Court in W.P.No.16772 of 2022 wherein under similar circumstances, the Court had directed the respondents therein to reinstate the petitioner therein into service with all consequential benefits by giving liberty to the respondents therein to take action in accordance with law thereafter. In the said decision there is a reference to the decision of this Court in W.P.No.12902 of 2021.

9. Learned Government Pleader, however relied upon the averments made in the counter affidavit stating that the petitioner's father had submitted a fake medical certificate and on the basis of such medical certificate, the petitioner's father was allowed to retire and thereafter, the petitioner was appointed on compassionate grounds and therefore, the removal order passed after issuance of a show cause notice and therefore, the due process was followed.

10. Having regard to the rival contentions and the material on record, this Court finds that similar circumstances had arisen in W.P.No.12902 of 2021 and vide orders dated 16.12.2021, this Court had considered the issue at length and in Para Nos.3 to 8 has held as under:

"3. It has been contended by the petitioner that his mother was employed as Multi Purpose Health Assistant with the respondents and the petitioner's mother has been retired on medical invalidation grounds vide proceedings dt.06-12-20216. Thereafter, the petitioner has submitted an application on 14-06-2017 to consider his case for appointment on compassionate grounds. Thereafter, the respondents were pleased to consider his case for compassionate appointment on compassionate grounds vide proceedings dt.06-07-2017 and subsequently the petitioner's services were regularized vide proceedings dt.24-07-2019. While petitioner is discharging his duties as Office Subordinate, it has been alleged by the respondents that a news item has been published in the local newspaper on 22-05-2018 alleging that some of the employees of M.G.M.

Hospital, Warangal, have secured employment by producing fake certificate in the name of Erragadda Mental Hospital, Hyderabad, and based upon the said news item, the 4th respondent had issued show cause notice to the petitioner on 21-11-2020. Alleging that the petitioner has produced fake certificate at the time of securing employment and that the petitioner has submitted a detailed explanation denying the said charges over the 3rd respondent had straight away imposed orders of removal vide proceedings dt.02-04-2021 by invoking the powers under Rule 25 (1) of the Rules, 1991.

4. The learned counsel for the petitioner has contended that a perusal of the Rule 25 (1) of the Rules, 1991 clearly states that whenever any employee is convicted by the competent Criminal Court, the disciplinary authority need not conduct any enquiry and straight away, based on the conviction, he can be removed. But in the instant case, no conviction has been awarded by the competent Criminal Court and only FIR in Crime No.131 of 2021 dt.19-04-2021 on the file of Matwada Police Station, Warangal District, has been registered against the petitioner on the complaint given by the 3rd respondent and the same is pending. Therefore, learned counsel for the petitioner has contended that the disciplinary authority i.e. 3rd respondent ought not to have invoked powers under Rule 25 (1) of the Rules, 1991 and imposed a major penalty of removal on the petitioner. Learned counsel for the petitioner has further contended that Rule 25 of the Rules, 1991 reads as follows:-

"25. Special procedure in certain cases: - Notwithstanding anything contained in Rule 20 to Rule 24-

(i) where penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or (ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or (iii) where the Governor is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these Rules, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit :

[x x x] (Proviso deleted by G.O.Rt.No.6421, Genl. Admn. (Ser.-C),Dt.29-12-1993)

Provided that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule.

[Provided further that no such consultation with the Commission is necessary before any orders are made under clause (i) of this rule.]

(Added by G.O.Ms.No.240, G.A. (Ser-C) Dept., Dt.14-08-2003)

A perusal of the said Rule clearly states that the disciplinary authority can invoke the said power where an employee has been convicted by the competent

Criminal Court or where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not expedient to hold any inquiry in the manner provided in these Rules.

5. Learned counsel for the petitioner has contended that none of these factors were there in the instant case and nowhere the disciplinary authority has assigned reasons why it is not practicable to conduct enquiry against the petitioner. Whenever the disciplinary authority is alleging stigma against the petitioner, the respondents are bound to conduct enquiry so as to give opportunity to prove his innocence. But in this case, no opportunity is given to the petitioner and straight away imposed major penalty of removal vide proceedings dt.02-04-2021 and further directed the respondents to reinstate the petitioner with all consequential benefits.

6. Learned Government Pleader for services-II appearing for the respondents has contended that the disciplinary authority has ample power under Rule 25 of the Rules, 1991 to discern whether the regular enquiry is required or not and the allegation levelled against the petitioner is that the petitioner has secured employment on compassionate grounds, based upon the fake medical certificate produced by his mother and that the show cause notice issued to the petitioner is only after following principles of natural justice and only after following the due procedure, the disciplinary authority has imposed major penalty of removal from service. Therefore, the Writ Petition has no merits and the same is liable to be dismissed.

7. Having regard to the rival submissions made by the parties, this Court is of the considered view that Rule 25 of the Rules, 1991 could not have invoked by the disciplinary authority as none of the three eventualities which were stipulated in Rule 25 are attracting in the instant case and no reason was recorded by the disciplinary authority as it is not practicable to conduct enquiry against the petitioner. Therefore, invoking Rule 25 (1) or Rule 25 of the Rules 1991 itself is not warranted in the instant case. Therefore, the impugned order of removal dt.02-04-2021 is set aside as none of the eventualities mentioned in Rule 25 of the Rules are not being attracted in the instant case.

8. Moreover, while alleging stigma against the petitioner, the disciplinary authority is bound to conduct enquiry and only after giving reasonable opportunity to the petitioner, the respondents have to pass the impugned orders. But in the instant case, no such enquiry is conducted. Therefore, on these grounds, the impugned order dt.02-04-2021 is liable to be set aside and accordingly the same is set aside. The respondents are directed to reinstate the petitioner into service with all consequential benefits. It is always open for the disciplinary authority to take action against the petitioner in accordance with law. No costs”.

11. This decision has also been followed by this Court in W.P.No.16772 of 2022. Since the relevant facts have already been considered by this Court in

W.P.No.12902 of 2021, this Court is inclined to follow the same and accordingly, the impugned order dated 26.03.2021 is set aside and the respondents are directed to reinstate the petitioner into service with all consequential benefits. However, it is made clear that the disciplinary authority is at liberty to take action against the petitioner, if they so choose, in accordance with law after giving due notice to the petitioner and by following the procedure laid down under law.

12. Accordingly, this writ petition is allowed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.