

(2017) 04 AP CK 0015
In the Andhra Pradesh High Court
Case No : 17685 of 2016

Sri V.V.R.K.Srinivas

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 07-04-2017

Acts Referred:

Constitution of India, Article 311 (2) -
Dismissal, removal or reduction in rank of persons employed in civil capacities under
the Union or a State
Andhra Pradesh Charitable and Hindu Religious

Citation : (2017) 04 AP CK 0015

Hon'ble Judges : Sanjay Kumar, Anis

Bench : DIVISON BENCH

Advocate : S.Ashok Anand Kumar, K.Ananda Rao, Lalitha

Judgement

1. These matters are coming up for consideration before this Bench on the reference made by a learned Judge of this Court.
2. The petitioners in these cases were non-muster roll (NMR) employees of Sri Durga Malleswara Swamy Vari Devasthanam, Vijayawada. The petitioner in W.P.No.17685 of 2016 worked as a NMR Work Inspector while the petitioner in W.P.No.31180 of 2016 was a NMR Helper. By separate proceedings, their services were disengaged. Aggrieved thereby, they filed these writ petitions.
3. When W.P.No.17685 of 2016 came up for hearing before the learned Judge, reliance was placed upon the order dated 30.12.2015 passed by another learned Judge of this Court in W.P.No.41126 of 2015. Therein, it was held that even in the case of a NMR employee, if the order of termination was not simpliciter, but had penal consequences and attached a stigma, it could not be passed without following the basic principles of audi alteram partem. However, the learned Judge hearing W.P.No.17685 of 2016 was not inclined to agree with this view and referred the matter for consideration by a Division Bench. The order of reference reads as under: The petitioner was working as NMR Work Inspector in the 3rd

respondent temple. After issuing a show cause notice and considering the explanation of the petitioner, the services of the petitioner were disengaged by the 3rd respondent by order dated 20.05.2016 and challenging the same, the present writ petition was filed.

4. The learned Counsel for the petitioner placed reliance on the order of this Court in W.P.No.41126 of 2015 dated 30.12.2015, wherein it was held that even in the case of NMR worker also when the order of termination is having penal consequences attaching stigma, the principles of natural justice should be followed while passing such an order. This Court got a doubt whether the principles of natural justice or a regular enquiry as contended by the learned Counsel for the petitioner is applicable in the case of NMR workers.

5. Since I am not in agreement with the view expressed by my learned Brother, this Court thinks it fit to refer the matter to a Division Bench for deciding the point with regard to application of principles of natural justice or conduct of regular enquiry in respect of termination of services of NMR workers.

6. Registry is directed to place this matter before appropriate Division Bench after obtaining orders from the Honble the Acting Chief Justice.

7. It appears that W.P.No.31180 of 2016 then came up for hearing and as W.P.No.17685 of 2016 was already referred to a Division Bench for consideration, it was also posted along with W.P.No.17685 of 2016. This is how the matters have come up before us.

8. Heard Sri S.Ashok Anand Kumar, learned counsel for the petitioner in W.P.No.17685 of 2016, Sri K.Ananda Rao, learned counsel for the petitioner in W.P.No.31180 of 2016, and Smt.Lalitha, learned standing counsel for the respondent Devasthanam/temple.

9. Perusal of the record reflects that the Vigilance and Enforcement Department of the State undertook an enquiry in relation to misappropriation of old iron gates of the old Anicut on Krishna River, Vijayawada, by a contractor of the respondent temple and submitted report dated 22.10.2009, recommending that suitable action be taken against the petitioners in both these cases. The Government of Andhra Pradesh thereupon addressed Memo dated 08.06.2010 enclosing a copy of the Vigilance report and requesting the Executive Officer of the respondent temple to take suitable action against the petitioners. Pursuant thereto, the respondent temple issued individual notices dated 18.04.2016 to both the petitioners calling upon them to show-cause as to why their services should not be dispensed with. Having considered their explanations, the respondent temple expressed dissatisfaction therewith and dispensed with their services.

10. At this stage, it may be noted that the fact situation obtaining in W.P.No.41126 of 2015 was altogether different. Therein, the petitioner was engaged as a NMR worker on daily wage basis in the very same temple but his

order of termination was not preceded by any enquiry or opportunity of hearing. The order of termination was however stigmatic as it was based on the finding of misappropriation of funds. The learned Judge who heard the case found on facts that no enquiry was conducted and no prior opportunity was offered to the petitioner therein in relation to the allegation leveled against him though an independent enquiry was held behind his back. No written submission was given by him. The learned Judge took note of the fact that no enquiry was conducted in his presence and there was no independent application of mind by the competent authority. It was in these circumstances that the learned Judge opined that as the order of termination was not simpliciter but had penal consequences and attached a stigma, it could not have been passed without adhering to the basic principles of audi alteram partem.

11. In the cases on hand, the Vigilance report dated 22.10.2009 manifests that both the petitioners before us participated in the Vigilance enquiry and were given full opportunity to put forth their case. Further, a copy of the Vigilance report was then furnished to them and they were asked to show-cause as to why their services should not be dispensed with. This was therefore not a case where the rule of audi alteram partem was not adhered to.

12. On facts, the cases of the petitioners before us are therefore distinguishable from that of the petitioner in W.P.No.41126 of 2015. However, the learned Judge opined that the view taken in W.P.No.41126 of 2015 was to the effect that the principles of natural justice should be followed even in the case of a NMR employee and expressed a doubt as to whether the principles of natural justice or a regular enquiry would be applicable in the case of NMR workers. This was the basis of the reference order.

13. The broader issue that therefore falls for consideration before us is whether the principles of natural justice have to be followed while dispensing with the services of a NMR worker/employee when such dispensation is stigmatic and if so, the extent to which the principles of natural justice have to be adhered to.

14. Sri S.Ashok Anand Kumar, learned counsel, placed reliance on Section 37 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for brevity, the Act of 1987), which states to the effect that all office-holders and servants attached to a charitable or religious institution or endowment shall be under the control of the Trustee who may, after following the prescribed procedure and having recorded reasons in writing, remove or dismiss such office-holder or servant for breach of trust, misappropriation etc. He would point out that under Section 38, the Commissioner, Deputy Commissioner or Assistant Commissioner of Endowments is empowered to punish office-holders or servants in certain cases. Learned counsel would further state that in exercise of the powers conferred by Sections 37 and 38 read with Section 153 of the Act of 1987, the Office Holders and Servants Punishment Rules, 1987 (for brevity, the Rules of 1987) were framed vide G.O.Ms.No.830, Revenue (Endowments-I), dated 18.08.1989, and rely upon Rule 4 thereof, which provides that no order

imposing, on an office-holder or servant of a charitable or religious institution or endowment, any of the penalties specified in Section 37 of the Act of 1987 and Rule 3 of the Rules of 1987 should be passed, except after following the procedure laid down in Rule 19 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1963.

15. Learned counsel would therefore contend that the procedure prescribed under the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 which superseded the Rules of 1963, had to be followed to terminate the services of the petitioners.

16. In this regard, it is relevant to note that appointment of office- holders and servants is governed by Section 35 of the Act of 1987, which states that every vacancy in the approved cadre strength, whether permanent or temporary, amongst the office-holders or servants of a charitable or a religious institution or endowment shall be filled by the Trustee with the prior permission of the competent authority. The question that would arise is whether the petitioners in these cases can be said to fall within the definition of office-holders or servants of the respondent temple in the light of Section 35 of the Act of 1987 which categorically states that the vacancy, permanent or temporary, should be in the approved cadre strength of the office- holders or servants, to which an appointment can be made by the Trustee. Unless a person is appointed to the cadre, be it in a temporary or a permanent vacancy, he cannot claim to be an office- holder or servant. In the present cases, both the petitioners were non-muster roll employees and were not cadre employees of the temple. No material is produced in proof of their having been appointed in temporary or permanent vacancies in the cadre. Reliance placed on the above rules is therefore of no consequence.

17. Learned counsel would also point out that under Rule 2(d) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Office Holders and Servants Service Rules, 2000 (for brevity, the Rules of 2000), an office-holder or a servant is defined to include a person who is either a whole-time or a part-time functionary. However, as there is no definition of office-holder or servant of a charitable or a religious institution or endowment in the Act of 1987 but Section 35 thereof, which deals with appointment of office-holders and servants of such institutions, puts it beyond doubt that such posts of office-holders and servants must be borne on the approved cadre and appointment must be made thereto, be it in a permanent or temporary vacancy, this Court cannot accept that a non-muster roll employee can straightaway be treated as a part-time employee falling within the definition under the Rules of 2000. In any event, the statute would prevail over the rule.

18. Learned counsel also placed reliance on the Andhra Pradesh Vigilance Commission Scheme defining Jurisdiction, Powers, Etc., of Andhra Pradesh Vigilance Commission, notified under G.O.Ms.No.421, General Administration Department, dated 03.08.1993, and contended that in terms thereof, in cases

enquired into or investigated by the Vigilance and Enforcement Department, Departments of Secretariat and Heads of Department are required to prepare draft articles of charge etc., utilizing their own resources. He would therefore argue that the Vigilance enquiry in the present cases would not be sufficient in itself and that the respondent temple ought to have initiated a separate departmental enquiry basing on the findings therein. Significantly, the Vigilance Administration instructions relied upon by the learned counsel specifically speak of only the Departments of Secretariat and Heads of Department being bound to follow the procedure prescribed therein. Whether this procedure would apply to the respondent temple is an issue that was not addressed by the learned counsel and this Court finds it doubtful as to whether these instructions can be automatically applied to the respondent temple.

19. Sri Ashok Anand Kumar, learned counsel, pressed into service a surfeit of case-law to support his argument that a regular departmental enquiry should be held even against a NMR employee in a factual scenario as obtaining presently. Case-law to the contrary was also cited by the learned standing counsel. A brief look at the decisions cited:

20. In *SAMSHER SINGH V/s. STATE OF PUNJAB* , a Constitution Bench of seven Judges of the Supreme Court was dealing with the case of a probationer discharged on grounds of misconduct. The Bench observed that if a probationer is discharged on the ground of misconduct, or inefficiency, or for similar reason, without proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge, it may amount to removal from service within the meaning of Article 311(2) of the Constitution. The Bench further observed that if the facts and circumstances of the case indicate that the substance of the order is that the termination is by way of punishment, then a probationer is entitled to protection. As this judgment relates to a probationer in regular service, we are of the opinion that the ratio laid down therein cannot be applied mutatis mutandis to a non-muster roll employee who would not stand on par with a probationer in regular service.

21. In *GUJARAT STEEL TUBES LTD. V/s. GUJARAT STEEL TUBES MAZDOOR SABHA* , the Supreme Court observed that the anatomy of a dismissal order is not a mystery and that the form of the order, or the language in which it is couched, would not be conclusive to determine its true nature. It was further observed that if the basis or foundation for the order of termination is not turpitudinous or stigmatic or rooted in misconduct or visited with evil pecuniary effects, then an inference of dismissal stands negated. By this standard, the orders dispensing with the services of the petitioners were undoubtedly punitive orders.

22. In *M.C.D. V/s. PRAVEEN KUMAR JAIN* , the Supreme Court was dealing with an order dispensing with the respondents services which was not preceded by an enquiry or a finding of guilt, though the dispensation of his services was by way of a penalty. The respondent in that case was working as non-technical staff as a

daily wager on non-muster roll. However, the distinguishing factor between that case and the cases on hand is that there was no enquiry report holding the respondent therein guilty of any charge. No charge was even framed against him and there was no acceptance of any finding of the enquiry officer by the disciplinary authority. The facts of the cases on hand, as already stated supra, present a different picture.

23. In STATE OF M P V/s. RAM KUMAR PATHAK , a learned Judge of the Madhya Pradesh High Court observed that services of a daily wager could not be terminated without departmental proceedings on the ground of misconduct or misuse of a public vehicle as such termination would be stigmatic in nature. Reliance in this regard was placed on the judgment of the Supreme Court in TELECOM DISTRICT MANAGER V/s. KESHAB DEB . In the case before the Madhya Pradesh High Court, there was admittedly no departmental enquiry but the order of termination cast a stigma.

24. In MAKWANA SANKARBHAI PARSHOTTAMBHAI V/s. AMC , a learned Judge of the Gujarat High Court was dealing with the case of daily wagers in the service of the Municipal Corporation, who were terminated from service on the ground of fraud. The show-cause notice issued to them was however after the order of termination from service and did not precede it. Relying on case law, the learned Judge held that a regular departmental enquiry ought to have been conducted before terminating the services of the petitioners and granted them relief by way of lump-sum compensation.

25. In S.ZABEDA PARVEEN V/s. A.P.WOMENS CO-OPERATIVE FINANCE CORPORATION, HYDERABAD , a learned Judge of this Court held that even a purely temporary contract employee would be entitled to the protection of Article 311 (2) of the Constitution if services were sought to be terminated on the ground of misconduct.

26. In M.GOPAL V/s. PRESIDING OFFICER, LABOUR COURT-I, HYDERABAD , a Division Bench of this Court held that if an employee appointed on regular basis is to be imposed with the punishment of termination from service, a regular departmental enquiry must be conducted after framing charges. In that case, the petitioner was placed on a time-scale and having acquired valuable rights thereby, the Bench held that his services could not be terminated without issuance of a charge-sheet, conducting of a regular departmental enquiry, proof of the alleged misconduct and application of mind by the disciplinary authority.

27. In B.NANDESWAR RAO V/s. A.P.TOURISM DEVELOPMENT CORP. LTD., HYDERABAD , a learned Judge of this Court observed that the legal position is fairly well settled that an order of termination simpliciter of a temporary employee or a probationer or even a tenure employee, without casting any stigma, may not be interfered with by the Court. The learned Judge however observed that if the order of termination is punitive and stigmatic in nature, an opportunity of hearing must be given before the punishment is inflicted.

Significantly, the employee in that case was appointed on contract basis for tenure.

28. In A.P. TOURISM DEVELOPMENT CORPORATION LIMITED, V/s. B.NANDESWAR RAO , a Division Bench of this Court held that though it is true that unlike an employee appointed on regular basis, the services of an employee appointed for a fixed tenure can be brought to an end without the necessity of conducting a detailed departmental enquiry, but if the employer intends to brand such an employee as inefficient or attribute misconduct to him, the conducting of an enquiry becomes essential.

29. In STATE BANK OF INDIA V/s. PALAK MODI , the Supreme Court observed that a probationer has no right to hold the post and his service can be terminated at any time during or at the end of the probation on account of general unsuitability, but if an allegation of misconduct constitutes the foundation of the termination of his services, it has to be by following the principles of natural justice.

30. In V.P.AHUJA V/s. STATE OF PUNJAB , the Supreme Court observed that a probationer, like a temporary servant, is also entitled to protection and his services can neither be terminated arbitrarily nor can they be terminated in a punitive manner without complying with the principles of natural justice.

31. In RADHEY SHYAM GUPTA V/s. U.P.STATE AGRO INDUSTRIES CORPORATION LTD. , the Supreme Court observed that termination of the services of a temporary servant or one on probation, on the basis of an assessment that his work is not satisfactory, would not be punitive but where the termination is preceded by an enquiry and evidence is received and findings as to misconduct are arrived at behind the back of the employee and where on the basis of such a report, the termination order is issued, it would be violative of the principles of natural justice.

32. Conspectus of the precedential-law set out supra puts it beyond doubt that a worker or employee, whatever be his status, cannot be branded by a punitive or stigmatic order, holding him guilty of misconduct or the like, without abiding by the principles of natural justice. The view expressed by the learned Judge in W.P.No.41126 of 2015 to this effect brooks no exception. Merely because a worker or employee is either casual or not borne out on the muster rolls, it would not give the employer the freedom to pass a stigmatic order against him without following the rule of audi alteram partem. It is a settled tenet of jurisprudence that no man can be condemned unheard. This edict dates back to the Magna Carta of 1215 AD and reads thus: No free man shall be taken or imprisoned, or disseised of freehold or liberties or free customs, or be outlawed, or exiled or in any way destroyed, nor will we proceed with force against him nor condemn him, except by lawful judgment of his peers or by the law of the land. We will sell to no man, we will not deny or defer to any man either justice or right.

33. That having been said, it is equally well settled that the principles of natural

justice cannot be straitjacketed or cast in iron-clad terms. To what extent compliance with the principles of natural justice is required to be adequate would depend upon the facts of the individual case. It may also be noted that these principles have been interpreted and moulded by Courts of law to give them deeper contextual meaning. Prejudice Theory has been evolved, requiring the person complaining of violation of the principles of natural justice to demonstrate the prejudice caused to him thereby, before seeking relief on the ground of such violation. The rule of audi alteram partem is not to be applied in absolute terms. The extent of hearing that must be afforded to the affected person to satisfy this rule would depend upon the facts of each case and cannot be pigeonholed in absolute terms. The full-fledged enquiry that is required in the case of a regular employee may not be required while dealing with a NMR employee. As long as sufficient opportunity of hearing is given to the latter, he cannot insist upon the procedure applicable to a regular employee being adopted in his case.

34. In the cases on hand, the record bears out the fact that the petitioners fully participated in the Vigilance enquiry. Basing upon the findings recorded against them therein, vide the Vigilance report dated 22.10.2009, the respondent temple put them on notice by duly supplying them a copy of the said report and offered them an opportunity to show-cause as to why their services should not be terminated. Having considered their explanations submitted in response thereto, the respondent temple found the same to be unsatisfactory and accordingly resorted to dispensing with their services. Though this dispensation was undoubtedly in the nature of a punitive measure, the fact remains that the petitioners cannot complain that they were not given an opportunity of hearing. Having been extended such opportunity to establish their innocence, not once but twice, the petitioners necessarily have to demonstrate before this Court that they suffered prejudice for want of a regular departmental enquiry. No such attempt was made by either of the learned counsel appearing for the petitioners to demonstrate that such prejudice was caused to them. In the absence of such prejudice, we are of the opinion that the opportunity of hearing afforded to the petitioners was more than adequate, considering their status as non- muster roll employees. They had no statutory or legal right to insist upon the procedure applicable to regular servants of the respondent temple being adopted in their cases and once sufficient opportunity of hearing was extended to them, both at the time of the Vigilance enquiry and again before the termination of their services, the principles of natural justice were adequately complied with. We therefore answer the reference thus: The principles of natural justice would be applicable even in the case of a NMR worker/employee, but the extent to which the principles of natural justice would have to be adhered to in such a case would depend upon the individual facts of each case.

35. In the cases on hand, we find that adequate opportunity was afforded to the petitioners during the enquiry held and even thereafter. No cause is therefore made out to infer that there was any violation of the principles of natural justice.

36. The writ petitions therefore fail and are accordingly dismissed. Pending miscellaneous petitions, if any, in both the writ petitions shall also stand dismissed. No order as to costs.