
(2001) 04 AP CK 0047

In the Andhra Pradesh High Court

Case No : WA No's. 1646 and 1697 of 2000

Tagore Home Junior College, Secunderabad

APPELLANT

Vs

P.P.A. Christian and others

RESPONDENT

Date of Decision : 13-04-2001

Acts Referred:

Andhra Pradesh Education Act, 1982 — Section 2, 24, 79(1), 80, 81
Andhra Pradesh Private Educational Institutions Employees (Disciplinary Control)
Rules, 1983 — Rule 5, 7(2)
Constitution of India, 1950 — Article 21

Citation : (2001) 3 ALD 742 : (2001) 4 ALT 191

Hon'ble Judges : S.B. Sinha, C.J;N.V. Ramana, J

Bench : Division Bench

**Advocate : Mr. A. Sitarama Rao, for the Appellant; Mr. C.H. Srinivas and
Government Pleader for Higher Education, for the Respondent**

Judgement

S.B. Sinha, CJ

1. "He who takes the procedural sword shall perish with the sword" said Frankfurter, J., in *Viteralli v. Seaton*, (1959) 359 US 535.

2. The State of Andhra Pradesh with a view to protect the teaching and non-teaching staff has enacted the Andhra Pradesh Education Act, 1982, (hereinafter referred to as "the Act" for the sake of brevity). Chapter XIV of the Act inter alia provides for disciplinary action against employees of private institutions. Subsection (1) of Section 79 of the Act inter alia states that no employee shall be dismissed, removed or reduced in rank, except after an enquiry in which he has been informed of the charges against him, given a reasonable opportunity of being heard in respect thereof, and further such an order of punishment shall not be passed without the prior approval of such authority or Officer as may be prescribed for different classes of private institutions. Section 80 provides for an appeal before the competent authority. Sub-section (2) of Section 80 lays down the grounds upon which the appellate authority can interfere with the order

appealed against. Section 81 provides for an appeal before the Government.

3. In exercise of its power conferred upon it under Sections 79, 80 and 83 read with Section 99 of the said Act, the Government of the State of Andhra Pradesh had framed rules known as the Andhra Pradesh Private Institutions Employees (Disciplinary Control) Rules, 1983 (hereinafter called as "the Rules" for the sake of brevity). Rule 5 of the Rules provides for the Penalties, which may be imposed. Sub-Rule (1) of Rule 7 of the Rules states that no employee shall be dismissed, removed or reduced in rank by an authority subordinate to the management of the private institution. Sub-Rule (2) of Rule 7 of the Rules provide for mode and the manner in which an inquiry shall be conducted, which reads thus:

"7. (1)xxxxx

(2) In every case, where it is proposed to impose any of the penalties specified in sub-section (!) of Section 79, the grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged together with a statement of the allegations on which each charge is based and of any other circumstances, which it is proposed to take in consideration in passing orders in such case. He shall be required with in a reasonable time to put in a written statement of this defence and to state whether he desires an oral enquiry or only to be heard in person. For the purpose of preparing his defence, the charged person may be permitted to inspect and take extracts from such records as he may specify, provided that the management may, for reasons to be recorded in writing, refuse such permission if in its opinion such records are not relevant for the purpose or it is against the interests of the institution to allow access thereto. If an oral inquiry is desired by the person charged, the management shall appoint an inquiring authority, who shall be superior in rank to the charged person, to conduct the enquiry. At that inquiry, oral evidence may be heard as to such of the allegations as are not admitted and the person charged shall be entitled to cross-examine the witnesses called as he may wish, provided that the authority conducting the inquiry may, for special and sufficient reasons to be recorded in writing, refuse to call a witness.

After the inquiry has been completed, the person charged shall be entitled to put in, if he so desires, any further written statement of his defence. If no oral inquiry is held, and the person charged had desired to be heard in person, a personal hearing shall be given to him by the management. The proceedings shall contain a sufficient record of the evidence and a statement of the findings and the grounds thereof. After examining the report of the inquiring authority or where no enquiry has been held, on consideration of the statement of the defence of the person charged and other circumstances of the case the management shall arrive at a provisional conclusion in regard to the penalty to be imposed, and the persons charged shall be called upon to show-cause within a reasonable time, not less than two weeks, against the particular penalty

proposed to be imposed.

Where an oral inquiry has been held, a copy of the report of the inquiry officer shall also be supplied to the person charged".

4. Sub-Rule (3) of Rule 7 of the Rules makes an exception to sub-Rule (2) of Rule 7. It envisages that where the authority to impose the penalty is satisfied, for reasons to be recorded in writing, that it is not reasonably practicable to hold an inquiry or to inform the employee, in writing of the allegations or charges on which action is proposed to be taken or where it is proposed to impose the penalty on the ground of conduct which led to his conviction or on a criminal charge involving moral turpitude, the provisions of sub-rule (2) shall not apply.

5. The writ petitioner-respondent was appointed in the year 1979 as Record Assistant. In the year 1997, on the basis of the allegations made before the authorities by some girl students, a disciplinary proceeding was initiated against him, and he was placed under suspension. An inquiry officer was appointed and he held that the charges against him are proved. On 16-8-1997 a show-cause notice "was served upon the writ petitioner- respondent to show-cause as to why he shall not be dismissed from service. The writ petitioner-respondent gave a reply to the said show-cause notice on 1-9-1997. The Correspondent of the appellant-institution, without obtaining prior approval of the competent authority, as envisaged under the proviso appended to sub-section (1) of Section 79 of the said Act, issued an order of dismissal on 4-9-1997, which is to the following effect:

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5. Whereas, the inquiry authority after an elaborate inquiry involving depositions of several witnesses, 5 on behalf of the Management of the Institution and 4 on behalf of the Defence and records and after obtaining written brief from the presenting officer and the Defence held "that the charge framed against the charged official is proved", and also noted that the visit of the Defence Assistant to the house of Kum. Kavitha (SW1) "while the enquiry was an act of intimidation" and that the charged official admitted that the Defence Assistant visited the house of Kum Kavitha, and that "all the defence witnesses spoke in one voice that the charged official was assaulted, it can safely be inferred that the behaviour of the charged official is questionable, and

that "no girl student/students come forward by giving such complaints that somebody misbehaved with her/them unless there is cent per cent truth in their grievance and that he had noticed during the enquiry that they were afraid that their future will be spoiled if they mention that somebody misbehaved with them and because of this fact some of them were not more specific about the misbehaviour, and that the Junior College in which the charged official was employed was and is an institution with co-education and any act of misbehaviour with girl students by any official of the Junior College shakes the confidence of the parents of the girl students and this act of indiscipline has to be

condemned with all force at our command, and

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7. xxxxx

Now, therefore, in exercise of my powers as the Disciplinary Authority and in terms of the Conduct and Discipline Rules contained in Section 79 of the A.P. Education Act, 1982, and the APCCA Rules, I, the undersigned, hereby impose the Penalty of "Dismissal", on Shri P.P.A Christian, Record Assistant (under Suspension) of this college with effect from the forenoon of this day, the 4th September, 1997 and further order that the period of suspension from 11-3-1997 till date will be treated as "suspension" for all purposes".

6. Against the said order of dismissal, the writ petitioner-respondent herein filed a representation before the Regional Joint Director and the same was allowed.

7. As the said order of the Regional Joint Director-2nd respondent was not being implemented, the delinquent filed a writ petition bearing WP No.23463 of 1999 seeking for a declaration that the action of the respondents in not considering his case for reinstatement into service by implementing the orders of the 2nd respondent dated 29-10-1998 and 16-8-1999 respectively and the action of the 2nd respondent in not taking any action against the 3rd respondent for non-implementation of the orders passed by him, as illegal and arbitrary and also for a direction upon the respondents for his reinstatement with all consequential benefits, including the arrears of salaries till the date of his reinstatement.

8. The writ petitioner-delinquent, however, during pendency of the writ petition, has obtained an interim direction dated 25-11-1999 to the respondents to reinstate the petitioner into service forthwith.

9. As the respondents have not complied with the directions of the Court, the delinquent has filed a Contempt Case bearing CC No.416 of 2000 seeking to punish the respondents for violating/ disobeying the order of this Court.

10. It appears that, against the said order of the Regional Joint Director, the management of the College has preferred an appeal before the Director. The appeal was allowed, during the pendency of the writ petition filed by the delinquent. The writ petitioner-delinquent questioned the said order of the Director by filing another writ petition bearing WP No.27183 of 1999.

11. Both the writ petitions and the Contempt Case were heard together and, by reason of the judgment impugned in these appeals, the learned single Judge inter alia held that the requirement of the proviso appended to sub-section (1) of Section 79 of the Act has not been complied with and, therefore, such an order cannot be sustained. The learned single Judge further held:

"In the result, the writ petitions and the contempt case are disposed of. The order of the first respondent in proceedings Rc.No.1306/JC2-1/97 dated 29-11-1999 is set aside and it is declared that the petitioner shall continue to be

treated as Record Assistant of the third respondent - College from 11-3-1997 (when he was placed under suspension) till today and he is entitled for all the monetary benefits like payment of salary etc. However, it is open to the third respondent to proceed against the petitioner from the stage of enquiry report dated 18-8-1997 subject to the condition that all other grounds raised by the petitioner in these writ petitions are left open to be decided by the third respondent while passing fresh orders of dismissal or before such appropriate authorities before whom the parties here may file appeals/representations. All the authorities shall decide the matters as and when they are brought before them without being influenced by any of the observations made hereinabove".

12. Mr. Sitarama Rao, the learned Counsel appearing on behalf of the appellant-College herein had raised a number of contentions before us. The learned Counsel would submit that having regard to the fact that the writ petitioner-respondent had accepted his guilt, no inquiry has to be conducted and, in support thereof, placed reliance on a decision of the Apex Court in *Dharmarathmakara Raibahadur Aroot Ramaswamy Mudaliar Educational Institution Vs. The Educational Appellate Tribunal and Another*, . Mr. Rama Rao would strenuously urge that keeping in view the fact that the writ petitioner-respondent has been found to be guilty of outraging the modesty of some girl students, his services having been dispensed with for maintenance of discipline, and, as also reputation of the College, this Court should not have exercised its discretion in his favour. Reliance, in this connection, has been placed on the decisions of the Apex Court in *Rt. Rev. B.P. Sugandhar Bishop in Medak Vs. D. Dorothy Dayasheela Ebeneser*, and *Apparel Export Promotion Council Vs. A.K. Chopra*, .

13. It was submitted by Mr. Rama Rao that, having regard to the facts and circumstances of this case, formal permission of the competent authority was not necessary, having regard to the fact that the entire act of the management must be read together. In support of the said contention, reliance has been placed on a decision of the Apex Court in *S. Prakash v. K.M. Kurian*, (1999) 6 SCC 624.

14. Judicial Review, according to the learned Counsel, has a limited scope. Any interference with a disciplinary proceeding is permissible only if the same suffers from perversity, bias or malice. Reliance in this connection has been placed on the judgment of the Apex Court in *R.S. Saini Vs. State of Punjab and Others*, .

15. The learned Counsel would further contend that, in any event, as the writ petitioner-respondent had moved the Labour Court, while he had already preferred an appeal; it was a fit case in which the discretionary jurisdiction of this Court should not have been exercised.

16. Mr. Srinivas, the learned Counsel appearing on behalf of the writ petitioner-respondent, on the other hand, would contend that the Correspondent of the College had no jurisdiction to pass the order impugned in the writ petition. It was submitted that keeping in view the fact that his client has remained under

suspension, there was absolutely no reason as to why the said authority, without referring the matter to the management and without obtaining prior approval of the competent authority, had passed an order on 4-9-1997 when the writ petitioner-respondent gave a reply to the show-cause notice only on 1-9-1997. The learned Counsel would contend that the proviso to sub-section (2) of Section 80 of the said Act would be attracted only in a case where the matter is required to be gone into in merit and not on the ground of want of jurisdiction.

17. According to the learned Counsel, as the jurisdiction of the disciplinary authority had been prescribed under sub-rule (1) of Rule 7 of the Rules, sub-rule (3) of Rule 7, whereupon Mr. Rama Rao had placed reliance, is not attracted. Mr. Srinivas strenuously submitted that having regard to the provisions of Section 81 of the said Act, an appeal by the management would lie only to the Government and such an appeal before the Director was wholly misconceived. In any event, contends the learned Counsel, as an order was passed by the appellate authority, without issuing a notice thereby giving his client an opportunity of hearing, the same must ex facie be held to be illegal and without jurisdiction.

18. Mr. Srinivas submits that the order in appeal having been passed on 29-10-1998, an appeal there-against has to be filed within a period of 30 days, and, any appeal filed thereafter, beyond the period of limitation, could not have been entertained.

19. In terms of the provisions of Chapter XIV of the Act the services of the employees of the private institutions are statutorily protected. The managements of the institutions are thus bound to strictly comply the requirements thereof. Sub-rule (2) of Rule 7 envisage the procedure which must be complied with before an order of punishment is passed by the competent authority in terms of sub-rule (1) of Rule 7 of the Rules. The submission of Mr. Rama Rao to the effect that the Correspondent of the institution must be held to be "management" within the meaning of sub-section (27) of Section 2 of the Act cannot be accepted. A Correspondent is appointed in terms of sub-section (2) of Section 24 of the Act, which reads thus:

"24. Appointment and removal of manager of private institution:

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(2) The management shall, for the purpose of this Act, nominate a person to manage the affairs of the institution, whether called by the name of secretary, correspondent or by any other name, and intimate such nomination within thirty days thereof to the competent authority.

xxxxx"

20. By reason of the afore-mentioned provisions, the management has been empowered to delegate its function in favour of the Correspondent or to any other Officer by whatever name he is called. The post of Correspondent, as would appear from the aforementioned provision itself, is again equal to the post

of Secretary, which clearly shows that the said authorities are only entitled to carry out the day-to-day functions, but, by reason of such delegation of power, the essential statutory function had not been delegated to them nor such statutory function could be delegated. The power of the management in terms of sub-rule (1) of Rule 7 is a statutory power, which must be exercised strictly in terms of law. Sub-section (2) of Section 24 of the Act does not envisage delegation of a statutory power, in the absence of a clear provision to the said effect.

21. Insofar as the contention of Mr. Rama Rao that the writ petitioner-respondent has admitted his guilt is concerned, we are of the opinion that the same also cannot be accepted. Reliance placed, in this connection, by the learned Counsel upon a representation dated 5-9-1997 of the delinquent to the Correspondent, is of no avail. Admission of guilt on the part of delinquent employee must be clear and unambiguous. In the said representation, the delinquent stated:

"I have received your order cited under reference, and I would like to bring few facts to your kind notice and necessary action.

Sir, I come to know that I have not put my signature on my representation sent to you only through your order. Sir, I submit that due to the hospitalisation of my wife for cordiac arrest, I might have not signed the representation, but sir it is not my carelessness.

Sir, I feel that my defence brief which was submitted to the Enquiry Officer was not properly considered, I was with a hope that at least your goodself would consider it favourably. I am unfortunate to find there in the order that you are in total agreement with Enquiry Officer.

Sir, still I do not intend to challenge your order, but pray to you sir, to reconsider the case.

Under these circumstances where I cannot prove my innocence, I only appeal to you sir, that you may reconsider the imposed penalty at least on humanitarian grounds, if not on the merits of the case as you felt.

It is only your decision sir, that saves my life and that of my family also".

The said letter, however, shows the desperate situation in which he was placed.

22. Another letter addressed to the Correspondent and Secretary of the appellant-College by the delinquent has been placed before us, which starts at page No. 17, Annexure-IV, of the material papers (Volume II). Our attention, in this connection, has been drawn to the following paragraph, which is at page No.19:

Sir, I hereby submit my apology though it is not my fault and I beseech you sir not to initiate any further action against me as I am totally innocent. I further request you sir to kindly revoke the suspension imposed on me from 11-3-1997 and regularise my service from 11-3-1997 since the suspension imposed on me without conducting any preliminary enquiry and I have already crossed the

maximum period".

The contents of the said paragraph do not show that the writ petitioner had accepted his guilt. In fact, he stated therein that he is totally innocent. A perusal of the other portions of the letter would also show that he had taken a defence that the allegations made against him were absolutely baseless.

23. In *Dharamarathmakara Raibahadur Arcot Ramaswamy Mudaliar Educational Institution case* (supra) the Apex Court was considering a case, which was factually different from the facts of the case on hand. The Apex Court, on facts, held that full opportunity had been granted to the petitioner therein and her delinquency was proved. In the said case, no submission had been made on merit. A leave was granted by the Apex Court to give any prima facie or plausible explanation to defend the delinquent's action, but nothing was placed. In the instant case, the defence and plea of innocence are replete on records.

24. So far as the contention of Mr. Rama Rao to the effect that it is not necessary to take recourse to the proviso of sub-section (1) of Section 79 of the Act is concerned, the same also cannot be accepted. The proviso appended to sub-section (1) of Section 79 of the Act has been enacted for protection of an employee. Such a statutory protection cannot be dispensed with. The said provision is mandatory in character. In *Prakash 's case* (supra) whereupon Mr. Kama Rao, the learned Counsel for the appellant-College relied, the Apex Court was considering the doctrine of *Generalia specialibus non-derogant* (General things do not derogate from special things).

25. The proviso appended to subsection (1) of Section 79 of the Act has been enacted for a purpose of allowing the competent authority to consider the materials on record independent of the opinion formed by the enquiry officer and/ or by the disciplinary authority so as to enable him to come to a conclusion that the matter is such where a major penalty is required to be imposed. The competent authority before grant of such approval would, therefore, be required to apply its own mind and satisfy itself, prima facie, that rules of fair play and natural justice have been complied with. The requirement to take prior approval before a punishment can be imposed cannot be said to be an empty formality, which can be dispensed with only in a case where the proviso is attracted. With regard to the importance of complying with the principles of natural justice, reference may be made to a decision of the Calcutta High Court in *Sri Hanuman Steel Rolling Mill and another Vs. C.E.S.C. Ltd.,* , wherein one among us (S.B. Sinha, J.) observed:

"39. In my opinion, the principles of natural justice are required to be complied with, be it pre-decisional hearing or a post decisional one depending on the facts and circumstances of each case".

26. In fact, the contextual interpretation of the Act and the Rules would clearly suggest that the same had been made for protecting the services of the employees and not for the purpose of granting an arbitrary power upon the

authorities and any particular Officer thereof to likely twist a case of this nature, keeping in view the fact that right to continue in service is protected under Article 21 of the Constitution of India. It was, therefore, obligatory on the part of the management to strictly comply with the statutory requirements. There cannot be any doubt, whatsoever, that where a delinquency of the nature of the present case is concerned, the delinquent cannot be treated with sympathy or mercy, as has been held by the Apex Court in Sugandhar Bishop's case (supra) and Apparel Export Promotion Council's case (supra), but before a ratio decidendi is laid down and the said decisions of the Apex Court can be applied, the procedural safeguards provided for under the statute must be complied with.

27. Having regard to our findings aforementioned, we are of the opinion that the impugned judgment is unassailable.

28. We, however, direct that the matter may now be placed before the competent authority for grant of prior approval, in terms of the proviso appended to sub-Section (1) of Section 79 of the Act. In the event such prior approval is granted, the matter shall be placed before the management so as to enable it to pass an appropriate order after applying its mind. We hope and trust that the proceedings will be concluded at an early date and the orders will be passed as early as possible.

29. We, however, having regard to the facts and circumstances of this case, direct that the writ petitioner-respondent shall continue to be placed under suspension.

30. With the aforementioned directions, the writ appeals are dismissed. However, having regard to the facts and circumstances of the case, there shall be no order as to costs.