

(1996) 04 AP CK 0073

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6202 of 1989

Vemuri Ramakanta Sarma, Lecturer, A.V.S. Junior College

APPELLANT

Vs

Adarsha Vidya Samithi and Others

RESPONDENT

Date of Decision : 01-04-1996

Acts Referred:

Andhra Pradesh Education Act, 1982 — Section 2(33), 79, 79(1), 80, 83
Andhra Pradesh Private Institutions Employees (Disciplinary Control) Rules, 1983 —
Rule 3, 7(2)

Citation : (1996) 2 ALT 47

Hon'ble Judges : C.V.N. Sastri, J

Bench : Single Bench

Advocate : V. Parabrahma Sastry, for the Appellant; D.V. Sitharama Murthy, for Respondent Nos. 2 and 3 and Govt. Pleader for Respondent Nos. 4 to 6, for the Respondent

Judgement

C.V.N. Sastri, J.—In this writ petition, the petitioner questions the legality and validity of the order dated 5-6-1987 reducing him to the rank of Junior Lecturer from the post of Principal in the 3rd respondent junior college, which was confirmed by the State Government by its order dated 30-1-89. The facts leading to the writ petition may be stated briefly.

2. The petitioner was appointed as Principal of A.V.S. Jr. College, Pulletikurru, East Godavari District which is a private institution recognised and aided by the State Government, in the year 1974. In the year 1983, the petitioner was issued with a show cause notice by the Management of the college alleging certain irregularities and calling for his explanation. After he submitted his explanation to the show cause notice, a retired Subordinate Judge was appointed as Enquiry Officer to conduct an enquiry into the allegations against the petitioner.

3. The petitioner was placed under suspension by an order dated 11-11-1983 pending enquiry into the charges against him. After holding the enquiry, the Enquiry Officer submitted his report holding the petitioner guilty of the charges

levelled against him. Thereupon, the Managing Committee met on 22-5-87 and resolved to impose the penalty of reduction in rank as Jr. Lecturer on the petitioner w.e.f. 8-6-1987 and accordingly, the impugned order dated 5-6-1987 was issued by the President of the Managing Committee.

4. Questioning the said order, the petitioner preferred an appeal to the competent authority and Regional Joint Director of Higher Education, Rajahmundry (4th respondent herein). The 4th respondent allowed the said appeal filed by the petitioner by his order dated 9-1-1988 and consequently, set aside the order dated 5-6-1987 issued by the President of the Managing Committee of the college and directed that the petitioner shall be deemed to have been restored to his original position i.e. Principal of A.V.S. Jr. College, Pulletikurru.

5. Questioning the said order passed by the 4th respondent, the management of the college preferred as second appeal to the State Government (6th respondent). By its order dated 30-1-1989, the State Government allowed the appeal and set aside the order dated 9-1-1988 passed by the 4th respondent and upheld the order dated 5-6-1987 of the management of the college reducing the petitioner to the rank of Jr. Lecturer. Aggrieved thereby, the petitioner has filed the present writ petition.

6. Sri V. Parabramha Sastry, the learned counsel for the petitioner has raised the following contentions in support of the writ petition :-

(1) The order inflicting the penalty of reduction in rank against the petitioner is illegal and unsustainable as the same was passed without the prior approval of the competent authority as required under the proviso to Sub-section 1 of Section 79 of the Andhra Pradesh Education Act, 1982.

(2) The said order is bad as the second show cause notice against the proposed punishment was not issued to the petitioner as required under Rule 7(2) of the Andhra Pradesh Private Institutions Employees (Disciplinary Control) Rules, 1983.

(3) The State Government (R-6) disposed of the appeal without any hearing and as such, its order is vitiated and it is opposed to the principles of natural justice. The learned counsel submits that the hearing before the 6th respondent was purely confined to the question of grant of the interim order only and there was no hearing of the appeal as such.

(4) In any case, as the petitioner was appointed to the substantive post of Principal, he cannot be reduced to the rank of Jr. Lecturer in Mathematics, which is non-existent and un-aided.

7. On the other hand, Sri D.V. Sita Rama Murthy, learned counsel appearing for the Management of the college has contended that proviso to Section 79(1) of the A.P. Education Act which was incorporated by Act 27 of 1987 w.e.f. 1-6-1987 has no application to the instant case, since the enquiry was concluded and the report of the Enquiry Officer was submitted prior to that date. He further

submitted that the said proviso is not any case operative

as the prescribed authority for the purpose of the said proviso has not so far been created or nominated and no rules in this behalf have been framed so far.

8. He has also contended that the Government gave full opportunity of hearing to the parties before disposing of the appeal and the order of the Government is very clear and the specific on this aspect. He has finally submitted that the petitioner has been guilty of openly defying the management at every stage without any justification whatsoever and in the normal course, the management would have been justified in removing him from service, but taking a lenient view, he is reduced to the rank of Jr. Lecturer. The petitioner has joined as Jr. Lecturer on 14-3-1988 and he has ever since been working as Jr. Lecturer and he is also being paid salary by the Government and as such the petitioner cannot have any legitimate grievance and the writ petition merits dismissal. In support of his contentions, the learned counsel for the management has place reliance on a decision of this Court in *Rev. Joseph Thumma and Anr. v. District Educational Officer 1995 (2) An.W.R. 117.* and the decision of the Supreme Court in *B.C. Chaturvedi Vs. Union of India and others, .*

9. The learned Government Pleader for Higher Education has tried to sustain the order passed by the State Government by contending that the State Government gave full opportunity of hearing to both sides before disposing of the appeal. The learned Government Pleader, however, has fairly conceded that as per Rule 7(2) of the A.P. Private Institutions Employees (Disciplinary Control) Rules 1983, it is incumbent on the management to give a further show cause notice to the delinquent calling upon him to show cause against the particular penalty proposed to be imposed and that inasmuch as show cause notice was not admittedly issued to the petitioner in the instant case the impugned order may be set aside and the matter may be remitted back to the management to pass orders afresh in accordance with law after giving the show cause notice against the proposed punishment to the petitioner. The learned Government Pleader has drawn my attention to the decision of the Supreme Court in *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.,* in this behalf.

10. I shall now deal with the respective contentions raised by the learned counsel for the parties. As regards the first and main contention of the learned counsel for the petitioner that the order dated 5-6-1987 reducing the rank of the petitioner to that of Junior Lecturer from Principal is illegal for want of prior approval by the competent authority, it is necessary to notice Section 79 of the A.P. Education Act, 1982, which reads as follows:

"79. DISMISSAL, REMOVAL OR REDUCATION IN RANK OR SUSPENSION, ETC., OF EMPLOYEE OF PRIVATE INSTITUTIONS :-

(1) No teacher or member or the non-teaching staff employed in any private institution (hereinafter in this Chapter referred to as the employee) shall be dismissed, removed or reduced in rank except after an inquiry in which he has

been informed of the charges against him given a reasonable opportunity of being heard in respect of those charges:

Provided that no order of dismissal, removal or reduction in rank shall be passed under this sub-section against an employee other than an employee of minority educational institution without the prior approval of such authority or Officer as may be prescribed for different classes of private institutions;....."

11. It may be mentioned that this proviso to Sub-section (1) of Section 79 was added by Amendment Act 27 of 1987 which came into force with effect from 1-6-1987 and according to Section 2(33), "prescribed" means prescribed by rules made by the Government under this Act. It is not in dispute that A.P. Private Institutions Employees (Disciplinary Control Rules), 1983 were issued in C.O.Ms. No. 467 dated 3-11-1988 (sic. 3-11-1983) and they came into force on 3-11-1983 i.e., long prior to the introduction of the proviso to Section 79(1) in 1987. No separate rules were issued by the State Government prescribing the authority or officer whose prior approval should be obtained for passing an order of dismissal, removal or reductions in rank against an employee by a private educational institution. The learned counsel for the Management of the college contends that as no such authority or officer has been prescribed so far, the proviso to Section 79 is not operative and therefore, the question of obtaining the prior approval of such authority before passing the impugned order arises in the present case. In support of this contention,, the learned counsel for the Management of the college has placed reliance on the judgment of a learned single Judge of this Court in *Rev. Joseph Thumma and Anr. v. District Educational Officer* (1 supra). This judgment is directly in point and lends support to the said contention of the learned counsel for the Management. The learned counsel for the petitioner, however, sought to contend that the competent authority, who is empowered by Rule 3 of the A.P. Private Institutions Employees (Disciplinary Control) Rules 1983 to perform the functions of the competent authority Under Sections 79, 80 and 83 of the Act, can also perform the function of according or refusing approval for an order of dismissal, removal or reduction in rank as per the proviso to Section 79(1) of the Act and that there is no need to prescribe or create any separate authority for this purpose. The learned counsel for the petitioner contends that such a construction, which makes the proviso to Section 79 operative, must be preferred to one that renders the proviso inoperative and it would be unreasonable to take the view that the legislature has left a lacuna either by negligence or by lack of foresight or because it did not know its job. In support of this argument, the learned counsel for the petitioner has relied upon *Mothibhai F.P. & Co., v. Collector, Central Excise*, AIR 1970 SC 829 and *M.G. Wagh and Others Vs. Jay Engineering Works Ltd.*, There can be no dispute about these propositions but on a reading of Sections 79,80 and 83 of the A.P. Education Act, it is manifest that the competent authority prescribed by Rule 3 for the purpose of exercising appellate power is quite different from the authority or officer contemplated by the proviso to Section 79(1) for the purpose of granting or refusing prior approval for an order of dismissal, removal or reduction

in rank passed against an employee. This question also has been considered by the learned Single Judge in *Rev. Joseph Thumma and Anr. v. District Educational Officer* (1 supra) and the learned Single Judge has repelled such a contention. Though the learned counsel for the petitioner has submitted that the said judgment requires reconsideration, I am not inclined to accept this submission of the learned counsel for the petitioner. I am in respectful agreement with the view taken by my learned Brother Justice P. Venkatarana Reddi in the said decision. I have, therefore, no hesitation in negating the first contention raised by the learned counsel for the petitioner.

12. Coming to the second contention of the petitioner that the impugned order is in violation of Rule 7(2) of A.P. Private Institutions Employees (Disciplinary Control) Rules, 1983, I find much force in this contention as the said Rule clearly provides that after examining the report of the inquiring authority or where no enquiry has been held, on consideration of the statement of 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 person 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. The said rule also further provides that where an oral inquiry has been held, a copy of the enquiry officer's report shall also be supplied to the person charged. Admittedly in the instant case, no show-cause-notice against the particular penalty proposed to be imposed was given to the petitioner. Though in the counter filed on behalf of the Government, a stand is taken that a second show-cause-notice is not necessary to be given, the learned Government Pleader as well as the learned counsel appearing for the Management of the College have not seriously disputed that the said rule mandates the giving of a second show-cause-notice against the proposed punishment. It, therefore, follows that the impugned order inflicting the punishment of reduction in rank against the petitioner without issuing a show cause-notice as contemplated by Rule 7(2) of the Rules cannot be sustained. The learned counsel for the petitioner contends that the impugned order, therefore, is liable to be quashed and the petitioner is entitled to be restored to the position of Principal with all consequential benefits and that it would not be just and fair to remit the matter back to the Management at this distance of time. The learned counsel for the Management as well as the learned Government Pleader, however, contend that according to the judgment of the Supreme Court in *Managing Director, ECIL v. B. Karunakar* (3 supra), the proper course to be adopted is to remit the matter back to the Management to pass orders afresh after giving a show-cause-notice to the petitioner as contemplated by Rule 7(2) of the Rules. In the decision *Managing Director, ECU, v. B. Karunakar* (3 supra), the Supreme Court was, no doubt, dealing with the question of the non-supply of the Enquiry Officer's report to the delinquent employee and not with the question of failure to issue a second show-cause-notice as in the present case. This, however, does not, in my view make any difference with regard to the principle involved which is one of

violation of principles of natural justice. In the aforesaid case, the Supreme Court held that to direct reinstatement of an employee with back wages in all cases, where there was a failure to furnish the Enquiry Officer's report to him is to reduce the rules of justice to a mechanical ritual and that it is for the Court or the tribunal, as the case may be, to consider whether any prejudice was caused to the employee on account of the denial to him of the report and that the said question has to be considered on the facts and circumstances of each case. In view of this authoritative pronouncement of the Constitution Bench of the Supreme Court, I feel that on the facts of the instant case, it would be just and proper to set aside the impugned order reducing the rank of the petitioner to that of Junior Lecturer and to remit the matter back to the Management to pass orders afresh after giving a show-cause-notice to the petitioner as contemplated by Rule 7(2) of the Rules. In view of this conclusion of mine, it may not be necessary to go into the other questions raised by the petitioner about the disposal of the second appeal by the Government without giving any hearing and about the propriety of reducing the petitioner to the rank of Junior Lecturer from the substantive post of the Principal to which he was appointed. A reading of the order dated 30-1-1989 passed by the State Government shows that both the parties i.e., the representative of the Management and the Ex-Principal of the college were heard on 25-2-1988 and 30-4-1988. It appears that when the matter initially came up for hearing on 25-2-1988, the Government expressed a desire that the Management of the college should reconsider their stand and try for an amicable settlement with the petitioner and time was granted till 15th March, 1988, to communicate the decision of the Management about reappointment of the petitioner as Principal. The Secretary to Government, who heard the matter, indicated that if the Managing Committee is reluctant, he will be forced to give a formal decision in the case after giving one more opportunity of hearing to both sides on 25th March, 1988. The learned counsel for the petitioner states that no such opportunity was given and that the Government passed the order dated 30-1-1989 without hearing. This, however, was disputed by the Government Pleader on the basis of the statement made in para.3 of the impugned order dated 30-1-1989 to the effect that both the parties were heard on 25-2-1988 and again on 30-4-1988. To verify whether, in fact, there was any hearing on 30-4-1988 or not, I wanted the learned Government Pleader to produce the record of the Government but unfortunately the said record was not made available on the date of hearing in the writ petition. Inasmuch as I am setting aside the impugned orders and remitting the matter back to the Management of the college, this question loses its importance and is merely academic. It may be mentioned that the first appellate authority i.e., the 4th respondent has not gone into the merits of the charges levelled against the petitioner and has not given any findings thereon. He set aside the order dated 5-6-1987 passed by the Management mainly on the ground that the reversion of the petitioner from the aided post of Principal to the unaided post of Junior Lecturer is not proper and the principles of natural justice have not been fully met and that the petitioner was not afforded a final opportunity to explain his

stand before inflicting the punishment of reduction in rank. On the other hand, the Government was of the view that the charges framed against the petitioner were proved and that he is guilty of misconduct and that the order reducing him to the rank of Junior Lecturer is justified. But I find no discussion whatsoever in the order of the Government also about the merits of the charges or any detailed consideration of the same.

13. Having regard to these facts, I think it just and proper to set aside all the orders passed by respondents 3, 4 and 6 and remit the matter back to respondents 2 and 3 for passing orders afresh in accordance with law after giving a show-cause-notice to the petitioner as contemplated by Rule 7(2) of the A.P. Private Institutions Employees (Disciplinary Control) Rules 1983 within two months from the date of receipt of this order. Till such orders are passed, the status quo as on today shall be continued. It is to be hoped that the Management of the college will consider the matter dispassionately and pass fair and equitable orders without being vindictive in any manner.

14. The learned counsel for the petitioner states that by virtue of the interim orders granted by this court, the petitioner has been paid the salary only from June, 1987 onwards and that he has to get salary from November, 1983 when he was placed under suspension as revised from time to time and he" seeks for a direction in that behalf. It will be open to the petitioner to make a representation in this behalf to the Commissioner of Collegiate Education through the Management of the college. On receipt of such a representation from the petitioner, the Commissioner will consider the same and pass appropriate orders thereon and direct payment of any amounts that may be legitimately due to the petitioner by way of salary and other allowances as per the rules applicable.

15. The writ petition is accordingly disposed of. Having regard to the facts, there will be no order as to costs.