

THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

WRIT PETITION (A.T). No. 34 of 2022

ORDER:-

1. This writ petition is filed to declare the proceedings dated 17.11.2017 in Rc.No.1181/B2/A3/2003 as illegal and arbitrary and consequently direct the respondents to reinstate the petitioner/applicant into service with all consequential benefits.
2. The factual matrix leading to the filing of the present writ petition is as follows:
3. One M.S. Nazeer Saheb, Attender, who is the husband of the petitioner died on 12.09.1997, while in Service. The petitioner was appointed as Attender and allotted to the office of the 3rd Respondent in the existing vacancy on compassionate grounds. The Collector, Ananthapur requested the 3rd Respondent/The Regional Joint Director of Intermediate Education, Kadapa, to issue posting orders to the petitioner duly verifying the original certificates of the individual regarding age, educational qualification and other antecedents. Thereafter, The Regional Joint Director Collegiate, Kadapa in turn reallocated the petitioner to Regional Joint Director of Intermediate Education, Kadapa, vide proceedings RC.No.587/A2/2002, dated 24.02.2003. Accordingly, the Regional Joint Director of Intermediate Education, Kadapa, appointed the petitioner as Attender and posted at

Government Junior College, Guntakal vide RC.No.1181/B2/2003, dated 20.03.2003.

4. The Principal, Government Junior College, Guntakal, Anantapur District, sent the certificates of the petitioner to the Superintendent of Police, Anantapur for verification of its genuineness. After due verification, the Superintendent of Police, Anantapur District, submitted his report stating that the information furnished by the petitioner that she has passed 5th Class in Municipal Elementary School, VI Ward, Guntakal is false. It is also stated that the verification disclosed that the petitioner has not studied in the above School and that she has produced a bogus record sheet No.8345, at the time of joining in her job, as such the certificate produced by the petitioner is fake.

5. In the light of the report of the Superintendent of Police, Anantapur, Regional Joint Director of Intermediate Education, Kadapa, suspended the petitioner from Service vide proceedings RC.No.1181/B2/A3/2003, dated 13.03.2006. In continuation of the same, Article of Charges was framed against the petitioner and had been served to her. In reply to the Article of Charges, she submitted her written explanation in which she pleaded that at the time of her appointment, she was innocent and did not know the fact that producing fake certificate was wrong. Further, she stated that due to unawareness only she has produced fake 5th Class Certificate to obtain the job. The petitioner submitted several representations to the respondents to prove her innocence, but no action was taken by the respondents.

6. Pursuant to the submission of the report by the Superintendent of Police, the 3rd Respondent herein, issued proceedings vide Rc.No.1181/B2/A3/2003, dated 13.03.2006, suspending the petitioner from services with effect from the date of service of suspension order. The 3rd Respondent also issued proceedings of Articles of Charges vide proceedings dated 23.03.2006 for which the petitioner submitted her representation dated 06.04.2006. Thereafter, nothing was happened for a period of five years. The learned counsel for the petitioner submits that after issuance of Articles of Charges dated 23.03.2006, no notice was issued to the petitioner either appointing the Enquiry Officer or any notice was issued for conducting any enquiry by the alleged Enquiry Officer. The petitioner submitted a letter dated 02.05.2011, to the 3rd Respondent herein, seeking for furnishing all relevant documents for submission of detailed explanation for the charges framed by the Respondents on 23.03.2006. Apart from so many requests in the meanwhile on submission of the same. But even after receipt of the said representation the Respondents did not choose to furnish the documents as requested by the petitioner.

7. While so, on 19.08.2011, the 3rd Respondent issued notice to the petitioner instructing to submit an explanation within ten days for proposing disciplinary action against the petitioner in pursuance of the enquiry report submitted by the Enquiry Officer dated 02.03.2011. The same was received by the petitioner on 30.08.2011 and again submitted a

letter dated 05.09.2011, requesting the 3rd Respondent for submission of enquiry report as well as other documents relied upon by the Enquiry Officer. Then, the 3rd Respondent also issued a notice dated 27.01.2011 (signed on 30.01.2012) proposing dismissal from service and instructed to submit an explanation within seven days from the date of receipt of the notice. The said notice was received by the petitioner on 03.02.2012. Finally, the 3rd Respondent issued proceedings dated 27.03.2012, dismissing the petitioner from her services. Even though, sufficient opportunity was given to the petitioner, she could not establish her case as well as not submitted any explanation for the notice dated 27.01.2011.

8. The said dismissal proceedings dated 27.03.2012 were under challenge in O.A.No.3255 of 2012 on the file of Hon'ble Andhra Pradesh Administrative Tribunal. After hearing both the parties the impugned proceedings dated 27.03.2012 were set aside by the Hon'ble Tribunal vide its Order dated 29.04.2016, extracted as under:

"Therefore, the impugned proceedings Rc.No.1181/B2/A3/2003, dated 27.03.2012 is liable to be set aside and is hereby set aside and the respondents are directed to serve the documents and enquiry report to the applicant by taking acknowledgment and pass appropriate orders after receiving the explanation from the applicant."

9. It is further case of the petitioner that in view of the orders of the Hon'ble Tribunal dated 29.04.2016, the 3rd Respondent herein served the enquiry report dated 02.03.2011 to the petitioner on 30.06.2017 and called for explanation. Pursuant to which the petitioner addressed letter dated

04.07.2017, again requesting the 3rd Respondent for furnishing documents apart from enquiry report and other documents as directed by the Hon'ble Tribunal. Without furnishing the documents as directed by the Hon'ble Tribunal, on 05.08.2016 and on 30.06.2017, the 3rd Respondent furnished only the enquiry report for which the petitioner addressed a letter dated 04.07.2017, wherein she specifically requested other documents that are statement of witnesses and for providing opportunity of cross-examination without furnishing the same, the 3rd Respondent insisted for submission of explanation. The 3rd Respondent without there being any explanation and without providing documents as directed by the Hon'ble Tribunal passed the impugned order dated 17.11.2017 reiterating that earlier dismissal order dated 27.03.2012 is holds good.

10. The learned counsel for the petitioner submits that the Tribunal specifically directed in its order while setting aside the impugned order that is order of dismissal from Service dated 27.03.2012, directed the Respondents to serve all the documents and enquiry report and to pass appropriate orders, after receiving explanation from the petitioner/applicant. But contrary to the directions of the Hon'ble Tribunal, the 3rd Respondent herein hastily without furnishing the documents except enquiry report and without there being any explanation from the petitioner reiterated the earlier orders dated 27.03.2012 holds good is illegal, arbitrary and contrary to the judgement of the Hon'ble Tribunal. She further submits that the record of 5th Class was submitted by the petitioner

to the respondents, on 20.04.1976, but the alleged enquiry was conducted by the police in the year 2004, after a gap of 28 years. More so, except stating the statement of the police, no written statement of headmaster regarding genuineness of the certificate either placed before the Tribunal or he was examined by the enquiry officer. In the absence of such enquiry, the mere statement of Police nearly after 28 years of the alleged report stating as bogus is also liable to be rejected.

11. The learned counsel for the petitioner further submits that as per the memo issued by the Government dated 28.03.2003 and view of the proceedings issued by the District Collector, Ananthapur District dated 07.07.2004, the compassionate appointment as attender can be given by reducing educational qualifications. Therefore the 5th Class certificate of the petitioner, either it is genuine or not is not the matter for concern for appointment of the petitioner as attender in view of the proceedings of the District Collector, Anantapur. However, the petitioner acquired qualifications of 7th Class as well as 10th Class and the same were submitted to the appointing authority/District Collector, Ananthapur for consideration and reinstating the petitioner into services.

12. She further submits that the impugned proceedings dated 17.11.2017 issued by the 3rd Respondent is contrary to the Rule 20 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (for short 'APCS (CCA) Rules') and were passed without any

explanation from the petitioner as directed by the Hon'ble Tribunal dated 29.04.2016. Moreover, the letter addressed by the petitioner dated 04.07.2017, wherein she requested for submission of documents and treating the same as explanation by the 3rd Respondent and passing the impugned order is nothing but illegal and colorable exercise on the part of the 3rd Respondent.

13. Finally, she contended that the Hon'ble Tribunal directed the Respondents to provide entire record and after submission of explanation by the petitioner, to pass appropriate orders afresh. But contrary to its directions, the 3rd Respondent without passing any orders, reiterating the earlier orders dated 27.03.2012 holds good, is nothing but an act done without application of mind and contrary to the orders of the Hon'ble Tribunal and the same are liable to be set aside. The impugned orders of dismissal from service dated 17.11.2017 were challenged by the petitioner vide O.A.No.2175 of 2018 on the file of Andhra Pradesh Appellate Tribunal, the said Original Application was renumbered as present Writ Petition No.34 of 2022, pending further orders.

14. The learned Government Pleader for Respondents filed counter in O.A.No.2175 of 2018 and now in this Writ Petition filed memo dated 28.03.2023, praying to treat the material papers filed herewith as part and parcel of the present writ petition.

15. The learned Government Pleader filed counter before the Hon'ble Tribunal on 30.11.2018, wherein it is stated that during the process of verification, the Head Master and the staff of the school were also enquired and proved the certificate produced by the petitioner was a fake document, not issued by the school authorities. It is also stated that she has admitted in her statement that the certificate produced by her was a fake one. It is further stated that the District Vocational Education Officer (for short 'DVEO'), Ananthapur was directed vide RJDIE's Lr.Rc.No.1181/B2/A3/2003 dated 23.02.2011 to conduct an enquiry on the charges framed against her and on the representation submitted by the petitioner/applicant on the charges, after considering the explanation only enquiry report was submitted.

16. It is further stated that the DVEO, Ananthapur conducted an enquiry in the college itself, the petitioner was present and submitted the report to the 3rd Respondent/Regional Joint Director of Intermediate Education, Kadapa vide Rc.No.A/5/2011-12, dated 04.08.2011, stating that during the enquiry she told that for the survival and livelihood of her family, as she is unaware of the Rule position and penalties to be imposed she had produced the fake certificate. Further the DVEO stated that under the circumstances explained in the case before him, the charges leveled against the petitioner were proved and the enquiry report was communicated to the petitioner vide Lr.Rc.No.2734/A3/2011, dated 19.08.2011, by speed post. The same was served to her and received by her on 30.08.2011. However, there was

no reply from the petitioner herein. Later vide Rc.No.1181/B2/A3/2011, dated 27.01.2012, the petitioner was again served notice to submit her written explanation within seven days failing which, action will be initiated. Since there is no explanation, orders were issued in RJDIE's proceedings Rc.No.1181/B2/A3/2003, dated 27.03.2012, dismissing the petitioner herein from Services as per the Rules.

17. The learned Government Pleader for Services III submits that the petitioner herein got appointment by submitting fake certificates. The same was admitted by herself while submitting representation/mercy petition nil dated to the 3rd Respondent. He further submits that as per Rule 23 of the APCS (CCA) Rules, the petitioner was provided alternative remedy by way of statutory appeal before the Commissioner of Intermediate Education against the orders passed by the 3rd Respondent herein. Therefore, in view of the statutory alternative remedy the present Writ Petition is also liable to be rejected.

18. Heard the submissions made by the learned counsel for the petitioner and learned Government Pleader for the respondents and perused the material available on record.

19. The fact remains that the 3rd Respondent did not furnish any other documents except enquiry report dated 23.11.2011 on 05.08.2016 and again on 30.06.2017. The impugned order dated 17.11.2017 issued by the 3rd Respondent reiterating the earlier orders dated 27.03.2012 by observing

as holds good, is contrary to the directions of the Hon'ble Tribunal dated 29.04.2016 as stated supra. It is settled principle of Service law jurisprudence that once the Tribunal or Courts directed the authority to do a particular thing by following a particular procedure, the authority should adhere to that procedure and cannot traverse beyond that or rescind procedure as directed. Therefore, the present impugned order is contrary to the directions of the Hon'ble Tribunal. More so the impugned proceedings were issued without application of mind and contrary to the directions of the Hon'ble Tribunal and the same were issued without there being any explanation from the petitioner and by treating a letter of the petitioner requesting to furnish documents, as explanation is erroneous and colourable exercise of power on the part of the 3rd Respondent.

20. The contention of the learned counsel for the petitioner that as per the proceedings of the District Collector, Ananthapur dated 07.07.2004 and pursuant to the Circular/Memo dated 28.03.2023, an exemption can be granted for appointment to the post of Attender under compassionate grounds. Therefore the alleged fake certificate of the petitioner may not be looked into, since an express exemption was granted by the District Collector/competent authority for appointment of the petitioner under compassionate grounds, is to be considered. The other contention of the petitioner, later she acquired qualification of 7th class as well as 10th class pending enquiry and the same were submitted for consideration for continuation of the service of the petitioner, also to be considered, in view

of the initial appointment of the petitioner as Attender under compassionate grounds.

21. As far as the contention of the learned Government Pleader that the petitioner is available with statutory alternative remedy by way of an appeal to the 2nd Respondent herein is not the bar to enforce the jurisdiction of the Hon'ble Tribunal. Since earlier the Hon'ble Tribunal set aside the impugned orders therein dated 27.03.2004 and again the same was reiterated by way of present impugned orders dated 17.11.2017. In these circumstances, petitioner cannot be driven for alternative remedy for testing whether the 3rd Respondent issued impugned proceedings as directed by the Hon'ble Tribunal dated 29.04.2016 or not. Therefore, the contention of the learned Government Pleader is not acceptable and held rejected.

22. The other contention of the learned Government Pleader that the petitioner submitted a representation/Mercy petition, nil dated admitting the submission of fake documents, is also not acceptable, in view of the fact that the District Collector issued proceedings that no qualification is pre-requisite, the appointment as attender/sub staff under compassionate grounds.

23. Having regard to the reasons stated above and on perusal of the material it is quietus, the 3rd Respondent herein not followed the Rule 20 of APCS (CCA) Rules, 1991, while conducting enquiry and also not followed the directions of the Hon'ble Tribunal dated 29.04.2016, while issuing

impugned proceedings dated 17.11.2017, as such the present impugned proceedings are liable to be set aside.

24. In view of the foregoing discussion the present writ petition is allowed with the following directions:

- i. The impugned proceedings dated 17.11.2017 in Rc.No.1181/B2/A3/2003 are declared as illegal and arbitrary.
- ii. The impugned proceedings dated 17.11.2017 in Rc.No.1181/B2/A3/2003 are hereby set aside
- iii. The Respondents are directed to reinstate the petitioner into service with all consequential benefits as entitled by the petitioner, in accordance with law.

JUSTICE VENKATESWARLU NIMMAGADDA

Date : 04.08.2023
SSN

257

THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA**WRIT PETITION (A.T). No. 34 of 2022**

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