

HON'BLE Dr. JUSTICE K. MANMADHA RAO

WRIT PETITION No.20105 of 2021

ORDER:-

This Writ Petition is filed under Article 226 of the Constitution of India, seeking the following relief:

.....to issue any writ order or direction more particularly one in the nature of writ of Mandamus declaring proceedings issued by the 3rd respondent in R C No 374/A3/2021 dated 06.06.2021 penalty imposed by withholding of 2 two annual grade increments with cumulative effect against the petitioner is as illegal, ultravirus to the Mandates of the constitution and against law and consequently direct the respondent No 3 to set aside the proceedings issued in R C No 374/A3/2021 dated 06.06.2021 and pass such other orders.”

2. Heard Mr. Ineni Venkata Prasad, learned counsel for petitioner and learned Government Pleader for Services-III appearing for the respondents.

3. The brief facts of the case are that the petitioner has applied for transfer as per G.O.Ms.No.54, School Education (Ser.II) Department, dated 12.10.2020 as he is entitled under Rule 7 to avail spouse points as per the Government Orders and he is permitted to opt any place in the District as both the spouses are under compulsory transfer and for that reason the petitioner has exercised option with genuine intention opting 21 schools. It is further stated that in obedience to the guidelines issued by the Government Orders, he applied for transfer in October 2020 and exercised 21 options and on 23.12.2020 the petitioner was transferred to Government High School, Loddipalli village of Kurnool District and he joined the High School. It is stated that as

per Law, the petitioner was applied the transfer application and was transferred from Koilakuntla Government High School to 5th respondent's school on 14.01.2021 as per orders of the 3rd respondent. Immediately after his joining, without any notice, he was suspended on the allegation that he misused and utilized the spouse points in teachers' transfers-2020. Accordingly, the petitioner filed WP No.3374 of 2021 before this Court and the same was closed as the respondent represented that he revoked the suspension orders. It is mainly stated that after issuance of suspension orders, the 3rd respondent issued impugned proceedings vide Rc.No.374/A3/2021, dated 06.06.2021 imposing penalty of two increments with cumulative effect. Questioning the same, the present writ petition has been filed.

4. Learned counsel for the petitioner contended that this Court passed an order dated 17.02.2021 in W.P.No. 3374 of 2021, which reads as follows:

“At the stage of arguments, learned Government Pleader for Services-III appearing for the respondents submitted that the suspension of this petitioner was already revoked by District Education Officer vide Lr.Rc.No.374/A3/2021, dated 15.02.2021.

Therefore, no further adjudication is necessary in this matter and consequently the writ petition is liable to be closed.

In the result, the writ petition is closed. No costs.”

5. Learned counsel for the petitioner contended that the respondents without conducting elaborate enquiry and decided that the petitioner is found guilty and mechanically passed the impugned order against the petitioner, which is not in accordance

with law and requested to remand the matter to the respondents for conducting elaborate enquiry and final report.

6. Learned Standing Counsel for the respondents would contend that the 3rd respondent has issued suspension order dated 18.01.2021 in Rc.No.374/A3/2021 and the same was revoked by the 3rd respondent on 15.02.2021. During pendency of the writ petition No.3374 of 2021, the 3rd respondent issued the impugned proceedings dated 06.06.2021. He further contended that he has no objection to remand back the matter to the 3rd respondent for fresh consideration.

7. In view of a close scrutiny of the impugned order shows, as rightly argued by learned counsel for petitioner, after noting in detail the allegations, the 3rd respondent issued suspension proceedings, without conducting any enquiry.

8. Therefore, it is needless to emphasize the order is devoid of reasons and bereft of following the principles of natural justice. In similar circumstances, a learned Single Judge of High Court of Andhra Pradesh at Hyderabad, having found that no opportunity of hearing was afforded to the petitioner therein and his explanation was not considered by the authority, set aside the impugned order of termination of the petitioner therein from the service and directed the concerned authority to pass appropriate order after affording a personal hearing to the petitioner. The said order squarely applies to the facts of the case on hand.

9. No doubt, it is argued by learned Standing Counsel for respondents that an appeal provision is provided in the concerned rules and thereby the writ is not maintainable. I am not convinced with this argument for the reason, in the instant case there is a discernible violation of principles of natural justice as noted supra.

10. Though admittedly the petitioner submitted his written explanation, the same was not considered and no personal hearing was also granted to the petitioner at the time of enquiry. Therefore, the writ petition is maintainable.

11. In ***Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others***¹ regarding maintainability of writ petition in the context of availability of alternative and efficacious remedy, the Apex Court held thus:

14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of Habeas Corpus, Mandamus, prohibition, Qua Warranto and Certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this court not to operate as a bar in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged (emphasis supplied).

The instant case falls in one of the exceptions carved out by the Apex Court, the principles of natural justice is a casualty here.

¹ AIR 1999 SC 22 = MANU/SC/0664/1998

12. Having regard to the facts and circumstances of the case and submissions of the both the counsel, the impugned proceedings in Rc.No.374/A3/2021, dated 06.06.2021 passed by the respondents against the petitioner is hereby set aside and the matter is remanded to the 3rd respondent to conduct elaborate enquiry in accordance with law, within a period of eight (08) weeks from the date of receipt of a copy of this order.

13. Accordingly, the writ petition is disposed of. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand dismissed.

Dr. JUSTICE K. MANMADHA RAO

Date: 12.07.2022.

Gvl

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