

M. Vimala Vs. Director of School Education and ors.

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Court : Andhra Pradesh

Decided On : Jul-24-2008

Reported in : 2008(5)ALD670

Judge : L. Narasimha Reddy, J.

Acts : Andhra Pradesh Education Act, 1982 - Sections 79 and 83; Andhra Pradesh Education Rules - Rule 5

Appeal No. : W.P. No. 9325 of 2007

Appellant : M. Vimala

Respondent : Director of School Education and ors.

Advocate for Def. : Government Pleader for Respondent Nos. 1 and 3 and; B. Vijayasen Reddy, Adv. for Respondent No. 2

Advocate for Pet/Ap. : D.V. Seetharam Murthy, Adv. for; P. Pankaj Reddy, Adv.

Disposition : Petition allowed

Judgement :

ORDER

L. Narasimha Reddy, J.

1. The petitioner was appointed as a teacher on ad hoc basis in Bharatiya Vidya Bhavan's Public School, Jubilee Hills, Hyderabad, 2nd respondent herein, on 22.6.2003. With short breaks, she was issued orders of reappointment in 2004 and 2005 and was being paid salary on consolidated basis. The 2nd respondent issued orders, dated 25.1.2006, placing the petitioner under probation, for a period of one year, with effect from 1.1.2006, in the pay scale of Rs. 4,500-125-7,000/-. It was also mentioned that the probation would be initially till 31.12.2006 and shall not be effective thereafter, unless any fresh order is issued extending the probation. Some correspondence ensued between the petitioner and the 2nd respondent as to the genuinity of the certificates of qualifications submitted by her. Through an order, dated 7.3.2007, the 2nd respondent informed the petitioner that she is allowed to continue as Primary Grade Teacher upto the end of the academic year 2006-07, meaning thereby that her services are not required thereafter. The petitioner challenges the same, as being illegal, arbitrary and violative of principles of natural justice and Sections 79 and 83 of the A.P. Education Act, 1982 (for short 'the Act').

2. It is contended that with the expiry of one year from 1.1.2006, the probation of the petitioner concluded and thereby, she became the regular member of service in the 2nd respondent-institution. It is also pleaded that the impugned order is not preceded by an order of approval by the competent authority under the Act and the Rules made thereunder.

3. The respondents filed a counter-affidavit, opposing the claim of the petitioner. It is stated that even while the petitioner was under probation, it emerged that the University, from which the petitioner is said to have acquired the qualification, was not recognized by the U.G.C., and though the petitioner made a request through her representation with a prayer to extend the probation, the institution expressed its inability to do so, on account of the fact that the petitioner did not hold the requisite qualifications. It is pleaded that the prior permission under Sections 79 and 83 of the Act was not necessary, since the petitioner was not a regular employee.

4. Sri D.V. Seetharam Murthy, learned Counsel appearing for the petitioner submits that with the expiry of one year, from the date of commencement of probation, the petitioner became a regular employee and her services could have been terminated, only by following the procedure prescribed under law. He contends that neither any domestic enquiry was conducted nor any show-cause notice was issued to the petitioner, before her services were dispensed with. Learned Counsel further submits that the permission under Sections 79 and 83 of the Act is mandatory, irrespective of the nature of appointment.

5. Sri B. Vijaysen Reddy, learned Counsel for the respondents submits that the 2nd respondent-institution has its own set of Rules and it is clearly mentioned therein that if any specific order declaring successful completion of probation is not issued, the appointment itself would come to an end. He contends that when the appointment has ceased by operation of law, the question of obtaining permission from the competent authority does not arise.

Both the learned Counsel have relied upon precedents in support of their contentions.

6. The petitioner, who was initially appointed on ad hoc basis for a period of one year, was placed under probation, vide orders, dated 25.1.2006. The period of one year expired on 31.12.2006. Neither any order of confirmation of appointment nor the one extending the probation was given to the petitioner. In *High Court of M.P. and Ors. v. Satya Narayan Jhavar* : AIR 2001 SC3234 , the Supreme Court explained the various consequences, that flow, on expiry of the period of probation, depending on the text of the applicable provisions of law. It was pointed out that if the Rules so warrant, mere expiry of the period of probation does not make the employee, a full member of service, unless a specific order of confirmation is passed. It is also pointed out that if the requirement is not so categorical, successful completion of probation may confer regular status on an employee. The Service Rules framed by the 2nd respondent-institution are a bit equivocal in this regard. Rule 5(a) thereof reads as under:

5(a) Ordinarily, appointments shall be made on probation for one year, which may be extended by one year or beyond, by the Kendra. If the probationary period is

not so extended it will be deemed to have ceased on the last working day of the probationary period.

7. Taking clue from the said proviso, it may be interpreted as directing that mere completion of probation does not confer any regular status on the employee and it is necessary that a specific order of appointment must be issued on such completion. If such a view is taken, the petitioner cannot be said to have become a full member and thereby, the 2nd respondent cannot be compelled to follow the regular procedure, before the petitioner is terminated, such as, holding domestic enquiry. This, however, does not resolve the controversy.

8. Section 79 of the Act mandates that no employee in a private educational institution shall be removed or dismissed, except by conducting an enquiry and after obtaining the prior approval of the competent authority. Section 83 of the Act deals with the case of retrenchment. Here again, the prior approval of the competent authority is mandatory. In *Vasavi College of Engineering v. A. Suryanarayana* : 1991(3)ALT335 , a Division Bench of this Court took the view that prior approval of the competent authority is necessary for removal of regular or temporary employee. Even assuming that the petitioner did not become a regular employee, she deserves to be treated as a temporary employee. Though the proposed cessation of service is not on the basis of any disciplinary proceedings, it can be treated as the one under Section 83 of the Act. If the 2nd respondent wanted to remove the petitioner from service, on the ground that she does not hold the requisite qualification, he ought to have put her on notice. Even if the 2nd respondent has nothing objectionable against the petitioner, warranting issuance of notice or conducting of domestic enquiry, the approval of the competent authority was necessary under Section 83 of the Act.

9. On this short ground, the writ petition is allowed and the impugned order, dated 7.3.2007, is set aside. It is left open to the 2nd respondent to follow the procedure prescribed by law, before the appointment of the petitioner is discontinued. There shall be no order as to costs.