

THE RT. REV. B.P. SUGANDHAR

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v.

SAT. D. DOROTHY DAYASHEELA EBENESER

APRIL 12, 1986

[S.C. AGRAWAL AND G.T. NANAVATI, JJ.]

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Constitution of India, 1950 : Article 226.

Departmental enquiry—Constitution of Enquiry Commission—Challenged by suspended employee—Meanwhile decision taken to hold regular enquiry and to appoint Enquiry Officer—Held : It was futile to quash constitution of Enquiry Commission.

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Service Law :

Suspension of employee pending departmental enquiry into financial irregularities—High Court directed management to restore employee to previous post—Held : In the circumstances of the case, viz administrative & financial irregularities, and disobedience the part of or employee, High Court's direction not proper—Management directed to go on paying full salary till enquiry was over.

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The appellant, Chairman of the Executive Committee of the Technical Institute, appointed an Enquiry Commission to enquire into the acts of commissions and omissions of the respondent- Principal. She was also suspended. A copy of the terms of reference of the Enquiry Commission was served on the respondent. After the Enquiry Commission found that there was sufficient material in support of the charges, the appellant issued a notice to the respondent to show cause why she should not be dismissed from service. Thereupon, she filed a writ petition in the High Court challenging her suspension and the appointment of the Enquiry Commission. The appellant state that the Enquiry Commission was only a fact-finding body and that an Enquiry Officer would be appointed to hold an enquiry and that a detailed charge-sheet would be issued on the report of the Enquiry Commission. In view of this statement a Single Judge of the High Court dismissed the petition as premature. Her writ appeal was allowed by a Division Bench on the ground that the terms of reference made to the Enquiry Commission were vague and general and that there

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A was 'element of *mala fides*' on the part of the appellant in initiating the said proceedings and that the order of suspension having come to an end the respondent was entitled to be restored as Principal. Aggrieved by that order the appellant had filed this appeal.

B Allowing the appeal, this Court

C HELD : 1.1. The Division Bench of the High Court should not have quashed the preliminary enquiry particularly when the appellant had made it clear, by the time the Division Bench disposed of the appeal, that the formal enquiry was yet to be held. The purpose of constituting the Commission of Enquiry was to hold only a preliminary enquiry to ascertain whether there was some truth in the complaints made against the respondent and whether there was enough material on the basis of which misconduct of respondent could be proved. The Division Bench failed to appreciate that at that stage no formal charge was required to be framed nor even participation by the respondent was necessary. The Executive Committee had only broadly indicated to the Commission of Enquiry the nature and scope of enquiry which they had to make and a copy of the terms of reference was served upon the respondent only enable her to put forward her explanation so that also could be considered along with the report of the Commission of Enquiry before taking a decision as to whether a full-fledged regular enquiry was required to be made against her. There was hardly any role for the court to play at that stage. [251-B-D]

F 1.2. The Single Judge had rightly dismissed that writ petition as premature and it was not proper for the Division Bench to set aside that order and quash the constitution of the Commission of Enquiry and holding of a preliminary enquiry. It should have been appreciated that it was futile to pass such an order as the Executive Committee had already taken a decision by the fine to hold a regular full-fledged enquiry and appointed an Enquiry Officer for that purpose. [251-E-F]

G 2. The charges levelled against the respondent are quite serious. They pertain not only to administrative irregularities but also to financial irregularities and disobedience. In such circumstances, the direction of the High Court for restoration of the respondent on the post of Principal is set aside. The appellant is directed to go on paying the full salary and allowances to her till the enquiry is over. [252-D-E]

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M. Chandrasekhara Rao v. Shri Sarvodaya College, (1988) 1 ALT 651 A
and *Dr. Philomena v. Government of Andhra Pradesh, (1994) 2 ALT 665,*
approved.

CIVIL APPELLATE JURISDICTION : Civil Appeal No.7137 of
1996.

From the Judgment and Order dated 1.2.96 of the Andhra Pradesh
High Court in W.A. No. 1746 of 1995.

Soli J. Sorabjee, A.T.M. Sampath and V. Balaji for the Appellant.

Rajeev Kumar Singh for the Respondent.

The following Order of the Court was delivered by

NANAVATI, J. Leave granted.

The Diocese of Medak is running an institution known as CSI EVA MAIR Technical Institute at Secunderabad. The appellant is the Chairman of the Diocesan Executive Committee and respondent No. 1 is the Principal of the said technical institute. On the basis of the report made by the Socio Economic Board concerned with administration of the institutions within the Diocese of Medak, the Executive Committee resolved on 12.6.95 to appoint an Commission to enquire into the acts of commissions and omissions of Respondent No. 1. It also resolved to suspend Respondent No. 1. Pursuant to that resolution the appellant by an order dated June 12, 1995 suspended Respondent No. 1 pending the enquiry and by letter of the same date a Commission of Enquiry was constituted. The terms of reference were as under :

1. Wilful insubordination and non-cooperation
2. Leaving headquarter without prior permission or intimation.
3. Unauthorised appointment of staff
4. Admissions
5. Purchases of furniture and equipment.
6. Addressing letters against the Bishop and Diocesan Administra-

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7. Using derogatory remarks against the Bishop and Diocesan Administration; and

8. Entire functioning of the Institution.

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The Commission of Enquiry submitted its report on 21.9.1995. The Enquiry Commission found that there was sufficient material in support of the charges made against Respondent No. 1. Therefore, on 5.11.1995 the Diocesan Executive Committee issued a notice to Respondent No. 1 calling upon her to show cause why she should not be dismissed from service.

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Thereupon, Respondent No. 1 filed a writ petition in the Andhra Pradesh High Court challenging the order of her suspension and also the action of the appellant constituting an Enquiry Commission. In the Counter filed by the appellant it was stated that the Enquiry Commission was only a fact-finding body, that an Enquiry Officer will be appointed to hold an

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enquiry and that a detailed charge-sheet will be issue on the report of the Enquiry Commission. In view of this statement learned Single Judge of the High Court, on 13.11.1995, dismissed the petition as premature. The first

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respondent, therefore, filed Writ Appeal No. 1746 of 1995 before a Division Bench of that Court. Meanwhile, as Respondent No. 1 did not give any satisfactory explanation with respondent to the allegations made against her the appellant appointed an Enquiry Officer on 29.12.1995. The Division, on 1.2.1996, allowed the appeal as it was of the view that the terms of reference made to the Enquiry Commission were vague and general and that there was an 'element of *mala fides*' on the part of the appellant in initiating the said proceedings and that the order of suspension dated

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12.6.1995 having come to an end on 12.10.1995 Respondent No. 1 was entitled to be restored as Principal. Aggrieved by that order the appellant has filed this appeal.

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What is contended by Mr. Soli J. Sorabjee, learned Senior Counsel for the appellant is that the Division Bench of the High Court completely misdirected itself as regards the correct legal position and, therefore, erred in quashing the action of the appellant in constituting a Commission of Enquiry and also the order of suspension. It was also contended that the Division Bench committed an error in directing the appellant to permit Respondnet No. 1 to assume charge as Principal. It was submitted that in

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view of the nature of the allegations made against her and in view of the

subsequent conduct in delaying the proceedings the order of suspension should not have been quashed. A

We find it difficult to appreciate how the Division Bench thought it fit to quash the preliminary enquiry particularly when the appellant had made it Clear, by the time the Division Bench disposed of the appeal, that the formal enquiry was yet to be held. Obviously, the purpose of constituting the Commission of Enquiry was to hold only a preliminary enquiry to ascertain whether there was some truth in the complaints made against Respondent No. 1 and whether there was enough material on the basis of which misconduct of Respondent No. 1 could be proved. The learned Judges failed to appreciate that at that stage no formal charge was required to be framed nor even participation by Respondent No 1 was necessary. The Executive Committee had only broadly indicated to the Commission of Enquiry the nature and scope of enquiry which they had to make and a copy of the terms of reference was served upon Respondent No. 1 only to enable her to put forward her explanation so that also could be considered along with the report of the Commission of Enquiry before taking a decision as to whether a full-fledged regular enquiry was required to be made against her. There was hardly any role for the court to play at that stage. The learned Single Judge had rightly dismissed the writ petition as premature and it was not proper for the Division Bench to set aside that order and quash the constitution of the Commission of Enquiry and holding of a preliminary enquiry. It should have been appreciated that it was futile to pass such an order as the Executive Committee had already taken a decision by that time to hold a regular full-fledged enquiry and appointed an Enquiry Officer for that purpose. B C D E

It was next contended by learned counsel for the appellant that in view of the two decisions of the same High Court in *M. Chandrasekhara Rao v. Shri Sarvodaya College*, (1988) 1 ALT 651 and *Dr. Philomena v. Government of Andhra Pradesh*, (1994) 2 ALT 665 the Division Bench should not have directed the appellant, by issuing a writ of Mandamus, "to arrange for the petitioner to assume charge as Principal", in view of the serious irregularities found to have been committed by her. In *M. Chandrasekhara Rao's* case (supra) the High court after considering the effect of Section 79(3) of the A.P. Education Act has held that in a case where there are grave charges of misconduct, whatever may be the reason for not completing the enquiry within the prescribed time, the interest of F G H

- A the institution and the employee would be best served if a direction is given to the management to continue to pay to the employee the salary and allowances of the post held by him instead of directing reinstatement/restoration of the employee into the service. The said view was reiterated by a Division Bench of the High Court in *Dr. Philomena's* case (supra) and it has been observed therein that though Section 79(3) is mandatory and on the expiry of the specified period the employee would be entitled to be restored to the same position and status as he or she occupied as on the date of the order of suspension, but such restoration cannot be automatic in all circumstances and court may in view of the peculiar facts and circumstances of the case, instead of directing restoration or reinstatement,
- B strike an equi-balance between the right of the employee vis-a-vis the right of the institution/society and the discipline among the co-employees. Unfortunately, the High Court did not consider this aspect and has ordered restoration of Respondent No. 1 on the post of the Principal. From the material on record we find that the charges levelled against Respondent No.
- C 1 quite serious. They pertain not only to administrative irregularities but also financial irregularities and disobedience. In view of the peculiar facts and circumstances of the case we think it just and proper to set aside the direction for restoration of Respondent No. 1 on the post of Principal and instead direct the appellant to go on paying the full salary and allowances to her till the enquiry is over. We also direct the appellant to conclude the enquiry within four months from today. Respondent No. 1 shall also cooperate with the enquiry in order to see that it is completed within the time fixed by us. This appeal is allowed accordingly, No order as to costs.
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V.S.S.

Appeal allowed.