

THE HON'BLE SRI JUSTICE G. CHANDRAIAH

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AND

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THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

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WRIT PETITION No. 5899 of 2006

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ORDER: (per Hon'ble Sri Justice G. Chandraiah)

This writ petition is filed against the order dated 04.01.2006 in O.A.No.54 of 2006 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad.

2. The petitioner herein is the 1st respondent and the 1st respondent herein is the applicant in the O.A. The O.A. was filed by the applicant questioning G.O.Rt.No.581, M.A.(E2), dated 27.04.2005. The said G.O. relates to the initiation of disciplinary proceedings against the applicant. The case of the applicant is that he is working as Town Planning Building Overseer in Visakhapatnam and was transferred to Kakinada Municipality on 25.03.2003 and he worked in Kakinada Municipality and in Ward No.7 from 25.03.2003 to December, 2004 and later he was transferred to Gajuwaka Municipality, after the transfer of the applicant certain allegations were made against the employees of Kakinada Municipality in Ward No.7 in respect of sanction of building plan and the constructions made and hence the impugned G.O.Rt.No.581 dated 27.04.2005 came to be issued to the applicant. One of the contentions that was raised by the applicant before the Tribunal was that, as the 1st respondent in the O.A. is the appellate authority and the 2nd respondent in the O.A. is the appointing authority, as per Rule 5 of the A.P. Town Planning Subordinate Services Rules, the appellate authority cannot exercise the powers of a Disciplinary authority, and therefore, the right of appeal of the applicant cannot be

taken away by the appellate authority. The said proposition is laid down by the Supreme Court in **Surjit Ghosh v. Chairman and Managing Director, United Commercial Bank & Ors**^[1], which was followed by this Court in W.P.No.672 of 2004. Having regard to the contentions raised by the applicant, the Tribunal while keeping the O.A. pending, passed the impugned order, the operative portion of which reads as under:

“In view of the above rule position, the submissions of the learned counsel for the applicant is that the ultimate appellate authority has exercised the powers in passing the impugned orders herein vide GO.Rt.No.581 M.A. (E2) dt.27.4.2005 and the learned counsel for the applicant relied upon the judgment in the case of Surjit Ghosh vs. Chairman and Managing Director, United Commercial Bank reported in AIR 1995 SC 1053 wherein it has been held that exercise of powers by authority higher than disciplinary authority are discriminatory and the said orders were set aside therein.

The same law as laid down by the Hon’ble Apex Court was followed by the Hon’ble High Court in W.P.No.672/2004 dt.4.3.2005.

As the impugned orders are in violation of the law laid down by the Hon’ble Apex Court as stated above and as followed by the Hon’ble High Court, the impugned orders herein are suspended, pending further orders in this O.A.”

3. On a perusal of the impugned order, it is evident that the order is interim in nature and the O.A. is still pending on the file of the Tribunal. This Court, on 27.03.2006, while admitting the writ petition, granted interim suspension of the orders of the Tribunal.

4. In view of the fact that the impugned order passed by the Tribunal is interim in nature, and as the O.A is still pending on the file of the Tribunal, instead of adjudicating this writ petition on merits, we deem it just and proper to dispose of this writ petition with a direction to the Tribunal to dispose the O.A. itself as expeditiously as possible.

5. Accordingly, the writ petition is disposed of with a direction to the Tribunal to dispose the O.A., as expeditiously as possible, preferably within two months from the date of receipt of a copy of this order, after affording due opportunity to both the parties. Till such time the O.A. is disposed of by the Tribunal, the interim orders passed by this Court on 27.03.2006 shall sustain. No costs. Miscellaneous petitions, if any pending, shall stand closed.

G. CHANDRAIAH, J

U. DURGA PRASAD RAO, J

16th November, 2015

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THE HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

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