

**IN THE HIGH COURT OF JUDICATURE, AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA
PRADESH**

-
W.P.No.372 OF 2003

Between:

T.Venkateswara Rao

....Petitioner

A n d

The District and Sessions Judge,
Visakhapatnam
and others

....Respondents

DATE OF JUDGMENT PRONOUNCED: 06.08.2015

SUBMITTED FOR APPROVAL:

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE S.V. BHATT**

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| 1. | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals? | Yes/No |
| 3. | Whether their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE S.V. BHATT**

W.P.No.372 OF 2003

ORDER: *(Per the Hon'ble Sri Justice S.V.Bhatt)*

Heard learned counsel for the parties.

The petitioner prays for Mandamus declaring the impugned orders in ROC.No.128/2001, C II/1 Dated 29.10.2002 passed by the 2nd respondent confirming the order in P.R.No.149-A/2000 dated 02.07.2001 passed by the 1st respondent and also the order passed by the 4th respondent in ZO(V)/DP/F.38/3522 dated 23.09.2002 modifying the punishment from dismissal to discharge from service of the order passed by the 3rd respondent in L.R.No.R.I/GR. I)2813 dated 20.07.2000, as illegal, arbitrary, capricious and shockingly disproportionate and set aside the said impugned orders and consequently to direct the respondents to reinstate the petitioner either into service either in the judicial department of respondents 1 and 2 or in the alternative in the bank of respondent No.3 with all attendant benefits, continuity of service etc.

The petitioner, through order dated 30.12.1989, was appointed as Attender by the 1st respondent. The petitioner was posted in the Special Court for CBI Cases, Visakhapatnam.

On 03.09.1998, the petitioner submitted his resignation as Attender in the Special Court for CBI Cases. The resignation letter was forwarded to the 1st respondent vide letter dated 13.05.1999 and along with the resignation dated 03.09.1998, it was brought to the notice of 1st respondent that the petitioner was appointed on

1/3rd scale wages as Sweeper-cum-Peon and 3/4th scale in two spells by the State Bank of India. The working as Attender-cum-Sweeper amounts to performing dual employment. The

1st respondent on 30.04.1999 issued show cause notice to the petitioner. In the mean time, the petitioner attempted to withdraw the resignation dated 03.09.1998. The 1st respondent, having decided to proceed further against the show cause notice, conducted preliminary enquiry and framed charges against the petitioner. In the enquiry

report, charges were held proved against the petitioner. The relevant portion reads as under:

“The contention of the charged employee is that the enquiring authority has recommended punishment and it is prerogative of the disciplinary authority is not correct. As per Government Orders issued from time to time the enquiring authority has right to mention or to recommend the punishment in the report of the enquiry but it does not bind the disciplinary authority to accept the recommendations made by the inquiring authority. It is for the disciplinary authority to take a decision about the punishment to be imposed, basing on the magnitude of the charges and other relevant factors. For the foregoing reasons, I have no hesitation to hold that the charges framed against the charged employee are proved and to accept the report of the enquiry officer in toto, as there is germane material on record.

PUNISHMENT:

The charged employee knowing fully well that he is employed in Judicial Department he himself undertook another employment in State Bank of Hyderabad and received salaries from both departments and suppressed the material facts before the authorities. The charged employee having fully conscious that dual employment is against rules, pleads his ignorance and innocence. These contentions cannot be accepted. If the Government Employees of such conduct were to be let off with a minor penalty the impact would seriously subvert the discipline amongst other employees in the administration. The other employees working in the department may thin that the double employment is not a serious misconduct and nothing would happen to them also. I, therefore, impose the penalty of compulsory retirement with immediate effect for the grave misconduct displayed by him. He is not eligible to treat the period of absence from 3.9.98 to duty in view of resignation and withdrawal. He is not eligible for any salary during his absence period. The said absence shall not count for pension.”

The petitioner filed appeal and the 2nd respondent after considering the grounds of appeal and the findings of fact recorded on

admitted circumstances, held as follows:

“There can be no gainsaying that the stand taken by the appellant is not proper, but on account of the circumstances that compelled him to do the same, which in the High Court’s considered view, is a mitigating factor. Perhaps, that is the reason why the learned District Judge has taken a lenient view in awarding the punishment of compulsory retirement. On facts and circumstances of the case, it is clear case and therefore, the facts do not warrant any interference. On humanitarian considerations and in as much as the lost jobs in both the departments, which requires a lenient view, which might have weighed ultimately with the learned District Judge in awarding the punishment of compulsory retirement instead of dismissal from service. This may not be a bar for repayment in future. The High Court is of the view that there is no substance the appeal and the appeal deserves for be dismissed.”

Hence, the petition.

The learned counsel appearing for the petitioner has admitted that with the modification of punishment by the 2nd respondent, the petitioner is not prevented from taking up employment, but on account of the removal order passed by the 1st respondent, the petitioner lost employment opportunity in the State Bank of Hyderabad as well and requests for reinstatement with back wages.

We have taken note of the submissions and carefully examined the record with the assistance of learned counsel.

We are of the view that no exception to the findings of fact recorded by the 1st and 2nd respondents could be taken by the petitioner. The punishment imposed by the 1st respondent and 2nd respondents is one of compulsory retirement and the same is confirmed by the High Court. Likewise, the 4th respondent/Bank has modified the punishment from dismissal to discharge from service. The 2nd respondent as appellate authority has exercised its discretion rightly

while disposing of the appeal. We do not see any illegality or irregularity in the orders impugned in the writ petition. This Court, on the ground that the petitioner lost employment in the bank as well, cannot consider reinstatement with or without back wages as the said direction, while accepting the findings of respondents as correct, is impermissible in law.

Writ petition is, accordingly, dismissed. No costs.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

BHOSALE, ACJ

DILIP B.

S.V.BHATT, J

Date: 06.08.2015

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