HON'BLE SRI JUSTICE R.KANTHA RAO

W.P.No.22837 OF 2000

ORDER

Heard learned counsel appearing for the petitioner and learned counsel appearing for the respondents.

The petitioner joined as LDC in the respondent-Khadi and Village Industries Commission on 4.12.1957 and retired as Assistant Director on 31-03-1997. While the petitioner was working as Superintendent of the Establishment, one E.D.Rama Rao, Superintendent of Accounts Department, retired on 31.10.1989. Due to his retirement, the petitioner was kept in-charge of the said section and she took charge of the same on 1.1.1990. The version of the petitioner is that she expressed her inability to deal with the accounts section for lack of knowledge. On that, the second respondent informed her that she may take assistance from one Krishnam Raju, who was well versed in accounts as well as procedures. As she could not refuse the direction of the superior officials, she accepted to be in-charge of accounts section. As per the procedure in the respondent organization, for issuance of a cheque, three officers viz., Assistant Director, Superintendent of the Accounts and the Cashier have to sign, failing which the cheque cannot be passed. While so, during the

course of audit of accounts, it was found that there was interpolation of two cheques for an amount of Rs.5,000/- and Rs.4,483/-. On account of interpolation, the amounts mentioned on those cheques were converted to Rs.55,000/- and Rs.44,483/- respectively. Initially, the Department found that the said Krishnam Raju taking advantage of his position had resorted to interpolation of cheques and therefore, report was given against him. Based on the said report, a case in Cr.No.161 of 1993 was registered for the offences punishable under Sections 420, 409, 468 and 471 IPC by CCS, DD, Hyderabad Police Station. Thereafter, Krishnam Raju applied for voluntary retirement and the Department permitted him to do so, as a result of which he retired on 3.8.1992. In this context, it is crucial to notice that no departmental enquiry was conducted against Krishnam Raju. The department while permitting him to retire voluntarily did not initiate any departmental enquiry against him with regard to the above case. While the criminal case was pending against him, Krishnam Raju died in the month of July, 1995. In consequence thereof, the criminal proceedings abated against him. After the death of Krishnam Raju, the department addressed a letter to the Government to write off the misappropriated amount. But the Government refused to do so. Thereafter, the department took a decision to recover

the misappropriated amount from the petitioner, Krishnam Raju and the Assistant Director.

It is also pertinent to note here that by the time the department took a decision to recover the amount, Krishnam Raju expired and two years thereafter i.e., on 31.03.1997 the petitioner retired from service on attaining the age of superannuation. After retirement, the department sought to recover an amount of Rs.1,000/- p.m from the pension of the petitioner. Aggrieved thereby, the petitioner filed the present writ petition.

The contention of the respondents is that though the respondent-department did not attribute the act of misappropriation at all to the petitioner or the Assistant Director, it sought to recover the amount from them on the ground that they are guilty of dereliction of duties. In this context, it is to be noticed that no enquiry was conducted against the petitioner before fastening the liability to pay the amount of Rs.21,293/-. Further, the decision to recover the amount was also taken after the retirement of the petitioner.

Learned counsel appearing for the petitioner would submit that the proceedings issued by the department directing to recover an amount of Rs.21,293/- in instalments of Rs.1,000/- p.m from the pension of the petitioner are illegal as the petitioner

has not resorted to any misappropriation of amounts and also no enquiry was initiated against her while she was in service.

On the other hand, learned counsel appearing for the respondents would contend that since the loss of an amount of Rs.21,293/- was occasioned to the department on account of dereliction of duties by the petitioner as well as the Assistant Director, the department can recover the amount from the pension of the petitioner even though she retired from service.

Now the question requires to be decided in the present writ petition is as to whether the order passed by the respondents to recover an amount of Rs.21,293/- from the pension of the petitioner is valid in law having regard to the facts and circumstances of the case indicated herein above.

The respondents did not place on record any material showing the regulations governing the service conditions of the petitioner enabling the department to take any disciplinary action after the retirement of the petitioner. Further, in the instant case, obviously, even according to the department, the petitioner is not guilty of misappropriation but it is only guilty of dereliction of duties. Without initiating any disciplinary proceedings while the petitioner was in service, the department is not supposed to pass the order impugned directing to recover an amount of

Rs.21,293/-. The order is in the nature of punishment and therefore, it cannot be passed unless the regulations governing the service conditions of the petitioner permit such a course. Moreover, despite lodging the report against Krishnam Raju attributing the act of misappropriation, the department did not choose to conduct any disciplinary enquiry against him. Further, the department accepted the application of Krishnam Raju for voluntary retirement and permitted him to retire voluntarily on 3.8.1992.

For the foregoing reasons, the impugned order passed by the respondents is contrary to law and illegal and is liable to be set aside.

Accordingly, the writ petition is allowed setting aside the impugned order passed by the respondents. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

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JUSTICE R.KANTHA RAO

20th November, 2015
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