HON'BLE SRI JUSTICE R. KANTHA RAO

+ WRIT PETITION No.25551 of 2015

%13.10.2015

K.Srinivasulu Reddy

...Petitioner

VERSUS

$ The State of Andhra Pradesh, rep. by its
Principal Secretary, Tourism, Hyderabad & another

...Respondents

< GIST:

> HEAD NOTE:

!Counsel for Petitioner: Sri P.Gangaiah Naidu, Senior counsel for
Sri N.Bharat Babu

^Counsel for Respondents: G.P. for Tourism (AP)
Sri A.K.Narasimha Rao

? Cases referred:

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

<u>Writ Petition No.25551 of 2015</u>

Between:

K.Srinivasulu Reddy

.. Petitioner

And

The State of Andhra Pradesh, rep. by
Principal Secretary, Tourism, Hyderabad & another

.. Respondents

JUDGMENT PRONOUNCED ON : 13.10.2015

HON'BLE SRI JUSTICE : R. KANTHA RAO

1. Whether Reporters of local newspapers may be allowed to see the Judgments? :

2. Whether the copies of judgment may be marked to Law Reporters/Journals? :

3. Whether their Ladyship/Lordship wish to see the fair copy of the Judgment? :

<u>HON'BLE SRI JUSTICE R. KANTHA RAO</u>

<u>Writ Petition No.25551 of 2015</u>

<u>ORDER</u>:

This writ petition is filed seeking writ of *Mandamus* declaring the impugned proceedings of the 2nd respondent dated 30.07.2015, served on 06.08.2015, as irrational, illegal and arbitrary and consequently set aside the same.

2. Heard Sri P. Gangaiah Naidu, learned senior counsel, representing Sri N. Bharat Babu, learned counsel appearing for the petitioner and Sri A.K. Narasimha Rao, learned standing counsel for the 2nd respondent-A.P. Tourism Development Corporation.

3. It is submitted that after completion of Post-Graduation in Commerce, the petitioner, joined as Senior Accountant on contract basis in the office of the 2nd respondent-Corporation on 08.03.2004. Later on he was posted to the Divisional Office at Tirupati in the year 2004 itself and on the date of issuing charge sheet, he was working at Central Reservation Office (CRO), Tirupati as Senior Accountant. It is further submitted that though he was working as Senior Accountant, he was allotted cashier duties, taking cash collected from the Information & Reservation Offices (IROs) and to look after the payments and other receipts.

ii) While so, on 26.02.2015, the Vigilance Team inspected the IRO, which was maintained by one Sri V. Narayana Reddy, Marketing Executive (petitioner in WP No.27296 of 2015). In the inspection, the Vigilance team found that a sum of Rs.4,08,500/- was unaccounted for, as the same is not remitted by the said V.Narayana Reddy since March 2014 to December, 2014 and another sum of Rs.88,445/- was short remitted from the amount collected through online booking. After inspection, a departmental enquiry was initiated against all the employees working at CRO, Tirupati. In so far as the petitioner is concerned, the following charge has been framed.

> "For having failed to verify the records of IRO before collecting the cash to ensure that the daily collection is remitted to the Corporation account, which resulted in misappropriation of amount to a tune of Rs.4,96,945/- over a period of five years, which constitutes misconduct."

iii) In response to the above charge, the petitioner submitted his explanation on 03.04.2015 stating that while collecting and depositing the amounts, it is very difficult for him to go through the accounts and money receipts (MRs) at the same time and requested to drop the charge framed against him keeping in mind the unblemished service rendered by him.

iv) However, vide proceedings dated 06.05.2015, the 2nd respondent Corporation appointed one Sri V.Rama Rao, a Consultant, as Enquiry Officer to conduct a joint enquiry and to report the findings. The Enquiry Officer conducted a joint enquiry against seven contract employees, including the petitioner, and after completion of the enquiry, the Enquiry Officer submitted his report on 18.05.2015.

v) It is the version of the petitioner that in the enquiry report, the charge of fraud and misappropriation was said to have been established against Sri V. Narayana Reddy only. As regards to the petitioner, the Enquiry Officer held that his explanation is not convincing and that he failed to monitor the financial procedures and therefore, the petitioner was responsible for the lapses equally though the fraud is not established. It is further submitted by the petitioner that the Enquiry Officer also held that the petitioner and Smt. A.Swathi, Senior Accountant, are responsible for violating financial procedures and the charge of Supervision failure is established against Smt. A.Aruna, V.Siva Prasad and Sri M.V.Subrahmanyam. As against Sri C.Rakesh Kumar, the Central Reservation Manager, it was held that he was responsible for failure in overall supervision.

vi) Thereafter, a final show cause notice dated 04.06.2015 was issued to the petitioner proposing penal action and also stating therein that the Competent Authority had provisionally come to the conclusion that the petitioner was not a fit person to be retained in service, the gravity of the charge is such as to warrant the imposition of a major penalty, for which the petitioner submitted explanation stating that he was not concerned with any fraud and the higher authorities at Divisional office failed to inspect the IROs and that the predetermination to impose major penalty of dismissal is against the principles of natural justice.

vii) After receiving the explanation submitted by the petitioner, the 2nd respondent issued impugned proceedings dated 30.07.2015, which were served on 06.08.2015, terminating the contract as per Clause (3) of the Contract Agreement. Challenging the said proceedings, the petitioner filed the present writ petition.

4. The 2nd respondent filed counter-affidavit contending *inter-alia* as follows:

The petitioner is a contract employee, appointed by the Corporation on the contract basis and the contract was extended from time to time. If the Corporation feels that the employees appointed on contract basis is not working to the satisfaction of the Corporation, Corporation as per Clause (3) of the Contract Service Agreement, his services can be terminated and he has no right to challenge the termination order in any manner.

ii) It is further submitted that keeping in mind the judgment of the Division Bench of this court and also the Circular issued by the Corporation, the petitioner, who was involved in irregularities in financial matters, who is responsible for failure to discharge the functions assigned to him, the Corporation issued a show cause notice and after receiving his explanation, a departmental enquiry was initiated against him by duly following the principles of natural justice and having regard to the proved misconduct of the petitioner, he was rightly terminated from service. It is further submitted that the petitioner is more responsible for the fraud committed by one Sri V.Narayana

Reddy and therefore, he was found fault for the financial irregularities. The other employees, who are involved in the incident, are not directly involved in financial irregularities and therefore, they were given lesser punishment.

iii) It is further submitted that the petitioner in his explanation dated 04.04.2015 to the charge memo, informed that he is attending the duties at CRO, Tirupati i.e., collecting daily cash collection from various TPS Agents and APTDC Counters at Tirupati, issuing money receipts for received cash, remittance of cash collections in the Bank, maintaining CRO cashiers cash book for cash and online transaction, writing of CRO cash book from 03.10.2014. It is further contended that the Enquiry Officer mentioned in his report that the petitioner, being the Cashier/Senior Accountant, has failed to monitor the financial procedure and its impact, is responsible for the lapses equally though the fraud is not established, but he is equally responsible for financial procedure violation, which is proved.

5. Learned senior counsel appearing for the petitioner submits that the charge of misappropriation is framed only against V.Narayana Reddy, who is the Marking Executive and against the remaining employees, including the petitioner, no charge of misappropriation has been framed. Smt. Swathi, who is also senior Accountant, against whom similar charge was framed and enquired into, was imposed punishment of withholding the benefits of equal work for equal pay with effect from July, 2015 for a period of two years only and imposing punishment of termination from services against the petitioner, is illegal and against the principles of natural justice.

6. On the other hand, Sri A.K. Narasimha Rao, learned standing counsel for the 2nd respondent-Corporation, would contend that the violation of financial procedures and system failure committed by the petitioner, resulted in misappropriation of an amount of Rs.4,96,945/-

and hence, he cannot be treated on par with the other employees, who are not directly connected with the act of misappropriation. Learned standing counsel further submits that as per Clause (3) of the Contract Agreement, the services of the petitioner can be terminated even without assigning any reasons and therefore, the petitioner cannot question the termination order.

7. Clause (3) of the Contract Agreement reads as under:

> "The contract appointment is terminable on either sides by issue of 1 months notice or in lieu of it 1 months wages to the other party without assigning any reasons what so ever."

8. The above said Clause enables the either party to put an end to the service of contract by issuing one months notice on either side. However, this is a case where termination is not simplicitor resorting to Clause (3) of the Contract Agreement. In this case, a specific charge has been framed against the petitioner and a detailed enquiry was conducted and the termination order was passed basing on the enquiry report. Therefore, the legality of the termination order has to be examined with reference the charge levelled against him, proof of charge and consequential termination order passed against him.

9. The main contention put-forth on behalf of the petitioner is that the charge of fraud and misappropriation was framed against one Sri V. Narayana Reddy, only and against the other employees no such charge was framed. Therefore, no other employee, who was subjected to enquiry, can be inflicted with similar punishment imposed against Narayana Reddy. It is further contended that the enquiry report clearly shows that misconduct established against the petitioner is violation of financial procedures and system failure. The very same misconduct was said to be proved against Smt. Swathi also, but the said Smt.Swathi was given punishment of withholding the benefits of equal work for equal pay for a period of two years with effect from July 2015. Therefore, according to the petitioner, there cannot be any disparity in

imposing punishment for the similar charge and showing differential treatment to the petitioner is not sustainable in law.

10. A perusal of the enquiry report shows that misconduct proved against the petitioner and also against Smt. Swathi, is one and the same. Obviously, there was no charge of either fraud or misappropriation, levelled against the petitioner. Even the proved misconduct against the petitioner is violation of financial procedure and system failure. Having gone through the aforementioned facts and circumstances, this court is of the view that the Disciplinary Authority could have inflicted the same punishment as imposed against Smt. Swathi, Senior Accountant, also against the petitioner. Having regard to the disparity in punishment imposed against two employees, for similar charge, I am of the view that the order of termination passed against the petitioner is illegal and therefore, it is liable to be set aside.

11. Accordingly, the writ petition is allowed, setting aside the termination order dated 30.07.2015 passed by the 2nd respondent against the petitioner and the petitioner is also imposed punishment of withholding the benefits of equal work for equal pay for a period of two years, as imposed against Smt. Swathi, Senior Accountant. The respondents are directed to reinstate the petitioner into service within a period of four weeks from the date of receipt of a copy of this order. Miscellaneous petitions, if any, in this writ petition, shall stand closed. No order as to costs.

R. KANTHA RAO, J

Date: 13.10.2015
Note: LR copy to be marked
(BO)
BSS

HON'BLE SRI JUSTICE R. KANTHA RAO

53

Writ Petition No.25551 of 2015

-
-
-
-
-

Date: 13.10.2015

BSS