

THE HON'BLE SRI JUSTICE DILIP B.BHOSALE
AND
THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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WRIT APPEAL No.28 of 2007

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JUDGMENT: (per the Hon'ble Sri Justice A.Ramalingeswara Rao)
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Heard the learned counsel for appellant at length and the learned Standing Counsel for respondents 1 and 3.

2. This Writ Appeal arises from an order dismissing W.P.No.4694 of 1995, dated 05.09.2006, wherein the proceedings in Rc.No.2511/87-C, dated 29.07.1987, issued by the second respondent and the proceedings No.A6/496/94, dated 19.12.1994, issued by the first respondent were challenged.

3. The facts of the case are that the appellant was appointed as Supervisor under "Work Experience Programme" on 22.10.1983 on a consolidated pay of Rs.1,100/- per month. He was allotted to work in Pedapadu Panchayat Samithi, West Godavari District. He was asked to execute the work of construction of 92 houses under rural permanent houses scheme for weaker sections at a unit cost of Rs.9,000/- during the year 1986-87. While executing the said work, the beneficiaries lodged a petition on 19.05.1987 with the police to probe into the matter, marking a copy to the second respondent. The Deputy Engineer (Housing), Eluru, vide his letter dated 21.05.1987, reported to the second respondent stating that the appellant was not attending to duty and also not rendering the accounts in spite of several instructions and requested to take disciplinary action. The third respondent called for explanation of the appellant on 26.05.1987, but the appellant did not submit his explanation. The District Revenue Officer, West Godavari District, who was also Task Force Officer visited the colony on 05.06.1987 and

conducted open enquiry in the presence of the appellant, Mandal Revenue Officer and Mandal Development Officer and submitted a report to the second respondent. The second respondent, during his review meeting held on 04.07.1987 gave a warning to the appellant to render the accounts of all the colonies and also issued a Memo on 09.07.1987 warning him that if the appellant does not improve himself, his services would be terminated. The District Revenue Officer submitted a report stating that the work of construction of colony was stopped due to non-payment of the amounts and the President of the beneficiaries committee and the appellant was involved in taking commission from material suppliers and the appellant confessed in the recorded statement dated 05.06.1987 that he had received part of the commission. The District Revenue Officer concluded that there was a *prima facie* case of misappropriation of funds meant for construction of colony by the Committee members with the collusion of the appellant and the Work Inspector. The appellant did not submit any explanation and did not render accounts inspite of memos dated 26.05.1987 and 09.07.1987. In those circumstances, the second respondent, taking into account the findings of the District Revenue Officer and the confession statement of the appellant, terminated the services of the appellant with effect from 29.07.1987. The first respondent, by his letter dated 05.08.1987, ratified the action of the second respondent and also requested to take appropriate steps to recover the misappropriated amount. A complaint was lodged with the Station House Officer, Pedapadu on 29.07.1987 by the second respondent for causing investigation and taking action. Crime No.39/1987 was registered under Sections 409 and 406 IPC and a charge-sheet was filed before the II Additional Judicial First Class Magistrate, Eluru against the appellant and the President of the colony construction Committee.

4. The appellant filed W.P.No.17259 of 1994 challenging the proceedings in Rc.No.2511/87/C dated 29.07.1987 issued by the second respondent and this Court, by order dated 29.09.1994, disposed of the said Writ Petition with a direction to the first respondent to consider the representation said to have been submitted by the appellant to review the earlier order passed in Rc.No.2511/87-C, dated 29.07.1987, terminating the services of the appellant as the appellant was acquitted in the criminal case in C.C.No.167/1988 on 10.11.1992. Accordingly the appellant submitted a representation to the authorities requesting them to reinstate him into service. The appellant submitted another representation on 21.10.1994 in continuation of his representation dated 21.11.1992 and those representations were considered by the first respondent, who passed an order in proceedings No.A6/496/94, dated 19.12.1994, rejecting the request of the appellant for reinstatement. Challenging the said rejection, the appellant filed W.P.No.4694 of 1995 and the learned single Judge of this Court dismissed the said Writ Petition on 05.09.2006 holding as follows:

“Having regard to the facts and circumstances of the case, I am of the view that the order dated 29.7.1987 had attained finality in the earlier writ petition. However, during the pendency of earlier writ petition, since the petitioner was acquitted in the criminal case, this Court directed the first respondent to consider his case taking the acquittal into consideration. The first respondent after considering the petitioner's case and the acquittal into consideration, passed an elaborate order rejecting the petitioner's request for reinstatement. I am of the considered opinion that the first respondent has not committed any illegality or irregularity calling for interference of this Court under Article 226 of the Constitution of India. The writ petition is devoid of merits and liable to be dismissed.

Accordingly, the writ petition dismissed. No order as to costs.”

5. In the present Writ Appeal, the learned counsel for the appellant contended as follows:

- (i) No proper enquiry was conducted before terminating the services, by order dated 29.07.1987, and hence the order of termination is invalid.

- (ii) The alleged confession on 05.06.1987 was not correct.
- (iii) Since the appellant was acquitted in a criminal case i.e., C.C.No.167/1988 on 10.11.1992, the first respondent should have taken the findings recorded therein into consideration and should have reviewed the order of termination dated 29.07.1987.
- (iv) The second respondent had no jurisdiction to terminate the services of the appellant and hence the order of termination dated 29.07.1987 is invalid.

6. At the outset, we have to state that this Writ Appeal is directed against the order in W.P.No.4694 of 1995, dated 05.09.2006 dismissing the Writ Petition, but not against the order in W.P.No.17259 of 1994, dated 29.09.1994. The order in W.P.No.17259 of 1994 has attained finality as observed by the learned Single Judge. This Court cannot sit in appeal or review an order which has attained finality. However, the learned counsel for the appellant vehemently contended the above points. The appellant did not choose to file an appeal against the said order W.P.No.17259 of 1994 dated 29-9-1994. When he accepted the said order and submitted representations, now he cannot turn around and challenge the very same order since his representation was rejected. The representations of the appellant were considered thoroughly and were rejected holding that the findings of the criminal court are not binding on the departmental proceedings and in view of the proof that has come out in the enquiry it was enough to impose punishment.

7. Hence, the only point that arises for consideration in the present Writ Appeal is whether the order of the learned single judge dismissing the Writ Petition of the appellant is correct or not.

8. In fact, the appellant was acquitted by the criminal court on 10.11.1992 and the said plea was also available to him when he filed

W.P.No.17259 of 1994. The appellant accepted the relief granted in the said Writ Petition and did not pursue the matter further. Now he cannot re-agitate the matter which he ought to have raised and argued it in the earlier round of litigation.

9. The appellant did not produce either before the learned Single Judge or before this Court with regard to the applicable rules under which he is entitled for a departmental enquiry, though he is a temporary employee. In the instant case, when the allegations were made against the appellant, an enquiry was conducted by the District Revenue Officer, who submitted a report in July, 1997. The appellant did not even submit his explanation to the Memos issued on 26.08.1987 and 09.07.1987 by the third respondent and second respondent respectively. On the other hand, the appellant confessed before the District Revenue Officer on 05.06.1987 with regard to the guilt. Hence, it is not open to the appellant to contend that no enquiry was conducted before terminating his services on 29.07.1987.

10. With regard to the confession alleged to have been made on 05.06.1987 before the District Revenue Officer, there is no material to show that the said confession was either retracted or he submitted any representation at any point of time stating that it was obtained under duress or coercion. In the absence of such material, the oral assertion made before us cannot be taken into consideration after 27 years for the first time.

11. The Supreme Court in **Himachal Pradesh Road Transport Corporation v. Hukam Chand**^[1] observed that no enquiry is necessary in cases where the employee himself admits the guilt, and held as follows:

“Compliance with the principles of natural justice, either by holding an

enquiry or by giving the employee an opportunity of hearing or showing cause, is necessary, where an employer proposes to punish an employee on a charge of misconduct which is denied, or when any term or condition of employment is proposed to be altered to the employee's disadvantage without his consent.

On the other hand, if there is an admission of misconduct, or if the employee pleads guilty in respect of the charge, or if the employee consents to the alteration of any terms and condition of service, or where the employee himself seeks the alteration in the conditions of service, there is no need for holding an enquiry or for giving an opportunity to the employee to be heard or show cause. Holding an employee guilty of a misconduct on admission, or altering the conditions of service with consent, without enquiry or opportunity to show cause, does not violate principles of natural justice."

12. In another case in **Dharmarathmakara Raibahadur Arcot Ramaswamy Mudaliar Educational Institution v. Educational Appellate Tribunal**^[2], the Supreme Court held that no enquiry is necessary when one admits one's violations, by observing as follows:

"The contention of learned counsel for the respondent is confined that there was no enquiry in terms of Section 6 of the said Act. There is no submission of any defence on merit. Even before us when we granted learned counsel an opportunity to give any prima facie or plausible explanations on record to defend her actions, nothing could be placed before us. Giving of opportunity or an enquiry of course is a check and balance concept that no one's right be taken away without giving him/her opportunity or without enquiry in a given case or where statute requires. But this cannot be in a case where allegation and charges are admitted and no possible defence is placed before the authority concerned. What enquiry is to be made when one admits violations? When she admitted she did not join M.Phil course, she did not report back to her duty which is against her condition of leave and contrary to her affidavit which is the charge, what enquiry was to be made? In a case where facts are almost admitted, the case reveals itself and is apparent on the face of record, and in spite of opportunity no worthwhile explanation is forthcoming as in the present case, it would not be a fit case to interfere with termination order."

13. In all cases of acquittal of an employee in criminal proceedings the department has to review the decision taken in departmental

proceedings. In **State of West Bengal V. Sankar Ghosh**^[3], it was held that an order of discharge or acquittal of a police officer by a Criminal Court shall not be a bar to the award of the departmental punishment. The said decision was rendered based on the regulations applicable to the delinquent. In the case before us, no regulation was shown in support of the contention of the appellant that his case is entitled for review in view of the acquittal in criminal case. In any event, such a plea which was available in the earlier round of litigation, which was not raised and could not be decided cannot be agitated now.

14. The learned counsel for the appellant relied on **Md. Shabeer Ali V. A.P.S.R.T.C., Hyderabad**^[4], wherein it was held that while examining the case of removal of a driver, the findings recorded by the criminal court for rash and negligent driving have to be taken into consideration and when his removal was based on the self-same ground, while moulding the relief. In the instant case, the appellant is only a temporary employee and there was misappropriation of funds in constructing a colony at Ramachandrapuram. The appellant confessed to the said guilt and the acquittal recorded by the criminal court which requires proof of guilt beyond reasonable doubt has no bearing to the action taken by the competent authority on the basis of enquiry report. The other decision cited by the learned counsel for the appellant in **G.M.Tank V. State of Gujarat**^[5] arose out of the provisions of the Prevention of Corruption Act, 1947. In the said case, the departmental enquiry was conducted against the employee and he was found guilty of the charge of having assets disproportionate to his known source of income. The employee was dismissed from service. The challenge before the High Court failed before the learned Single Judge as well as before the Division Bench. Then he filed an appeal before the Hon'ble Supreme Court. It was

noticed that the employee was acquitted by holding that the prosecution has failed to prove the charges levelled against the appellant. In the light of the above facts, the Hon'ble Supreme Court framed the following issues:

“1. Whether in the case of no evidence, the employee can be dismissed from service?

2. Whether acquittal, absolutely on merits amounting to clear exoneration of the appellant by the Special Court under the P.C. Act does ipso facto absolve the appellant from the liability under the disciplinary jurisdiction when the charges leveled against the appellant in the departmental proceedings and the criminal proceedings are grounded on the same set of facts, charges, circumstances and evidence.”

After examining the case on the point, it held that the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal Court are one and the same. It was also held that the charges, evidence, witnesses and circumstances are also one and the same. It was held that under the circumstances, it was unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand, and the Hon'ble Supreme Court allowed the appeal of the employee based on the judgment in **Capt.**

M.Paul Anthony v. Bharat Gold Mines Ltd.^[6]. But, in the present case, no regular departmental enquiry was conducted as the appellant himself confessed about the guilt before the District Revenue Officer, who conducted enquiry and the appellant was a temporary employee. Thus, the facts are distinguishable.

15. In the above circumstances, we cannot hold that the order passed by the first respondent is invalid when he rejected the representation based on findings recorded in the criminal court for setting aside the earlier order of termination dated 01.09.1987.

16. The last point raised by the learned counsel for the appellant with regard to the jurisdiction of the second respondent to terminate the

services of the appellant dated 29.07.1987 and ratified by the first respondent, is also equally without any merit as no rule or authority was shown in support of the said contention. In any event, the order of termination dated 29.07.1987 has already become final. Now the point of jurisdiction cannot be entertained for the first time after a lapse of 27 years.

17. In view of the above, the order passed by the learned Single Judge is correct on facts and law and is accordingly upheld. The Writ Appeal fails and is dismissed. Miscellaneous petitions pending, if any, stand disposed of. There shall be no order as to costs.

DILIP B.BHOSALE, J

A.RAMALINGESWARA RAO,J

Date: 30.01.2015
TJMR

[\[1\]](#) (2009) 11 SCC 222

[\[2\]](#) (1999) 7 SCC 332

[\[3\]](#) AIR 2014 SC 405

[\[4\]](#) 1989 (1) ALT 560

[\[5\]](#) 2006 (4) Supreme 740

[\[6\]](#) (1999) 3 SCC 679