

HON'BLE SRI JUSTICE R. KANTHA RAO

Writ Petition No.34111 of 2015

ORDER:

This writ petition is filed seeking writ of *Mandamus* to declare the proceedings dated 26.09.2015 issued by the 2nd respondent imposing a penalty of dismissal from service to the petitioner without conducting enquiry as mandated under Regulation-10(2) of APSEB (Revised) Conduct Regulations adopted by the 1st respondent, as illegal and arbitrary and consequently to set aside the same.

2. Heard Sri B.V.Anjaneyulu, learned counsel appearing for the petitioner and Smt. K.Aruna, learned standing counsel for the respondents.

3. The petitioner is working as Additional Divisional Engineer in the 1st respondent-Corporation. According to the petitioner, his wife Smt. G.Esther Rani, deserted him about 24 years back. Though he made repeated requests to her to join him, she refused. He further submits that the said Smt.G.Esther Rani lead a matrimonial life with him only for a period of six months from the date of marriage i.e., 05.03.1990.

ii) Nextly, it is submitted that as his wife G.Esther Rani, did not join him for a long time inspite of his repeated requests and deserted him, he started living with one Ch. Krupavathi and two children were also born to Ch.Krupavathi, through him. He got mentioned the said children and Krupavathi, as his family members in the official records.

iii) The said Smt.G.Esther Rani, filed OS No.709 of 2013 on the file of the III Additional Junior Civil Judge, Vijayawada, for declaration that she is the wife and the 2nd plaintiff i.e., John Wesley, is the son of

the petitioner herein. As his wife filed suit for declaration after 22 years, he filed OP No.191 of 2014 praying for divorce on the ground of desertion and cruelty before the Judge, Family court, Vijayawada. According to the petitioner, OS No.709 of 2013 was filed by his wife Esther Rani, 22 years after desertion and during the period of 22 years, she never tried to join the petitioner.

iv) While so, the 2nd respondent issued charge sheet dated 31.10.2014 to the petitioner alleging that he gave false information and that he has developed illicit intimacy with Ch. Krupavathi and declared her as his wife in the service records, for which, the petitioner submitted a detailed explanation dated 01.12.2014 stating the circumstances under which he made such a declaration. He also informed the 2nd respondent that his wife deserted him and thereafter he has been living with the said Krupavathi.

v). It is the version of the petitioner that as the petitioner stated the true facts and mentioned the name of Ch.Krupavathi, as his wife in the service record, it does not amount to any false information, since he did not suppress any fact. In any event, a show cause notice dated 28.02.2015 was issued to the petitioner stating that the 2nd respondent has taken a decision to impose penalty of dismissal from service in all proved cases of misappropriation, bribery, bigamy, corruption, moral turpitude, forgery and outraging the modesty of woman etc. It is further submitted that the petitioner's case does not fall in any of the categories. Ultimately, without conducting any enquiry, the 2nd respondent imposed punishment of dismissal from service on the petitioner by order dated 26.09.2015, which is against to the procedure contemplated under Regulation-10(2) of the A.P.S.E.B. (Revised) Conduct Regulations. The said order is challenged in the present writ petition.

4. The argument advanced by the learned counsel appearing for the petitioner is two fold. The first one is that the 2nd respondent is not the competent authority to impose any punishment nor to appoint any Enquiry Officer. As per Regulation-10(2)(a), the authority competent to impose the penalty, shall appoint an Enquiry Officer with the concurrence of the Committee constituted. The Committee to be constituted in respect of the post the petitioner was holding is the Chairman and three members. Therefore, according to the learned counsel appearing for the petitioner, the punishment imposed on the petitioner is vitiated on account of not following the Regulation-10(2) of the APSEB (Revised) Conduct Regulations.

5. I have gone through the show cause notice issued and the impugned order passed against the petitioner. Though, the petitioner admitted that he is living with Ch.Krupavathi, there is no categorical admission by him that he suppressed any fact. In the circumstances, I am of the view that there is no admission by the petitioner in respect of the charge levelled against him, in which event, the Competent Authority has to conduct enquiry before imposing penalties as stipulated in Regulation 10(2)(a). Thus, the punishment imposed on the petitioner is vitiated for non-observance of the Regulations as well as principles of natural justice and is liable to be set aside in the present case.

6. Consequently, the writ petition is allowed setting aside the impugned order dated 26.09.2015 passed by the 2nd respondent dismissing the petitioner from service and the respondents are directed to reinstate the petitioner into service within a period of four (4) weeks from the date of receipt of a copy of this order. However, this order does not preclude the Competent Authority to conduct fresh enquiry against the petitioner by following the procedure and in accordance with the Regulations.

Pending miscellaneous petitions, if any, in this writ petition,
shall stand closed. No order as to costs.

R. KANTHA RAO, J

Date: 14.10.2015
BSS

HON’BLE SRI JUSTICE R. KANTHA RAO

98

Writ Petition No.34111 of 2015

-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-

Date: 14.10.2015

BSS