THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

W.P.No. 36193 OF 2014

ORDER: (*per Hon'ble Sri Justice Ramesh Ranganathan*)

Heard the Learned Government Pleader for Services – I (T.S.) and Sri S.Jagadish, learned counsel for the respondent and, at their request, the Writ Petition is disposed of at the stage of admission.

The 1st respondent herein was a Town Planning Officer at Nizamabad during the period 05-07-2000 to 05-09-2002. Even during that period, he was on leave from 15-07-2002 to 04-09-2002. Articles of charges were framed against him including that he had not collected advertisement taxes for the period 1994-1995 to 2005-2006. Consequent on his retirement from service on 28-02-2009, the 1st respondent was imposed the punishment of 5% reduction in pension for a period of three years. Aggrieved thereby, he invoked the jurisdiction of the Andhra Pradesh Administrative Tribunal, Hyderabad ("Tribunal" for short). By an interlocutory order dated 28-10-2011, the tribunal suspended G.O.Rt.No. 1124, Municipal Administration & Urban Development (E2) Department, dated 06-09-2011, for recovery of Rs.5,97,000/- from the retiral benefits of the 1st respondent. The petitioners herein were also directed to release the pensionary benefits of the 1st respondent by deducting 5% cut amount as per G.O.Rt.No. 1124. Thereafter, O.A.No. 8445 of 2011 was disposed of by order dated 18-03-2014.

In the order, under challenge in this Writ Petition, the tribunal noted the contradictions in the enquiry officer's report and held that, while the allegation against the officers concerned was for non-collection of advertisement taxes from 1994-1995 to 2005-2006, the 1st respondent had worked at Nizamabad only for a part of the said period; and even if the charges were held proved, the punishment imposed on the petitioner was disproportionate to the charges held established. The Tribunal substituted the punishment of 5% cut in pension for three years with that of 5% cut in pension for a period of one year, and directed the petitioners not to recover any amount from the pensionary benefits of the 1st respondent. The petitioners herein were directed to release the pension, and other pensionary benefits of the 1st respondent, within a period of four weeks. Aggrieved thereby, the present Writ Petition.

While the Tribunal cannot be faulted in holding that the statements of the enquiry officer were self-contradictory, and that the punishment imposed was disproportionate as the 1st respondent had merely worked for a part of the period from 05-07-2000 to 05-09-2002 as against the period of non-collection of advertisement taxes from 1994-1995 to 2005-2006, it ought not to have modified the punishment by substituting one punishment with another, as these are all matters for the competent authority to determine and not for Courts/Tribunals to substitute. To the limited extent that the tribunal did so, the impugned order is set aside.

The 1st petitioner herein shall re-consider the punishment imposed earlier on the 1st respondent, and impose on him any punishment lesser than the one imposed earlier, as the tribunal was justified in holding that the punishment imposed earlier is disproportionate to the charges held proved. During pendency of proceedings before the Tribunal, and even thereafter, the 1st respondent had the benefit of an order in his favour prohibiting initiation of proceedings for recovery. The petitioners herein shall, therefore, forbear from recovering the dues, if any, till it passes an order of punishment afresh and communicates the same to the 1st respondent. The entire exercise, culminating in an order being passed afresh and being communicated to the 1st respondent, shall be completed within a period of six weeks from the date of receipt of a copy of this order. The Writ Petition stands disposed of accordingly.

Pending miscellaneous petitions, if any, in this Writ Petition shall stand closed in consequence. No order as to costs.

RAMESH RANGANATHAN, J.

M.SATYANARAYANA MURTHY, J.

Date: 02nd February, 2015.

JSK