

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION NO.21056 OF 2014

Between:

The Government of Andhra Pradesh

Rep. by its Principal Secretary and 3 others.

... Petitioners.

And

M.V.Satyanarayana and another.

... Respondents.

DATE OF JUDGMENT PRONOUNCED:03.08.2015

SUBMITTED FOR APPROVAL:

-

-

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE MRS. JUSTICE ANIS

—

1. Whether Reporters of Local newspapers	No
may be allowed to see the Judgments?	
2. Whether the copies of judgment may be marked to Law	No
Reporters/Journals	
3. Whether Their Ladyship/Lordship wish to see the fair	No
copy of the Judgment?	

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE MRS. JUSTICE ANIS

WRIT PETITION No.21056 of 2014

—

ORDER: (per Hon'ble Sri Justice Nooty Ramamohana Rao)

This writ petition is preferred by the State and its officers against the order passed by the Andhra Pradesh Administrative Tribunal in O.A.No.2495 of 2013 preferred by the 1st respondent herein.

The 1st respondent while working as Police Constable has been inflicted with the punishment of dismissal from service on the count of a charge laid against him. The charge comprised of two separate limbs. One is with regard to the alleged harassment meted-out by the 1st respondent to his wife including his involvement in

an offence under Section 498-A IPC. The second limb comprised of his getting married to another woman while the 1st marriage was subsisting.

During the course of debate at the bar Sri P.V.S.S.S.Rama Rao, learned counsel for the 1st respondent – employee, has urged two specific pleas. Firstly, he urged that when the 1st respondent has been prosecuted, the alleged offence under Section 498-A IPC has been permitted by the competent criminal Court to be compounded. Consequently, no ill effects can flow therefrom. Hence, he urged that the 1st limb of the charge can never stick to the 1st respondent – employee. So far as the 2nd limb is concerned, it is urged by Sri P.V.S.S.S.Rama Rao, learned counsel for the 1st respondent – employee, that the inspiration for laying the said limb of charge is a ration card supplied by the Civil Supplies Department, which contained the name of his alleged 2nd wife, whereas the 1st respondent – employee has taken prompt steps with the Civil Supplies Department and got the erroneous entry made by them rectified. In spite of the same, the 1st respondent – employee was sought to be victimized. It is also urged by Sri P.V.S.S.S.Rama Rao, learned counsel for the 1st respondent – employee, that no opportunity has been provided by the Enquiry Officer to the 1st respondent – employee to cross-examine the witnesses examined by him. Further, though 2 witnesses could not be examined on the day of enquiry, but nonetheless the statements said to have been made by such witnesses during the course of preliminary enquiry are relied upon by the Enquiry Officer. There is no legally admissible material available before the Enquiry Officer and consequently before the disciplinary authority as well, for the 1st respondent – employee to be held guilty of the 2nd limb of charge, which resulted in maximum punishment of dismissal from service.

It was pointed out by us that factual controversies such as not providing a fair, reasonable and adequate opportunity to cross-examine the witnesses examined during the course of enquiry and non-examination of certain witnesses during the course of enquiry, but yet relying upon the statements said to have been made by them during the course of preliminary enquiry, are all questions essentially rooted in fact. Such factual controversies ought to have been agitated before the appellate

authority constituted under the C.C.A. Rules. They cannot be raised for the first time before the judicial forum.

The other contention of Sri P.V.S.S.S.Rama Rao, learned counsel for the 1st respondent – employee, that there is no legally admissible evidence before the disciplinary authority, for him to be held guilty of 2nd limb of the charge viz., getting married 2nd time. All the more so, in view of the amended Civil Supplies Ration card, the question in this regard should have been raised before the appellate authority or the disciplinary authority for that matter, so that they would have bestowed their attention. At that stage, Sri P.V.S.S.S.Rama Rao, learned Counsel for the 1st respondent – employee, has filed a memo seeking permission of the Court to withdraw the O.A. with liberty to file an appropriate departmental appeal by granting time for preferring any such appeal.

We have taken the memo filed into the Court today on record.

The endeavour of every Court should be to secure adequately the ends of justice. When a party seeks leave of the Court to withdraw the legal proceeding and pursue the alternative remedy, which is equally efficacious provided under the rules, the Court should normally lean in favour of such a suggestion. Therefore, we have no hesitation to act upon the memo filed by the Counsel for the 1st respondent – employee and grant him liberty to withdraw the O.A.No.2495 of 2013. Accordingly, we dismiss the O.A.No.2495 of 2013 as withdrawn. We also grant liberty to the 1st respondent – employee to prefer an appeal to the appellate authority against the orders of punishment of dismissal from service imposed on him. If any such appeal is preferred within 30 days from today, the appellate authority may entertain the same without rejecting it only on the ground of delay in preferring it as the principle enshrined in Section 14 of the Limitation Act is that if a party has prosecuted wrongly a proceeding, the time consumed in prosecuting such a legal remedy should be discounted. Hence, we grant 30 days time to the 1st respondent to prefer the appeal and as and when he prefers any such appeal, the same may be dealt with on merits as expeditiously as is possible preferably within a period of six (6) months from the

date of receipt of a copy of this order.

With this, the writ petition stands disposed of. No order as to costs.

The miscellaneous applications, if any shall also stand dismissed.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE ANIS

03.08.2015

Note:

Issue C.C. in one week.

B/o

Ksp