

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.8014 OF 2009

ORDER:

Heard Sri S.Ravindranath, learned counsel for the petitioner and Sri Vinod Reddy, learned standing counsel for respondents 1 and 2.

The petitioner prays for writ of certiorari to call for the records leading up to and inclusive of orders of 1st and 2nd respondents dated 17.03.2008 and 18.12.2008 and to quash the orders, as absolutely illegal, arbitrary and unconstitutional.

The circumstances leading to filing of the writ petition are not in dispute and the learned counsel appearing for the parties fairly state that the legal objection raised by the petitioner against the impugned orders is covered by the decision of this Court in **C.Madhusudhan v. APSEB, Hyderabad**^[1] and the common order dated 04.08.2015 in W.P.Nos.8107 and 8108 of 2009.

The circumstances relevant for disposal of the writ petition are as follows:

The petitioner is an employee of 1st respondent-corporation and was promoted as Junior Accounts Officer in the year 2000. On 14.07.2005, the petitioner was suspended pending enquiry into the charges framed against the petitioner. On 18.01.2006, the petitioner was reinstated and the petitioner reported to duty on 01.02.2006. The 1st respondent on 26.07.2005 appointed a learned retired District Judge as Enquiry Officer to conduct enquiry into the charges framed against the petitioner. On 22.09.2006, the Enquiry Officer submitted the report and found that the charges framed against the petitioner are not proved. On 13.12.2006, the 1st respondent appointed one Sri G.Sudershan, CJM as Enquiry Officer to enquire into the charges framed in the charge sheet dated 26.07.2005. The Enquiry Officer

submitted report dated 14.05.2007. The relevant portion of the enquiry report reads thus:

“The explanation offered by the charged officer Sri K.Shankaraiah, JAO (Retd) was not specific to the charges framed and not relevant to the functions held as UDC and JAO in ERO/Sainikpuri. Therefore the charges 1 and 2 are held attributable.”

The Disciplinary Authority accepted the above conclusion recorded by the 2nd Enquiry Officer and imposed the punishment of 25% cut in the pension vide order dated 17.03.2008. The petitioner assailed the order before the 2nd respondent and the appeal was dismissed through order dated 18.12.2008. Hence, the writ petition.

Learned counsel for the petitioner contends that the report of Enquiry Officer dated 14.05.2007 cannot and could not have been accepted as the basis for inflicting any punishment much less the punishment of cut of 25% in the pension. His grievance against the enquiry Officer's report is that there is no conclusiveness of guilt recorded against the petitioner still the same is accepted and punishment is imposed. He alternatively contends that the appointment of 2nd enquiry officer (G.Sudhershana) is illegal, contrary to regulations and relies upon the decision of this Court referred to above.

The relevant portions read as follows:

“It is no doubt true that in *Thayagarajan's case* (1999) 1 SCC 733, the Supreme Court held that it was open to the disciplinary authority to order a de novo enquiry when it found that the Enquiry Officer had not followed the correct procedure in taking the evidence of witnesses. But even in that case, the relevant rule enabled the disciplinary authority to remit the matter to the same Enquiry Officer for further enquiry. In the present case, the disciplinary authority altogether discarded the first enquiry and instituted a fresh enquiry from scratch by a newly appointed Enquiry Officer. Such an action was clearly not contemplated by the regulations and is in

utter violation of the law laid down by the Apex Court.”

Learned counsel for the 1st respondent fairly states that ordering second enquiry more particularly in the manner it has been done in the instant case is covered by the decisions relied upon by the petitioner. The submissions are placed on record and by following the decisions referred to above, the orders impugned in the writ petition are set aside.

The writ petition is allowed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT, J

Date:22.02.2016

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[\[1\]](#) 2009 (5) ALD 455 (DB)