

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT APPEAL Nos. 1143 and 1144 of 2016

COMMON JUDGMENT: (*Per VRS,J*)

Both these appeals arise out of a common order passed by the learned Judge partly allowing the writ petitions, but refusing to grant the reliefs in total.

2. Heard Mr. P.V.Ramana, learned counsel for the appellants. The Government Pleader for Services (Telangana) takes notice for the respondents.

3. The appellants were originally dismissed from service by orders, dated 17.03.2016. The orders of dismissal were set aside by the Tribunal in O.A.Nos.1296 of 2016 and 1293 of 2016, by a common order, dated 27.04.2016, on the ground that no disciplinary proceedings were initiated. However, the Tribunal said that after reinstatement, the appellants could be placed under suspension, if necessary, and disciplinary action could be taken as per Rules.

4. In their anxiety to take the follow-up action, the respondents served three memos of the same date, namely, 19.07.2016, (i) issuing

articles of charges, (ii) appointing an Enquiry Officer, and (iii) appointing a Presenting Officer. This procedure is, no doubt, contrary to Rule 20 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 as well as the law laid down by this Court and several other Courts.

5. However, the appellants appeared before the Enquiry Officer and seem to have sought time. The Enquiry Officer filed reports holding the charges proved. Along with the enquiry reports, show-cause notices were issued on 15.09.2016, proposing to impose a penalty of dismissal. Challenging the said show-cause-notices as well as the very initiation of the proceedings, the appellants filed writ petitions in W.P.Nos.33757 of 2016 and 33760 of 2016, respectively. A learned Judge of this Court disposed of both the writ petitions, by a common order, dated 30.09.2016. The effect of the common order is that the show-cause-notices to impose the penalty of dismissal, cannot stand, in view of the law well settled. Therefore, the learned Judge set aside the reports of the Enquiry Officer, dated 22.08.2016, as well as the show-cause-notices, dated 15.09.2016, and permitted the appellants to produce the educational certificates before the Enquiry Officer.

6. The aforesaid order, in our considered view, is the only order that could have been passed in the facts and circumstances of the cases. It is true that in normal circumstances, an Enquiry Officer cannot be appointed while issuing a charge memo. But in these cases, the appellants were already dismissed without an enquiry, and the orders of dismissal, dated 17.03.2016, were set aside with opportunity to the respondents to initiate disciplinary action. Moreover, the appellants participated in the enquiry and sought time. Therefore, the defect, which was a curable defect, actually got cured.

7. What could not be cured, was the issue of the show-cause-notices proposing the penalty itself. After the removal of the proviso to Article 311 with regard to the second show-cause-notice, and the law laid down in *Managing Director, ECIL, Hyderabad and others Vs. B. Karunakar and others*¹ and *Union of India and others Vs. Mohd. Ramzan Khan*², the disciplinary authority cannot pre-determine the penalty, before the objections are filed to the findings of the Enquiry Officer. Therefore, the learned Judge was right in setting aside the enquiry reports and the show-cause-notices.

8. But, the other part of the common order of the learned Judge, to which objections are now raised, is also in tune with the law. All that

¹ (1993) 4 SCC 727

² (1991) 1 SCC 588

he has done is to direct the appellants to participate in the enquiry by producing the certificates. The apprehension of the learned counsel for the appellants is that the very same Enquiry Officer will reproduce the very same enquiry reports. But, we do not think so. The first enquiry report was prepared, when no certificates were produced by the appellants. Now, when the appellants have an opportunity to produce the certificates, no Enquiry Officer can overlook the same and stick to his previous stand. Therefore, we have no justification to interfere with the common order of the learned Judge.

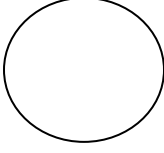
9. Hence, both the Writ Appeals are dismissed. In view of the shortage of time now, the appellants are granted time till 15.11.2016 to go before the Enquiry Officer and produce the certificates. The Enquiry Officer shall keep an open mind and give sufficient opportunity to the appellants, before concluding the proceedings and submitting reports.

Consequently, miscellaneous petitions if any pending in the writ appeals shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

G. SHYAM PRASAD, J

28th October, 2016
cbs



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