

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 19275 of 2006

ORDER:

The order, dated 06.06.2006, dismissing the petitioner from the respondent institution is challenged before this Court.

2. Brief facts for the purpose of disposal of the writ petition to the extent required are set out as follows:

3. The petitioner was appointed as a Public Relation Officer in the respondent institution (hereinafter referred to as "NIMS"). Basing on certain newspaper reports, wherein certain adverse comments were made against him with respect to utilization of the Chief Ministers Relief Fund/Prime Minister's Relief Fund/SIAF, he was initially suspended on 27.11.2002 and, thereafter, he was in police custody from 16.12.2002 to 26.02.2003. As the petitioner was arrested and was in police custody, charge sheet, dated 05.12.2002, was filed and notice of enquiry, dated 06.12.2002, was received by his wife on 16.01.2003 and she sought time stating that her husband i.e., the petitioner is in judicial custody and, accordingly, time was granted up to 18.04.2003. However, on 04.02.2003, a dismissal order was passed without there being any enquiry, and pursuant to the orders of this Court in W.P.No.7263 of 2003 the appeal filed against the dismissal

order was disposed of on 12.03.2003 by the Executive Board, wherein the Executive Board while setting aside the dismissal order, directed fresh enquiry to be conducted. Though an opportunity was given to the respondent to conduct fresh enquiry, no enquiry proceedings were initiated. In those circumstances, the petitioner filed W.P.No.19741 of 2005 seeking reinstatement into services and the same was disposed of by this Court by order, dated 28.01.2006, with a direction to the respondent to complete the enquiry within two months, failing which, the petitioner shall be reinstated into service. Since the said order was not complied with, the petitioner initiated contempt proceedings. Thereafter, the Executive Registrar, based on the enquiry report, dated 20.01.2005, served notice, dated 01.04.2006, on the petitioner calling upon him to file his explanation as to why his services shall not be terminated. Pursuant to the said notice, the petitioner submitted his explanation on 13.04.2006. Rejecting the said explanation, the impugned order was passed on 06.06.2006.

4. Initially, the matter was argued by Sri Srinivass Rao Bodduluri, learned counsel for the petitioner, and thereafter, in his place Sri Tulasi Raj Gokul advanced further arguments and placed reliance on the judgments of the Supreme Court in **Kumaon Mandal Vikas Nigam Ltd., v. Girja Shankar Pant and others**¹, **Rajinder Kumar**

¹ (2001) 1 SCC 182

Kindra v. Delhi Administration through Secretary (Labour) and others² and the judgment of this Court in **Managing Director, A.P. State Handloom Weavers Co-op., Society Ltd., Hyderabad v. Ch. Prasad Rao and another³**. On behalf of NIMS, learned Standing counsel, Sri G. Anandam, advanced arguments and placed reliance on the judgments of the Supreme Court in **Devendra Pratap, Narain Rai Sharma v. State of Uttar Pradesh and others⁴**, **Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corpn., Ltd., Haldia and others⁵**, **A.P.S.R.T.C. v. Raghuda Siva Sankar Prasad⁶**, **State of Punjab and others v. Chander Mohan⁷**, **L.K. Verma v. HMT Ltd., and another⁸** and **Chairman & Managing Director, V.S.P. and others v. Coparaju Sri Prabhakara Hari Babu⁹** for consideration.

5. The gist of the arguments of the learned counsel for the petitioner is that no witnesses were examined and there is no material to prove the charges and that it is a case of no evidence. Learned counsel further submits that the entire enquiry report is based on newspaper clippings and on surmises and conjectures and inasmuch as the disciplinary authority's order does not consider the objections

² (1984) 4 SCC 635

³ 2016 (5) ALD 670

⁴ AIR 1962 SC 1334

⁵ (2005) 7 SCC 764

⁶ (2007) 1 SCC 222

⁷ (2005) 13 SCC 81

⁸ (2006) 2 SCC 269

⁹ (2008) 5 SCC 569

filed by the petitioner and there being no finding to bring home the charges alleged against the petitioner in the charge sheet, the order of dismissal is unsustainable. As the order itself states that the decision to terminate the services of the petitioner was taken by the Executive Board on 23.05.2006, no useful purpose would be served by filing appeal before the Executive Board as designated appellate authority, as it had already decided. Learned counsel, based on the judgments cited also submits, that as it is a case of no evidence, the impugned order of dismissal cannot be sustained.

6. On the other hand, learned Standing counsel for the respondent submits that the very nature of charges is in relation to financial misappropriation, more particularly, collection of money from the patients for extending free treatment and claiming the amount from Prime Minister's Relief Fund/Chief Minister's Relief Fund/SIAF schemes and the crucial finding recorded by the Enquiry Officer is to the effect that the petitioner himself had admitted depositing of Rs.10.00 lakhs into the institute's account and the challan to that effect was signed by him. This aspect of the matter is evident inasmuch as the petitioner himself had deposited the money, which was alleged to have been misused. In the face of admitted facts, there is no necessity to prove the same independently.

7. Having considered the respective submissions, the scope of interference with respect to the disciplinary authority's order and the findings recorded therein based on the enquiry report, is limited. The Apex Court as well as this Court have repeatedly held that interference can only be in cases of no evidence or the facts as recorded or the order is perverse and as the scope has been explained in a judgment cited by both the learned counsel, it is not necessary for this Court to extract the same. Keeping the principles under which an order of the disciplinary authority is liable to be interfered with and applying the same to the case on hand is the task before this Court. The charges levelled against the petitioner are:

“Charge 1: Based on the news item published in various papers such as Andhra Jyothi, Eenadu, Vartha on 23.11.2002 and 27.11.2002, it is evident that Sri S. Panduranga Rao has demanded and collected money from the patients for extending free treatment and claiming the amount from CMRF/SIAF/PMRF.

Charge 2: Sri S. Panduranga Rao has also produced fake white cards utilizing his contacts and using his good offices in Civil Supplies Department or through some other Agency to extend the treatment benefits by projecting patients as poor and below poverty line.

Charge 3: Sri S. Panduranga Rao also collecting and demanding the amount from the patients on arranging the refund/reimbursement from the institute on receipt of sanction from CMRF/SIAF/PMRF for the advance paid by the patients.

Charge 4: Sri S. Panduranga Rao on getting sanction of CMRF/SIAF/PMRF on institute's name diverting the funds to other private hospitals like Mahavir Hospital, Hyderabad

and Usha Cardiac Centre, Vijayawada, by using his offices with the assistance of Revenue Department and Chief Minister's Peshi.

Charge 5: Sri S. Panduranga Rao vide Telegram Dt.25.11.2002 has been instructed to report for duty in view of 3rd Convocation but he failed to report for duty. Sri S. Panduranga Rao was unauthorizedly absented himself from duty with effect from 25.11.2002.”

8. The enquiry report, dated 20.01.2005, itself discloses that the petitioner did not attend the enquiry. The reason for his not attending the enquiry was on account of his being in the judicial custody. The enquiry report further reveals that an enquiry was conducted in the room of Dr. Narasimhulu and Dr. S.V.Ratnam by some other officers of the respondent. It also reveals that the Enquiry Officer, namely, Sri D. Raghunadha Rao, was also the Enquiry Officer for an earlier unsubstantiated allegation by a co-worker. The enquiry report reads as under:

“The Enquiry:

Depending on who the enquiry officer was the enquiry was conducted in the room of Dr. Narasimhulu or in Dr. S.V. Ratnam, in the designated room in the 1st floor of Millennium Block of NIMS or in my room 607, E-Bock, NIMS.

I was the enquiry officer for an earlier unsubstantiated allegation by a co-worker, at the time of his suspension and finally, after his dismissal, following a couple of other enquiry officers.

The Institute made every document that was available in relation to his enquiry available to me.

Sri S. Pandurangarao was given a chance to see all the documents available with us. He was given photocopies of all the documents requested by him. He was asked to appear before the enquiry officer in person. All the charges were readout to him and the entire proceedings were written down verbally. A copy of the proceedings for the day was handed over to him at the end of each sitting. He was very amicable and cooperative.

A sustenance allowance was provided by the Director on the recommendation of the Enquiry Officer, subsequent to a plea for the same by Sri S. Pandurangarao.”

9. The above quoted portion leave no manner of doubt that the Enquiry Officer, Sri D. Raghunadha Rao, did not issue any show cause notice to the petitioner for conducting enquiry after the Executive Board setting aside the earlier dismissal order. However, the enquiry report was submitted based on the preliminary enquiry conducted before pre-issuance of the charge sheet and, thereafter, the *ex-parte* report. It may be noted that the dismissal order, dated 04.02.2003, itself was not based on any enquiry, but the same was based on the report of one D.V. Nageshwar Rao, Inspector of Police, North Circle, and further on the alleged crediting of Rs.10 lakhs by way of challans on 13.12.2002. In other words, even at the earlier stage after issuance of the charge sheet, dated 05.12.2002, no enquiry was conducted. The Enquiry Officer appointed earlier, as a matter of fact, never initiated enquiry proceedings, except issuance of show cause notice, for which on behalf of the petitioner, time was sought on

account of his being in police custody. It may be noted that on behalf of the petitioner, his wife sought for four weeks time on 20.01.2003 and the Enquiry Officer granted time till 18.04.2003. However, earlier dismissal order was made on 04.02.2003, which came to be set aside by the Executive Board on 11.10.2003. After 11.10.2003, the record discloses that the petitioner was not called for verbal enquiry and no witness was examined and even the allegation that the petitioner, in fact, deposited Rs.10.00 lakhs in Chief Minister's Relief Fund account was not established.

10. As a matter of fact, the evidence that is said to have been gathered is that (i) the evidence available at the time of suspension were long answer questions and the newspaper reports and (ii) the latter evidence available at the time of his dismissal is in the form of a Challan for Rs.10.00 lakhs and FIR and a Police Enquiry Report at the time of his arrest and remand for fraud and misappropriation of CMRF/PMRF/SAIF along with other accomplices. The enquiry report does not even remotely appear as an enquiry report, but the same appears to be more of a justification for the suspension pending enquiry as well as the earlier dismissal order of the petitioner. The same is evident from the observations of the Enquiry Officer in his report, which reads as follows:

“Therefore, the employer’s decision to suspend him from service appears to be undeniably correct and appropriate for the charged crime.

The decision to dismiss him from service is based on more concrete evidence as stated above – an FIR, ‘admission of guilt’ through payment of monies alleged to have misappropriated and a police officer’s investigative report. That the entire procedure resulted in his arrest and subsequent remand proves that the crime committed was indeed grave. Sri Pandurangarao vehemently denies all the evidence against him but has no proof to the contrary except for the plea that he is ‘innocent until proven guilty’. This line of argument is open to interpretation by courts of law.

Based on the evidence available to I conclude that the suspension of Sri S. Pandurangarao is fully justified and maintainable. His dismissal from service also appears to be in order, the argument ‘innocent until proven guilty’ is however, open for interpretation in a Court of law.”

11. In sum and substance, this is a case where Enquiry Officer miserably failed to adhere to the basic principles of enquiry leave alone making an effort to arrive at the truth. The disciplinary authority, except reiterating the events that have taken place from the date of the newspaper reports and narrating the events and the orders of this Court in the earlier writ petitions filed by the petitioner, did not consider the material on record. Further, the disciplinary authority’s order itself categorically asserts that the Executive Board comprising of the Hon’ble Minister for Medical and Health and the higher officials of the Government and considering the serious and grave nature of the allegations, the Executive Board has decided in its

meeting, dated 23.05.2006, to terminate the services of the petitioner. In other words, the disciplinary authority merely implemented the decision of the Executive Board. In this context, the Rules governing the domestic enquiry and taking action based on the same may be noticed as set out in the Nizam's Institute of Medical Sciences Employees (Control and Appeal) Rules, which sets out an elaborate procedure with respect to method and manner of conducting enquiry and passing of orders by the disciplinary authority. On the orders of the disciplinary authority, Executive Board is the appellate authority and removal of service being a major penalty, the procedure contemplated under the Rules is required to be strictly adhered to. From the material placed before this Court, it can be observed that the enquiry report as well as the disciplinary authority's order do not disclose such exercise, having been carried out even remotely leave alone in letter and spirit. As the termination order of the petitioner itself came to be passed at the instance of the Executive Board, as contended by the learned counsel for the petitioner, directing the appellate authority to consider the case of the petitioner, would also be futile.

12. Now, it is not in dispute that the criminal case being C.C.No.205 of 2003 filed against the petitioner, wherein the petitioner was arrayed as accused No.3, was ended in acquittal for the specific

charges mentioned therein on 02.08.2010. It may also be noted that in the order of criminal Court a categorical finding was recorded that the prosecution has failed to prove that the petitioner was the one, who had deposited Rs.10.00 lakhs. On the contrary, the criminal Court categorically found that the very allegation of the amount being credited in favour of the respondent Institution belonging to accused Nos.1 and 2 itself was not established and there is no material to link the said deposit of Rs.10.00 lakhs to the petitioner. The order of the criminal Court is on merits. Though the findings recorded by the criminal Court are not binding and in the absence of there being no other material, there is no alternative other than to accept the same by this Court.

13. In the result, the Writ Petition is allowed and the impugned order of termination, dated 06.06.2006, is set aside. The respondent is directed to reinstate the petitioner into service. However, it is left open to the respondent, if they so otherwise advised, to make a fresh enquiry, in accordance with law, in view of the law declared by the Hon'ble Supreme Court in **Devendra Pratap Narain Rai Sharma Vs. State of Uttar Pradesh and others**¹⁰, that setting aside the order of termination shall not be considered as bar on the respondent from conducting an enquiry, in accordance with law.

¹⁰ AIR 1962 SC 1334 (V 49C 200) (From Allahabad)

Consequently, miscellaneous applications if any pending in the writ petition shall stand dismissed.

CHALLA KODANDA RAM, J

30th December, 2016
cbs/es



HON'BLE SRI JUSTICE CHALLA KODANDA RAM



W.P.No. 19275 of 2006

30th December, 2016

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