

**HONOURABLE SRI JUSTICE G.CHANDRAIAH
AND
HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO**

WRIT PETITION No. 42339 of 2015

DATED 4th JANUARY, 2016

BETWEEN

Y. Adinarayana Murthy

...Petitioner

And

The Joint Collector/Enquiry Officer,
Ongole, Prakasam District and ors

...Respondents

**HONOURABLE SRI JUSTICE G.CHANDRAIAH
AND
HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO**

WRIT PETITION No. 42339 of 2015

ORDER: (Per Hon'ble Sri Justice G.CHANDRAIAH)

This Writ Petition has been filed aggrieved by the order dated 23.12.2015 passed in O.A.No.7169 of 2015 whereby the Andhra Pradesh Administrative Tribunal (for short 'the Tribunal') while admitting the aforesaid O.A., directing the learned Government Pleader to file counter and posting the matter after four weeks, rejected the request of the petitioner to grant interim suspension of the operation of the Memo No.19912/EX.1/2015-2, dated 03.10.2015 issued by the first respondent therein and consequential proceedings dated 10.12.2015 issued by the second respondent therein.

The learned Counsel for the petitioner submits that the impugned order passed by the Tribunal does not contain any reason, much less valid and substantial, in rejecting the request of the petitioner to grant interim suspension as sought for. He submits that though the petitioner has made out prima facie case and balance of convenience in his favour for grant of interim suspension and cited several decisions of the Apex Court and this Court in support of his contentions, the Tribunal without looking into the same, bluntly rejected the request of the petitioner to grant interim suspension.

The facts of the case in brief are that: while the petitioner was working as Prohibition and Excise Superintendent, Markapur, Prakasam District and also President of the Employees Association, certain allegations of imputations/irregularities were published against him in the Press and those press reports were taken note of by the Government. The said allegations are said to be serious in nature. Therefore, the Government thought it fit to conduct a preliminary enquiry and accordingly the Special Chief Secretary to Government-fourth respondent issued Memo dated 03.10.2015 appointing the Joint Collector, Prakasam District to conduct a detailed enquiry into the allegations levelled against the petitioner and submit report to the Government within one month for taking further necessary action in the matter. Pursuant to the same, the first respondent-Joint Collector issued consequential notice dated 10.12.2015 directing the petitioner to appear before him for enquiry. Aggrieved by the same, the petitioner approached the Tribunal.

In the OA, several grounds have been raised by the petitioner/applicant. It was the main case of the petitioner/applicant before the Tribunal that the news items reported in the Press have no basis and the Memo dated 3.10.2015 issued by the Government and consequential notice dated 10.12.2015 issued by the Enquiry Officer do not come within the provision of any law. Therefore it was his case that the Memo dated 3.10.2015 and consequential notice dated 10.12.2015 prima facie are illegal. It was also his case that he made out a prima facie case and balance of convenience to grant interim relief.

Now the point that arise for consideration is whether the impugned order passed by the Tribunal requires to be interfered with ? If so to what relief ?

We have heard the learned Counsel on either side. Perused the material on record. We gave our anxious consideration to the submissions made by the learned Counsel on either side.

Having heard the learned Counsel on either side, we are not inclined to go in to the merits or otherwise of the allegations of irregularities published in the media against the petitioner. The petitioner is holding a substantial position in the cadre of Prohibition and Excise Superintendent and considering the same, the Government thought it fit to enquire into the truth or otherwise of the allegations of irregularities published against the petitioner in the media at the first instance and therefore it contemplated an enquiry preliminary in nature by exercising the

executive powers vested in it. In furtherance of the same, the Special Chief Secretary to Government issued Memo dated 3.10.2015 appointing the Joint Collector, Prakasam District to conduct a detailed inquiry into the allegations published against the petitioner in the media and furnish report to the Government within one month for taking further necessary action in the matter. Pursuant to the same, the Enquiry Officer so appointed issued consequential notice dated 10.12.2015 directing the petitioner to appear before him for enquiry. It appears that the petitioner did not appear before the Enquiry Officer and on the other hand, he sought for postponement of the enquiry and in the meanwhile he approached the Tribunal.

It is pertinent to state that whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint an enquiry officer. Preliminary enquiry is basically a fact-finding enquiry. Its object is to ascertain the truth or otherwise of the allegations made against an officer, to verify the information or complaint against an officer, and to collect necessary material in support of such allegations, and thereafter to enable for taking a decision as to whether there is justification to initiate a regular departmental action against the officer. If the allegations contained in the information or complaint received are not definite and/or sufficient material is not available to prove or substantiate them, the disciplinary authority may get a preliminary enquiry conducted in the allegations for the purpose of deciding further course of action in the matter. Thus, sometimes, a preliminary enquiry may be

needed to ascertain the truth or otherwise of the allegations against an employee. But, at the cost of repetition, it may be stated that a preliminary enquiry is not a precondition for initiating a departmental action. It may also be noted that there is no prescribed procedure for conducting preliminary enquiry, and appropriate procedure as per the requirements of the situation can be followed. At the stage of preliminary enquiry, it is not necessary to obtain the explanation of the delinquent officer unless it is considered necessary for any purpose. In the case of *Nirmala J. Jhala v. State of Gujarat*, {(2013) 4 SCC 301}, the Supreme Court has held that the preliminary enquiry may be useful only to take a prima facie view, as to whether there is any material in the allegations made against an employee warranting a regular enquiry. Thus the fundamental rights or the provisions of Article 311 of the Constitution or principles of natural justice do not apply to a preliminary enquiry. Thus no prejudice would be caused to the petitioner in appearing before the enquiry officer. Further it is not the case of the petitioner that the Government/disciplinary authority has no jurisdiction to conduct enquiry against public servant. Thus the contentions advanced by the learned Counsel for the petitioner do not merit consideration.

The decision of the Full Bench relied on by the learned Counsel for the petitioner in *GOVERNMENT of AP Vs. M.Z.MAJEED* {2006 (1) ALD 823} has no application to the facts of the case on hand. Therein the Full Bench interpreted Rules 20 to 22 of the CCCA Rules and held that it is mandatory for the disciplinary authority under the CCCA Rules 1991 to frame

charges before appointment of Enquiry Officer under Rule 20(2) and the role of enquiry officer commences after serving the articles of charge/s and receiving the written statement of defence, if any from the delinquent employee. In the case on hand, that stage of framing/serving articles of charges has not cropped up. It is only at the preliminary stage and hence the said decision has no application to the facts of the case on hand.

In this view of the matter only, the Tribunal instead of prolonging the matter, directed for filing counter so as to dispose of the main OA itself. That is the reason why probably the Tribunal has not granted interim order. For the foregoing discussion, we do not see any valid and substantial ground to interfere with the order of the Tribunal.

The Writ Petition is dismissed. However, it is made clear that this order will not come in the way of the petitioner to make appropriate application seeking expedite hearing of OA or any other appropriate relief. If such an application is made or if the Tribunal proceeds to dispose of the main OA itself, the same shall be disposed of uninfluenced by any of the observations made herein and purely on the merits of the subject matter.

Miscellaneous petitions pending consideration if any in the Writ Petition shall stand closed in consequence. No order as to costs.

JUSTICE G.CHANDRAIAH

JUSTICE U.DURGA PRASAD RAO

DATED 4TH JANUARY, 2016 .
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