

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA
REDDY

AND
THE HON'BLE MRS. JUSTICE ANIS

WRIT PETITION No.6483 of 2016

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03.03.2016

Between:

The State of Andhra Pradesh,
represented by its Principal Secretary,
Home Department, Hyderabad and another

..Petitioners

And

R.Amarnatha and another

..Respondents

Counsel for the petitioners: Government Pleader for Services (AP)

Counsel for the respondents: --

The Court made the following:

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ORDER: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This writ petition is filed for a *certiorari* to quash the order, dated 11.08.2015, in O.A.No.4610 of 2015 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'the Tribunal) – respondent No.2.

2. In the view we are proposing to take, it is not necessary to record the facts in detail. It will suffice to note that respondent No.1 was allegedly involved in a criminal case for the offence under Section 354 I.P.C. As he has not completed his probation as Police Constable (Civil), petitioner No.2 has issued a show cause notice, dated 04.08.2015, wherein respondent No.1 was called upon to show cause why his probation shall not be terminated and he shall not be discharged from service for his unsatisfactory performance, conduct and character, during the period of probation. It is also alleged in the said show cause notice as under:

“It is to inform you that you are involved as accused in Cr.No.100/2013 u/s 354 I.P.C. of Ramapuram PS and caused grave reprehensible criminal misconduct under sub rule (2) of Rule 8 of APCS (CC&A) Rules, 1991.”

Feeling aggrieved by the said show cause notice, respondent No.1 filed the aforementioned O.A. with the plea that as criminal misconduct on his part has been alleged, the petitioners cannot discharge him otherwise than by holding a full-fledged departmental enquiry. This plea was found acceptance with the Tribunal and it has, accordingly, allowed the O.A., by the impugned order, dated 11.08.2015. In para 5 of its order, the Tribunal held as under:

“In view of the above circumstances, as the impugned Show Cause Notice C.No.A10/2001/2014, dated 04.08.2015, is ex-facie illegal, it is set-aside. The respondents are at liberty to conduct a detailed enquiry providing an opportunity to the applicant and pass appropriate orders, as per rules and on merits. Accordingly, the O.A. is allowed at the stage of

admission. No costs.”

3. The learned Government Pleader for Services (AP) appearing for the petitioners has submitted that indeed, as far back as 20.12.2013, a memorandum of charge was issued by petitioner No.2, a full-fledged enquiry was held and charges were proved against respondent No.1, *vide* minutes, dated 14.11.2014, followed by a memo, dated 22.11.2014, to which the said respondent has submitted a detailed explanation, dated 02.12.2014. She has further submitted that the Tribunal has not taken these facts into consideration and proceeded on the premise that the later show cause notice, dated 04.08.2015, issued by petitioner No.2 was not preceded by an enquiry.

4. From the facts brought out on record, we find that the petitioners have followed a strange procedure in the instant case. On finding that respondent No.1 was involved in a criminal case, a charge memo was issued by petitioner No.2 on 20.12.2013. Admittedly, the procedure of departmental enquiry has been initiated by holding a full-fledged enquiry and in due culmination thereof, a memo calling for explanation of respondent No.1 was also issued, to which the said respondent has submitted his explanation.

5. Abandoning the above line of action, petitioner No.2 has embarked upon a new line of action by issuing a fresh show cause notice, dated 04.08.2015, in purported exercise of his power under Rule 17(a) (ii) of the Andhra Pradesh State and Subordinate Service Rules, 1996. In our opinion, as the probation of respondent No.1 is sought to be terminated by imputing criminal misconduct, the petitioners are bound to hold a full-fledged enquiry before taking a decision as to whether respondent No.1 shall be discharged or not. Though the Tribunal has not discussed the abovementioned facts, it has rightly concluded that respondent No.1 cannot be discharged without an enquiry and it has left liberty with the petitioners

to hold such an enquiry.

6. Since petitioner No.2 has already held enquiry, which was followed by a memo, dated 22.11.2014, and respondent No.1's explanation, dated 02.12.2014, the petitioners are permitted to resume further action from the stage where it was stopped.

7. Subject to the above observations, the Writ Petition is disposed of.

8. As a sequel to disposal of the writ petition, W.P.M.P.No.8243 of 2016 filed by the petitioners for interim relief shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

ANIS, J

03rd March, 2016
GHN