THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.36344 of 2014

ORDER

The present writ petition is filed, challenging the order passed by the Executive Officer of the 4th respondent temple vide proceedings Rc.No.A1/4393/2010 dated 08.03.2012, inflicting on the petitioner the punishment of withholding two annual grade increments with cumulative effect as enhanced by the third respondent Trust Board vide proceedings Rc.No.A1/4393/2010 dated 06.08.2014 ordering withholding of three increments with cumulative effect.

2. Heard Sri W.B.Srinivas, learned counsel for the petitioner, learned Government Pleader for respondents 1 and 2 and Sri A. Srikanth Reddy, learned Standing Counsel for respondents 3 and 4.

3. Since the pleadings are complete, with the consent of the counsel on either side, this Court deems it appropriate to dispose of the main writ petition at this stage.

4. Petitioner herein is working as a Senior Assistant in the 4th respondent temple. Mainly, there are three contentions raised by the learned counsel for the petitioner in the present writ petition. They are;

(i) the impugned orders of punishment are not sustainable as the respondents did not conduct any enquiry by giving opportunity to the petitioner;

(ii) the enquiry under CCA Rules is not permissible as the said Rules are not applicable to the petitioner being a temple employee and governed by Office Holders and

Servants Punishment Rules, 1987.

(iii) the order of the appellate authority, enhancing the punishment is without jurisdiction.

In support of his submissions and contentions, learned counsel for the petitioner places reliance on the judgments in **M.P.State Agro Industries Development Corporation Ltd., V. Jahan Khan**[1]**; K. Balarama Raju V. The High Court of Andhra Pradesh, Hyderabad, rep. by Registrar (Vigilance)**[2]**; N. Ravindra Murthy V. Shri Veerabhadra Swamy Temple, Bonthupally, Medak District**[3]**;** and **Makeshwar Nath Srivastava V. The State of Bihar**[4]**.**

5. On the contrary, it is vehemently contended by the learned Standing Counsel for respondents 3 and 4 that basing on the enquiry report of the Vigilance Officer and after issuing a show cause notice and after considering the explanation only, the Executive Officer of the 4th respondent temple passed the order of punishment, as such, there is no illegally nor procedural infirmity in the impugned action. It is further submitted that the contentions of the learned counsel for the petitioner that CCA Rules are not applicable and the appellate authority has no power to enhance the punishment are not tenable.

6. In the above background, now the issues which this Court is called upon to answer in the present writ petition are;

(i) Whether the procedure adopted by the respondents, for inflicting the punishment of withholding the increments with cumulative effect is in accordance with law or not?

(ii) Whether the enquiry is permissible under

Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991?

(iii) Whether the appellate authority- third respondent has power to enhance the punishment?

7. **<u>Issue No.1</u>**

Admittedly, in the present case, the vigilance enquiry went on behind the back of the petitioner and the petitioner had no opportunity to participate in the said enquiry nor he had any say in the said proceedings. In pursuance of the vigilance report, and of the strength of the same, the 4th respondent-Executive Officer issued a show cause notice in Rc.No.A1/5857/2011 dated 08.01.2012 asking the petitioner to offer explanation. Responding to the said show cause notice, the petitioner submitted an explanation on 07.02.2012. In the said explanation, the petitioner herein requested for open enquiry. There is also no controversy on the reality that no regular enquiry was conducted by giving opportunity to the petitioner to participate and to deny the allegations by adducing evidence. The fact remains that the said punishment admittedly is a major punishment. In this context, it may be appropriate to refer to the judgments cited by the learned counsel for the petitioner.

In **Agro Industries's case (1 supra),** wherein it was held as under;

> "Be that as it may, we are of the opinion that in the light of our interpretation of the aforenoted Regulations, the imposition of penalty vide composite order dated 19th December, 1989, directing recovery of loss of Rs.16903.41 and stoppage of three increments with cumulative effect, is a major penalty, clearly envisaging a regular enquiry before punishing the respondent. Since admittedly, this procedure was not followed, the High Court was justified in coming to the conclusion that imposition of the impugned penalty without

holding enquiry was illegal and without jurisdiction".

In **K. Balarama Raju's case (2 supra)**, wherein this Court held as under;

> "This Court in the normal circumstances would not have interfered with the findings of fact recorded at the domestic enquiry, even if there is some evidence on record which is acceptable and which could be relied, howsoever compendious it may be. The findings would be of two kinds, basic and ultimate. The ultimate findings could be reached only on the basic facts. If the basic fact does not exist or is not accepted, there cannot be an ultimate finding. In the instant case, the basic facts were denied and did not exist as those against whom the offence was said to have been committed, denied that the offence has ever been committed against them. Insofar as charges 1 and 3 are concerned, as discussed supra, the same were denied by the very persons who were said to have been involved and against whom the alleged violations had occurred. Insofar as charge No.2 is concerned the accused in C.C.No.113 of 2005 admitted the offence and paid the fine and that the petitioner made an endorsement on the charge sheet. The finding of the Enquiry Officer that the petitioner added his name as a witness is also not correct. With regard to charge No.4(a), no specific words of abuse were mentioned either in the complaint or in the Articles of Charges. Nobody was examined to demonstrate that he was personally abused or ill-treated. So also the finding on charge No.4(e) which is not proved on facts at all. On what date the incident is alleged to have happened was not at all indicated. The witnesses also speak only about a single incident wherein the petitioner allegedly broke a tumbler. This can hardly be a foundation to conclude that he was in the habit of breaking tumblers".
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> "Rule 20(18) of the CCCA Rules mandates the Enquiry Officer to question the Charged Officer after he closes his case, on the circumstances appearing against him in the evidence and seek his explanation when the charged officer does not examine himself. The Enquiry Officer, however, did not follow this procedure. As per Rule 20(18), the petitioner ought to have been examined after his evidence is closed, whereas in the present case, the petitioner closed his evidence on 28.04.2007, but his examination by the Enquiry Officer took place on 12.04.2007, which is in violation of the procedure prescribed under Rule 20(18). That apart, Rule 21 of the CCCA Rules specifies that the Disciplinary

Authority should give its own findings on the basis of the evidence adduced during the enquiry and then should come to a conclusion that a major penalty should be imposed on the basis of its findings. If it disagrees with the Enquiry Officer's findings, notice should be given to the Government Servant. If it does not disagree, no further explanation need be called from the Government Servant. Since the Disciplinary Authority did not give any findings on the basis of the evidence adduced before the Enquiry Officer, the Impugned order is liable to be struck down on this count also".

In view of the above parameters and the ratio laid down therein, the impugned action is vitiated owing to the failure to the regular enquiry by giving opportunity to the petitioner. As such, issue No.1 is answered in favour of the petitioner.

8. <u>Issue No.2</u>

In order to resolve this issue, it would be apt to refer to the judgments cited by the learned counsel for the petitioner.

In **N. Ravindra Murthy's case** (3 supra) at paragraph 72, this Court

held as under;

"The conclusions on questions referred and other related questions are as follows.

(1) Officer holders and servants of any charitable religious institution or endowment authorized to perform functions and discharge duties of Eos of an institution cannot be treated or considered as Eos appointed under Section 29(2) and (3) of the Act read with Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Subordinate Service (Non-Gazetted) Rules, 2002;

(2) Officers and holders authorized to perform functions and discharge the duties of EOS cannot be treated as Government servants under Section 29(6) of the Act, and therefore, they cannot be paid salary, allowances, pension or other remuneration out of Consolidated Fund of State;

(3) Andhra Pradesh Civil Services

(Classification, Conduct and Appeal) Rules, 1991 have no application to EOs appointed under Section 29(2) of the Act. As a corollary, these Rules were not applicable to office holders and servants of temple who are authorized to discharge functions of Eos;

(4) The Commissioner and/or Assistant Commissioner of Endowments are not competent to suspend a temple employee performing functions and discharging duties of EO as authorized by Commissioner under Section 29(5)(d) of the Act; and

(5) It is competent to the trustee/board of trustee or EO, as the case may be, to tale disciplinary action against temple employees and temple employees discharging functions of EO in accordance with Office Holders and Servants Punishment Rules, 1987. If the trustee or board of trustee or EO fails to take such action including the action to suspend a temple employee pending enquiry, then alone the Commissioner and/or department officers can take action".

Therefore, it is incumbent on the part of the respondent authorities to follow the Office Holders and Servants Punishment Rules, 1987. Therefore, this issue is also answered in favour of the petitioner and against the respondents.

9. **Issue No.3**

In the present case, the Executive Officer of the 4th respondent temple inflicted on the petitioner the punishment of withholding two increments with cumulative effect and as against the same, petitioner filed an appeal before the Trust Board and the Trust Board, by virtue of the impugned order, enhanced the punishment to that of withholding three increments. In this connection, it may be appropriate to refer to the judgment of the Honourable Apex Court, cited by the learned counsel for the petitioner, in **Srivastava's case (4 supra)**, wherein the apex Court held as under;

"Under this rule an appeal would lie before the Government against the order of the Inspector-General reverting the appellant to his substantive post of Sub-Inspector for one year. Such an appeal was in fact filed by the appellant. But no appeal was filed by the department against the order of the Inspector-General exonerating the appellant of the charges of misappropriate and connivance of misappropriation by the two constables. Under Rule 851(b), therefore, the only question before the, Government was whether the order of reversion should be sustained or not. There was no other matter by way of an appeal before the Government by the department or by any one else being aggrieved against the order of the Inspector-General by which he held that the charges against the appellant had not been established. That being so, the Government could pass in exercise of its appellate power under Rule 851(b) such an order as if though fit in the appeal filed by the appellant, i.e., either upholding the order of reversion or setting it aside. In the absence of any other appeal, the Government could not sit in Judgment over the findings of the Inspector-General given by him under the power conferred upon him by Section 7 of the Act. An appeal before the Government having been provided for under Rule 351(b), presumably both by the delinquent police officer, as also by the department, if aggrieved by an order passed by the Inspector-General, there would also be no question of the Government exercising its general power of superintendence under Section 3 of the Act. The exercise of such a power is ordinarily possible when there is no provision for an appeal unless there are other provisions providing for it. The order of dismissal passed by the Government in the appeal fled by the appellant, therefore, was not sustainable.

In its order, dated January 31 1963, the Government, no doubt, has referred to Rules 851(b) and 853-A as being the rules under which it purported to act for the purpose of making the impugned order of dismissal. Rule 851(b), as already pointed out, however, confers no such power. As regards Rule 853-A, it is neither set out in the impugned order, nor in the statement of case of the respondent-State. We called for its production, or even its copy but counsel for the State expressed his inability to produce the same. Further, counsel for the appellant told us that even if Rule 853-A had been framed, State cannot operate because so far it has not been published in the official gazette as required by Section 46(2). Counsel for the State was not in a position to throw any light whether the said rule has been framed or not and if framed whether it was notified in the Gazette. In these circumstances, he could not rely upon that rule to sustain the order of dismissal passed by the Government. We have, therefore, to go upon Rule 851 (b), which clearly does not empower the Government to pass an order such as the one impugned by the appellant on the ground of its revisional power or any such similar power under Section 3 of the Act. In the absence of any other provision of law or any rule conferring on the State Government the power to pass an order of dismissal in exercise of its revisional power or power of general superintendence, the general principle must prevail namely, that an appellate authority in an appeal by an aggrieved party may either dismiss his appeal or allow it either wholly or partly and uphold or set aside or modify the order challenged in such appeal. It cannot surely impose on such appellant a higher penalty and condemn him to a position worse than the one he would be in if he had not hazarded to file an appeal. Since under Rule 851(b) an appeal to the Government has been provided for and the Government had under that rule the appellate authority to dispose of appeals filed before it against the original order passed by the Inspector-General. It could not resort to any general power of superintendence except in cases where there is a provision conferring such a power in addition to its appellate authority and in the manner envisaged by such a provision".

In the instant case also, no provision of law could be brought to the notice of this Court which enables the appellate authority to enhance the punishment. Therefore, this issue is also answered in favour of the petitioner and against the respondents.

10. For the aforesaid reasons, the Writ Petition is allowed, setting aside the impugned orders. However, it is open for the respondents to take action in accordance with law. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

A.V.SESHA SAI, J

30th March, 2016

sj

[1] 2007(6) Supreme 172

[2] (2009) 5 ALD 1

[3] (2008) 3 ALD 372

[4] (1971) 1 SCC 662