

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

WRIT PETITION No.10792 of 2003

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Date:04.01.2016

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Between:

Mr. Mohd jaleel Ahmed

... Petitioner.

AND

The Andhra Pradesh Technology
Services Ltd., Rep by its
Managing Director, IV Floor,
BRKR Bhavan, Tank Bund Road,
Hyderabad and another

...Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

WRIT PETITION No.10792 of 2003

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ORDER:

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This writ petition is filed to declare proceedings of first respondent giving compulsory retirement to the petitioner through proceedings dated 07-04-2003 & 09-04-2003, which were confirmed by second respondent through order dated 20-05-2003 as illegal, arbitrary, without jurisdiction and violative of Articles 14, 16 & 21 of the Constitution of India.

2. Petitioner herein was appointed as Data Entry Operator in the first respondent-Limited Company and his services were regularised as Data Entry Operator from 15-06-1990.

The petitioner abstained for duty unauthorisedly from 20-11-2002 to 21-12-2002 for a period of 32 days, on that an explanation was called for and petitioner submitted his explanation dated 15-01-2003 informing the reasons for his absence from 20-11-2002 to 21-12-2002 and the first respondent, having not satisfied with the explanation, issued show-cause notice dated 18-02-2003 proposing dismissal from service for which, he submitted explanation dated 13-03-2003 and on considering the same, proceedings dated 07-04-2003 were issued giving compulsory retirement to the petitioner. Thereafter, petitioner preferred appeal to Chairman on 10-04-2003 and his appeal was rejected by proceedings dated 20-05-2003 confirming compulsory retirement given to him. Challenging the same, present petition is filed.

3. According to petitioner, the respondents, without following the service rules and regulations and without ordering any enquiry, awarded major punishment of compulsory retirement and therefore, the action of the respondents is arbitrary, illegal and violative of principles of natural justice.

4. Heard both sides.

5. At the time of filing of this writ petition, the employees are governed by Draft Regulations. Regulation 50 (2) of Draft Regulations is in respect of framing of charges etc. These regulations are subsequently approved in 2012. According to Regulation 17, the provisions contained in A.P., Civil Service (CCA) Rules, 1991, as may be amended from time to time are applicable to the A.P State Government Employees, shall apply to the employees of Andhra Pradesh Technology Services Limited covered by these regulations. The exceptions given to this Regulation 17 under (a),

(b), (c) & (d) are not applicable to the petitioner and petitioner has to be dealt under the CCA Rules of 1991. According to Rule 20 of the CCA Rules, no order imposing any of the penalties specified in Clauses 6 to 10 of Rule 9 shall be made except after an enquiry. Sub-rules 6 to 9 of Rule 9 deal with major penalties and sub-rule 8 deal with compulsory retirement, which was awarded to the petitioner herein. So from a combined reading of Rules 9 & 20, it is clear that punishment of compulsory retirement can be awarded only after due enquiry under CCA Rules. Here admittedly, no enquiry is ordered nor conducted for the unauthorised absence of the petitioner from 20-11-2002 to 21-12-2002 on account of which, he was given this major penalty of compulsory retirement. As rightly pointed out by Advocate for petitioner giving such major penalty, without conducting any enquiry, is against principles of natural justice.

6. Advocate for petitioner has relied on a decision of Hon'ble Supreme Court reported in **Kendriya Vidyalaya Sangathan & Another. vs. S.C. Sharma**^[1], wherein it was held to impose major penalty, basic requirement is that a conclusion has to be recorded as to misconduct before passing such order.

7. Since the respondents have not followed the procedure contemplated under draft regulations for awarding major penalty in my view is arbitrary and contrary to principles of natural justice. Following the decision of Hon'ble Supreme Court in **Kendriya Vidyalaya Sangathan & Another vs. S.C. Sharma**¹, I feel that ends of justice would meet if respondents are directed to reinstate petitioner within two weeks from the date of receipt of the order and then initiate disciplinary proceedings in accordance with Rules applicable and pass appropriate orders basing on the findings of the enquiry report. The

period of compulsory retirement till date of reinstatement shall be subject to the result of the enquiry. It is made clear that I have not expressed any opinion as to entitlement of any service benefit.

8. This Writ Petition is accordingly disposed of. No costs.

9. As a sequel, miscellaneous petitions, if any, pending in this writ petition, shall stand disposed of.

JUSTICE S. RAVI KUMAR

Date:04.01.2016

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[\[1\]](#) 2005 (1) Supreme 211