

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

AND
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

WRIT PETITION No.5877 of 2016

25.02.2016

Between:

P.Kamala Kumari

..Petitioner

And

The State of Andhra Pradesh,
represented by its Principal Secretary,
Environment, Municipal Administration and
Urban Development Department, Hyderabad and others

..Respondents

Counsel for the petitioner: Mr.D.Linga Rao for Mr.V.Ravichandran

Counsel for respondent Nos.1 to 3: Government Pleader for Services
(AP)

Counsel for respondent No.4: --

The Court made the following:

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ORDER: (Per CVNR,J)

The petitioner was initially appointed as Assistant Engineer by the Andhra Pradesh Public Service Commission (APPSC) in 1983 in Public Health & Municipal Engineering Department. Later, she was promoted as Deputy Executive Engineer in the year 2001; she was subsequently sent on deputation to the Fisheries Department and was repatriated to her parent department on 31.05.2006. Pertaining to an incident occurred during her deputation with the Fisheries Department, respondent No.3 has issued a charge memo, dated 02.11.2006. As her case was not considered for promotion to the post of Executive Engineer, the petitioner filed O.A.No.5598 of 2012 for a direction to respondent Nos.1 and 2 to consider her case for promotion, without reference to the charge memo issued by respondent No.3 without jurisdiction. During the pendency of the said O.A., the petitioner filed M.A.No.1834 of 2015 for amendment to the O.A. by including a fresh prayer for quashing the disciplinary proceedings including the charge memo, dated 02.11.2016, issued by respondent No.3. The Tribunal, by the impugned order, dated 14.08.2015, while dismissing the O.A. and the M.A. and holding that the M.A. for amendment is barred by limitation, however, left respondent Nos.1 and 2 free to issue fresh charge memo with articles of charges similar to those contained in the charge memo impugned in the O.A., on respondent No.3 dropping the said charge memo for want of jurisdiction.

2. Mr.D.Linga Rao, learned counsel representing Mr.V.Ravichandran, learned counsel for the petitioner, has submitted that the Tribunal has committed serious factual as well as jurisdiction errors in dismissing the O.A., in that it was under erroneous impression that the petitioner has not questioned the charge memo in the O.A. and that having realized that the charge memo issued by respondent No.3

is without jurisdiction, the Tribunal itself has left respondent Nos.1 and 2 free to issue a fresh charge memo, on respondent No.3 dropping the charge memo already issued by him. He has further submitted that one Bhupathi Ganga Rushyendhrudu, Assistant Engineer, Fisheries Department, filed O.A.No.6648 of 2009 and batch, wherein the Tribunal, *vide* its order, dated 15.04.2013, has quashed the charge memo on the ground of delay of six years and that the State Government has issued G.O.Rt.No.68, Animal Husbandry Dairy Development & Fisheries (VS.2) Department, dated 07.02.2014, implementing the said order in favour of the aforementioned employee.

3. The learned Government Pleader for Services (AP) appearing for respondent Nos.1 to 3 has sought to justify the order of the Tribunal.

4. A perusal of the record reveals that the petitioner was on deputation up to 31.05.2006 and she was repatriated to her parent department i.e., Public Health & Municipal Engineering Department on the said date. However, respondent No.3 has issued charge memo on 02.11.2006 after repatriation of the petitioner. Evidently, being conscious of the fact that respondent No.3 had no jurisdiction to issue a charge memo after the petitioner's repatriation to her parent department, the Tribunal has left respondent Nos.1 and 2 free to issue a fresh charge memo on the premise that respondent No.3 may drop the charge memo by himself as he had no jurisdiction to issue such charge memo. As could be seen from the reliefs claimed by the petitioner before the Tribunal, originally, she has sought quashing of the charge memo, dated 02.11.2006, issued by respondent No.3, not only on the ground of delay in concluding the disciplinary proceedings, but also on the ground that he has no jurisdiction. However, the petitioner appeared to have been ill-advised by filing the M.A. seeking amendment of the relief in the O.A., in order to question the charge memo on the ground of lack of jurisdiction. In our opinion, the Tribunal was not justified in non-suiting the petitioner only on the ground that

the amendment application was filed beyond the period of limitation. When the Tribunal was conscious of the fact that respondent No.3 has no jurisdiction to issue the charge memo, it ought not to have relied upon the technicalities and denied the relief to the petitioner. As we are convinced that respondent No.3 had no jurisdiction to issue a charge memo to an employee after repatriation to the parent department, the said charge memo is wholly unsustainable and the action of respondent Nos.1 and 2 in denying consideration of promotion to the petitioner on the ground of pendency of the disciplinary proceedings cannot also be sustained.

5. In the premises as above, charge memo, *vide* proceedings No.361/A.1/2006, dated 02.11.2006, of respondent No.3 is set aside as without jurisdiction. Since more than 11 years had elapsed from the time of the alleged misconduct of the petitioner and also considering the fact that the charges framed by respondent No.3 did not pertain to any misfeasance or malfeasance, we feel that it would be wholly unjust and unreasonable to subject the petitioner to fresh disciplinary proceedings by respondent Nos.1 and 2 at this length of time. Therefore, respondent Nos.1 and 2 are restrained from initiating fresh disciplinary proceedings against the petitioner. Accordingly, the order, dated 14.08.2015, in O.A.No.5598 of 2012 with M.A.No.1834 of 2015 is set aside and Respondent Nos.1 and 2 are directed to consider the case of the petitioner for promotion, if she is otherwise eligible.

6. The Writ Petition is accordingly allowed.

7. As a sequel to allowing the writ petition, W.P.M.P.No.7462 of 2016 filed by the petitioner for interim relief shall stand disposed as infructuous.

C.V.NAGARJUNA REDDY, J

25th February, 2016
GHN

M.S.K.JAISWAL, J