

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

WRIT PETITION No.8872 of 2016

Between:

The Commandant, 8th Bn TSSP, Kondapur,
Ranga Reddy District and others

..Petitioners

And

T.Venkata Sai Krishna and another

..Respondents

JUDGMENT PRONOUNCED ON: 18th March, 2016

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

AND

THE HON'BLE MRS. JUSTICE ANIS

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|--|--------|
| 1. Whether Reporters of local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment
may be marked to Law Reporters/Journals? | Yes/No |
| 3. Whether their Ladyship/Lordship
wish to see the fair copy of the Judgment? | Yes/No |

C.V.NAGARJUNA REDDY, J

ANIS, J

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*** THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE MRS. JUSTICE ANIS**

+ WRIT PETITION No.8872 of 2016

% 18.03.2016

The Commandant, 8th Bn TSSP, Kondapur,
Ranga Reddy District and others

..Petitioners

Vs.

\$ T.Venkata Sai Krishna and another

..Respondents

! Counsel for the petitioners: Government Pleader for Services (TS)

Counsel for the respondents: --

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>Head Note:

? Cases referred:

1. AIR 1964 SC 1006
2. (1969) 1 SCC 110
3. (1997)5 SCC 536
4. (1974) 2 SCC 831
5. (1999) 2 SCC 21
6. AIR 1958 SC 38

7. AIR 1960 SC 689
8. AIR 1961 SC 177
9. AIR 1963 SC 531
10. AIR 1958 SC 36 =1958 SCR 828
11. (2013) 3 SCC 607

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

Counsel for the respondents: --

The Court made the following:

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

The order, dated 05.11.2014, in O.A.No.2870 of 2014 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'the Tribunal) – respondent No.2, is questioned in this writ petition by the respondents in the said O.A.

2. Respondent No.1 was appointed on 01.02.2012 as a Police Constable in the 8th Battalion Telangana State Special Police, Kondapur, - petitioner No.1 and was placed on probation for a period of two years. As he was unauthorizedly absent for a period about 100 days, petitioner No.1 issued a show cause notice on 30.09.2013, whereby respondent No.1 was called upon to show cause why his probation shall not be terminated with effect from the date of expiry of the period of one month from the date of service of the said notice for his unsatisfactory performance and non-compliance of the conditions under Rules 16 and 17 of the Andhra Pradesh State and Subordinate Service Rules, 1996. It is relevant to note that in the penultimate para of the said show cause notice, it was held as under:

“It clearly shows that, you committed gross misconduct and carelessness attitude in his legitimate duties and more interested (sic – ‘in’) other affairs further your performance of duties (sic – ‘is’) also not up to the mark.”

Respondent No.1 submitted his explanation. Thereafter, petitioner No.1 passed order, dated 05.12.2013, terminating the probation of respondent No.1 and discharging him from Government service with immediate effect. Assailing the same, respondent No.1 filed the

aforesaid O.A. As referred to above, by the impugned order, the Tribunal has allowed the O.A. along with two other O.As. filed by the similarly situated persons.

3. The learned Government Pleader for Services (TS) appearing for the petitioners has submitted that the Tribunal has misdirected itself in allowing the O.A. based on the legal principle that a probationer cannot be discharged without enquiry, in cases where the order of discharge casts a stigma on him/her. He has invited this Court's attention to the discharge order and submitted that in the said order, respondent No.1 was not stigmatized and therefore, the Tribunal has allowed the O.A. by wrong application of law.

4. Opposing the above submissions, the learned counsel for respondent No.1 has taken objection to the entertainment of the writ petition on the ground that the same suffers from unexplained laches. Even on merits, he has relied upon the penultimate para of the show cause notice, dated 30.09.2013, as reproduced above and submitted that even though the discharge order *per se* does not contain the stigmatic remarks, the show cause notice itself shows that the alleged misconduct was the basis for discharging respondent No.1.

5. We have carefully considered the submissions of the learned counsel for both the parties.

6. As regards the laches, the Tribunal has allowed the O.A. on 05.11.2014. No explanation whatsoever has been offered by the petitioners for not moving this Court for one year and three months. Not only that they have remained quiet, but also they have kept respondent No.1 in suspended animation, without implementing the order of the Tribunal.

7. Section 21 of the Administrative Tribunals Act, 1985 stipulated one year time from the date of arising of cause of action for an

employee to invoke the jurisdiction of the Tribunal. This being so, we do not find any reason as to why the same yardstick shall not be applied to the employer for filing the writ petition, if he is aggrieved by the order passed by the Tribunal. Though Article 226 of the Constitution of India does not stipulate any period of limitation for filing writ petitions, in a catena of decisions, the Supreme Court held that even in the absence of limitation, the Constitutional Courts have to examine whether the party has approached the Court within a reasonable time and that what is reasonable time depends on the facts of each case. (See **State of M.P. vs. Bhailal Bhai**^[1], **Tilokchand Motichand vs. H.B.Munshi**^[2] and **Mafatlal Industries Ltd., vs. Union of India**^[3]) As noted hereinbefore, for an employee, a limitation of one year is stipulated. It is appropriate that the same yardstick shall be applied to the State or any other employer for filing a writ petition against the orders of the Tribunal. Any other standard, in our opinion, would discriminate between an employee and an employer. Applying this yardstick and in the absence of any explanation whatsoever offered for the inordinate delay in filing the present writ petition, we are of the opinion that the writ petition is liable to be dismissed on the ground of laches alone.

8. Even otherwise, on merits, we are convinced that the writ petition is liable to be dismissed. A Constitution Bench of the Supreme Court in **Samsher Singh vs. State of Punjab**^[4], *inter alia*, held as under:

“.....The authority may in some cases be of the view that the conduct of the probationer may result in dismissal or removal on an inquiry. But in those cases the authority may not hold an inquiry and may simply discharge the probationer with a view to giving him a chance to make good in other walks of life without a stigma at the time of termination of probation. If, on the other hand, the probationer is faced with an enquiry on charges of misconduct or inefficiency or corruption, and if his services are terminated without following the provisions of Article 311(2) he can claim protection.....”

In **Radhe Shyam Gupta v. U.P. State Agro Industries Corporation Limited**^[5], Jagannadha Rao, J, speaking for the two Judge Bench, referred to seven Constitution Bench judgments and a judgment of seven Judges, which include the judgments in **Parshottam Lal Dingra v. Union of India**^[6], **State of Bihar v. Gopi Kishore Prasad**^[7], **State of Orissa v. Ram Narayan Das**^[8], **Madan Gopal v. State of Punjab**^[9] and **Samsher Singh v. State of Punjab**^[10] and various other subsequent judgments, and summed up the legal position to the effect that in cases of termination of a temporary employee or a probationer simpliciter and misconduct was the motive behind such termination, no enquiry is necessary, but where misconduct constitutes foundation of the termination order, regular departmental enquiry must precede such termination.

Singhvi, J, speaking for a two-Judge Bench in **State Bank of India v. Palak Modi**^[11] has extensively referred to the case law reflected in the various Constitution Bench judgments, including those referred to above and reiterated the above settled legal position.

9. Thus, the law recognized a dichotomy in order to determine whether termination of a probationer must be preceded by an enquiry or not. If misconduct is the motive behind such termination, no enquiry is necessary and in cases where misconduct constitutes the foundation of termination, an enquiry must precede such termination.

10. From the perusal of the show cause notice dated 30.09.2013, as referred to above, it is clearly evident that respondent No.1 was imputed with misconduct. Therefore, it is clear that the misconduct is the foundation for termination of respondent No.1. On the analysis as above, we are of the opinion that even on the merits of the case the

writ petition must fail.

11. For the aforementioned reasons, the Writ Petition is dismissed.

12. As a sequel to dismissal of the writ petition, W.P.M.P.No.11252 of 2016 filed by the petitioners for interim relief shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J

ANIS, J

18th March, 2016

Note: L.R. copies to be marked.

(B/o)

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[\[1\]](#) AIR 1964 SC 1006

[\[2\]](#) (1969) 1 SCC 110

[\[3\]](#) (1997)5 SCC 536

[\[4\]](#) (1974) 2 SCC 831

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[\[9\]](#) AIR 1963 SC 531

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[\[11\]](#) (2013) 3 SCC 607