

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE M.S.K.JAISWAL

WRIT PETITION No.11148 of 2016

Date:21.4.2016

Between:

The State of A.P., retd by its
Principal Secretary, Higher Education
Department, Hyderabad and another.

....Petitioners

And:

Ch. Ravindra, S/o Baswaiah
and another.

.....Respondents

Counsel for the petitioners: GP for Services (AP)

Counsel Respondent No.1: Mr. K.Ram Reddy

The Court made the following:

ORDER: *(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

This Writ Petition is filed for a *Certiorari* to quash order, dated 27.4.2015, in Original Application No.3267 of 2014 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'the Tribunal').

We have heard the learned Government Pleader for Services (Andhra Pradesh) appearing for the petitioners and perused the record.

Respondent No.1 was appointed as Head of Section (Mining) in pursuance of his selection by the Andhra Pradesh Public Service Commission in the year 1991 and was posted at Government Polytechnic College, Gudur.

As per his eligibility and seniority, he was due for promotion as Regional Joint Director, Technical Education in the year 2007. As he was overlooked for promotion, he has challenged the action of the petitioners by filing O.A.No.5935 of 2013. The Tribunal has directed the petitioners to consider the case of respondent No.1 for promotion. As the said order was not implemented, respondent No.1 has filed a Contempt Application. In this background, petitioner No.1 has issued G.O.Ms.No.25, Higher Education (TE.I) Department, dated 08.5.2014, imposing the penalty of removal of respondent No.1 from service. The reason for passing the said order was that one Kumari Aziza Begum, who was an employee, has filed a police report alleging that respondent No.1 was sexually harassing her and he tried to outrage her modesty. The said report was registered as a case in Crime No.6 of 2004 for the offences under Sections-354 and 509 of the Indian Penal Code and was tried by the learned Assistant Sessions Judge, Asifabad as Sessions Case No.375 of 2004. During the pendency of trial, the petitioners have initiated departmental proceedings against respondent No.1 by issuing charge memo, dated 02.02.2005, based on the same allegations on which respondent No.1 was prosecuted. By judgment, dated 30.11.2006, respondent No.1 was acquitted of the charges. However, the petitioners continued the departmental proceedings and the enquiry officer/Secretary-SBTET submitted his report allegedly behind the back of respondent No.1. Accepting the said report, petitioner No.1 has issued G.O.Ms.No.25, dated 08.5.2014, removing respondent No.1 from service. Assailing this order, respondent No.1 approached the Tribunal, which initially granted interim suspension of the said order and later, allowed the said O.A. on keen contest by the petitioners.

The Tribunal held that even if the acquittal of respondent No.1 was to be ignored as the same was based on benefit of doubt, the enquiry officer failed to follow the proper procedure under the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (for short 'the Rules'); that respondent No.1 was not served with the list of witnesses proposed to be examined by the department; that the enquiry officer has recorded the statements of as many as 32 staff members behind the back of respondent No.1; and that the statements of the alleged victim was also recorded in the absence of respondent No.1. The Tribunal further found that placing reliance on the statements recorded by the enquiry officer behind the back of respondent No.1, who was not even given an opportunity to cross-examine those witnesses, the enquiry officer found respondent No.1 guilty of the charges and that based on the enquiry report, the order of removal was passed. The Tribunal has, accordingly, held that the whole enquiry was vitiated by procedural illegality and violation of principles of natural justice and that, therefore, removal of respondent No.1 from service cannot be sustained in law. The Tribunal has also taken note of the fact that as the petitioners could not complete the enquiry within a reasonable time and respondent No.1 is not left with much service, it is not proper to expose him to further departmental proceedings.

On a careful consideration of the facts of the case and the reasons assigned by the Tribunal, we do not find any reason to interfere with the first part of the impugned order, whereby it has set aside the removal order. However, we are not in agreement with the part of the order of the Tribunal whereby it has restrained the petitioners from holding fresh enquiry. While ordinarily an employee shall not be subjected to prolonged enquiry,

here is a case where serious allegations of misconduct towards a subordinate employee were made against respondent No.1. While we are not inclined to express our opinion on the delinquency or otherwise of respondent No.1 at this stage, we are, however, of the opinion that considering the nature of the allegations, respondent No.1 cannot be allowed to get away without being subjected to further enquiry. The learned counsel for respondent No.1 has also fairly conceded to this extent.

In the light of the above facts of the case, the Writ Petition is partly allowed. The order of the Tribunal to the extent of dropping all further proceedings is set aside. The petitioners are directed to hold a fresh enquiry as per the procedure prescribed under the Rules, complete the same and pass appropriate orders within three months from the date of receipt of this order.

As a sequel to disposal of the Writ Petition, WPMP.No.14071 of 2016 is disposed of as infructuous.

*JUSTICE C.V.NAGARJUNA
REDDY*

JUSTICE M.S.K.JAISWAL

*21stApril, 2016
DR*