

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

AND
THE HON'BLE MRS. JUSTICE ANIS

WRIT PETITION No.8888 of 2016

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18.03.2016

Between:

G.Giddaiah

..Petitioner

And

The Executive Engineer, HLC (LOC) Division,
Ananthapur and others

..Respondents

Counsel for the petitioner: Mr.Penjuri Venugopal

Counsel for the respondents: Government Pleader for Services (AP)

The Court made the following:

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

This writ petition is filed for a *certiorari* to quash order, dated 28.12.2015, in O.A.No.2274 of 2012, on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'the Tribunal') – respondent No.4. The petitioner sought for a consequential direction to respondent No.1 to continue him in service, without break and with all the consequential benefits.

2. We have heard Mr.Penjuri Venugopal, learned counsel for the petitioner, and perused the record.

3. The brief facts leading to the filing of this writ petition are that the petitioner while working as Work Inspector in HLC (LOC) Section, Garladinne, under the control of HLC (LOC) Sub Division, Yeruvapalli and that of the Assistant Executive Engineer (Section Officer), Garladinne, his salary was stopped from 03.09.2007 on the allegation that he was absconding from his duties, by issuing memoos, dated 10.09.2007 and 14.09.2007 by the Assistant Executive Engineer, Garladinne. The petitioner filed O.A.No.6111 of 2007 for the relief of payment of salary. The Tribunal disposed of the said O.A. on 24.06.2008, with the following directions:

“In view of the serious nature of the allegations made by the applicant in the reply to the counter that he was directed to collect mamools from the farmers and the evidence of work statement produced by the applicant and in the absence of proper evidence produced by both sides in support of their respective stands taken, in the interests of justice and fair play, it is hereby directed that enquiry be conducted by proper officer within a period of two months to go into the truth of the allegations made by the applicant and also with regard to the allegation by the Department that the applicant is absconding from duty from 03.09.2007 by serving notice to the applicant for his explanation and to take appropriate action on the basis of the enquiry proceedings. The O.A. is disposed of in the

above terms.”

In pursuance of the said order of the Tribunal as extracted above, respondent No.2, who is the unit officer, ordered enquiry by appointing one P.Ravindra Reddy, Deputy Executive Engineer, as the enquiry officer, with a direction to submit his report on or before 15.08.2008.

The enquiry officer conducted enquiry and submitted his report, dated 29.09.2008, to respondent No.2, with the finding that the petitioner was not attending his duties and there was no truth in the allegation made by him against respondent No.1 with regard to the collection of bribes. Since respondent No.1 is the competent authority for passing appropriate order against the petitioner, respondent No.2 forwarded the enquiry report to the former. On receipt of the enquiry report, respondent No.1 issued show cause notice, dated 15.11.2008, calling for his explanation within one month from the date of receipt of the same, indicating the proposed punishment for the unauthorized absence to duty for a period exceeding one year in terms of G.O.Ms.No.8, Finance (FR-I) Department, dated 08.01.2004. The petitioner filed his explanation on 20.11.2008, wherein he has taken the ground that the enquiry was not conducted in accordance with the procedure laid down in the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991. On

consideration of the said explanation of the petitioner, respondent No.1 issued charge memo, dated 23.12.2008, and initiated fresh enquiry. On 31.12.2008, the petitioner submitted his explanation denying all the charges. Not satisfied with the explanation of the petitioner, respondent No.1 appointed one K.Yerriswamy, Deputy Executive Engineer, HLC (LOC) Sub-Division, Anantapur, as enquiry officer on 05.01.2009 to conduct enquiry on the charges framed against the petitioner and he also appointed one K.Madhusudhan Reddy, Assistant Executive Engineer, Anantapur, as Presenting Officer on the same day i.e., 05.01.2009.

4. In pursuance of the aforementioned charge memo, dated 23.12.2008, departmental enquiry was conducted in the presence of the petitioner and after completion of the enquiry, enquiry officer submitted his report, dated 07.03.2009, wherein he has found all the four charges proved against the petitioner. On receipt of the said enquiry report, respondent No.1, furnishing a copy of the same, issued show cause notice, dated 17.03.2009, calling for the petitioner's explanation. The petitioner submitted his explanation on 28.03.2009. Not being satisfied with the explanation submitted by the petitioner, respondent No.1 has come to the conclusion that the petitioner was highly irregular and has shown gross negligence in discharge of his official duties and accordingly, the major penalty of removal from service was imposed on him on 03.04.2009. Thereafter, the petitioner filed O.A.No.3182 of 2009 questioning the show cause notice, dated 15.11.2008, pertaining to the enquiry conducted at the instance of respondent No.2 and the said O.A. was dismissed by the Tribunal on 22.11.2011 as infructuous with liberty to the petitioner to file a fresh O.A. against his removal order. Accordingly, the petitioner filed O.A.No.2274 of 2012. As observed above, the Tribunal, by the impugned order, dismissed the said O.A.

5. The learned counsel for the petitioner has submitted that the first enquiry ordered by respondent No.2 itself was vitiated and that his removal order partly based on the enquiry report submitted in the first enquiry by the enquiry officer, who was equal in rank of the petitioner himself, is not sustainable in law.

6. We have perused the impugned order of the Tribunal, which not only contains detailed discussions, but also the reasons, which are highly convincing. The Tribunal has considered each one of the contentions advanced on behalf of the petitioner, before it rejected the same, by giving cogent reasons. The Tribunal has rendered a finding that the first enquiry report was *nonest* as the same was ordered by

respondent No.2, who was not competent to order such enquiry, and that even though there was reference to the contents of the first enquiry report in the removal order, the same was mainly passed based upon the findings of the enquiry officer in the second enquiry report. The Tribunal has rightly observed based on the decided case law that the Tribunals will not sit as appellate authority over the orders passed in the disciplinary proceedings and that unless the findings are not based on the evidence on record or are the same are perverse, the Courts seldom interfere with the orders in the disciplinary proceedings. Upon a careful reading of the reasons assigned by the Tribunal for dismissing O.A.No.2274 of 2012, we are entirely in agreement with the same and therefore, we do not find any reason whatsoever to interfere with the impugned order of the Tribunal.

7. The learned counsel for the petitioner has submitted that his client is entitled to payment of arrears of salary. If that be so, the petitioner is permitted to make a representation to respondent No.1 and if such representation is made, the latter shall consider the same, take an appropriate decision thereon and communicate the same to the petitioner, within a period of one month from the date of receipt of a copy of this order.

8. Subject to the liberty given to the petitioner as above, the Writ Petition is dismissed.

9. As a sequel to dismissal of the writ petition, W.P.M.P.No.11266 of 2016 filed by the petitioner for interim relief shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J

ANIS, J

18th March, 2016

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