THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.24857 OF 2016

ORDER:

Heard learned counsel for the petitioner, Government Pleader for Endowments for respondents 1 to 5 and Smt K.Lalitha, counsel for respondent Nos.6 and 7.

Petitioner was employed as Senior Assistant in the 6th respondent temple. On the allegation that the petitioner committed certain irregularities as Manager of Sri Yadavallivari Choultry, Guntur, the 4th respondent directed the 6th respondent to take disciplinary action against him. Thereafter, a charge memo dated 16.09.2013 was issued to the petitioner. Ultimately, the petitioner was removed from service on 16.04.2016.

While the petitioner was in service and facing the enquiry pursuant to the charge memo dated 16.09.2013, another charge memo was issued to the petitioner on 27.11.2015 framing different charges against the petitioner. Petitioner assails the continuance of the disciplinary proceedings after he was removed from service on 14.06.2016 by the respondents in regard to the charges framed under the subsequent charge memo dated 27.11.2015.

Learned counsel for the petitioner placed reliance in **Bhagirathi Jena v Board of Directors, O.S.F.C and others**[1] and contended that in the absence of any specific provision in the service rules empowering the employer to deduct any amount from the amounts payable to an employee or permitting continuance of an enquiry after superannuation or removal, the respondents cannot proceed to conduct the enquiry on the basis of the second

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[1] (1993)3 SCC 666

charge memo dated 27.11.2015 after the petitioner was removed from service on 16.04.2016.

In the counter affidavit filed on behalf of the 6th respondent no legal basis is pleaded for continuing the disciplinary proceedings pursuant to the second charge memo dated 27.11.2015 after the petitioner was removed from service on 16.04.2016.

Section 37 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act) also does not permit the employer to continue disciplinary proceedings against an employee, who has been removed from service or to recover any amounts from him after his removal from service. There is also no such provision in the A.P. Charitable and Hindu Religious Institutions and Endowments Officeholders and Servants Punishment Rules, 1987 (for short 'the Rules) vide G.O.Ms.No.830, Revenue (Endowments-I), dated 18.08.1989.

In **Bhagirathi Jena's case** (supra) cited by the learned counsel for the petitioner, the question was whether the disciplinary enquiry against an employee can be continued after his retirement from service and whether the employer can continue it even for the purpose of effecting recovery from the petitioner's provident fund. The Court referred to the applicable service regulations and observed that there was no specific provision made in the regulations for deducting any amount from the provident fund consequent to any misconduct determined in the departmental enquiry, nor was any provision made for continuance of the departmental enquiry after superannuation, and that in the absence of any such provision in the regulations, the employer has no legal authority to make any reduction in the employee's retiral benefits. It further held that there is also no provision for conducting disciplinary enquiry after the employee's retirement nor is there any provision stating that in case misconduct is established, a deduction could be made from the retiral benefits. Therefore, it declared that there is no authority vested in the employer for continuing departmental enquiry even for the purpose of imposing any reduction in retiral benefits payable to the employee. It also held that in the absence of such an authority, the enquiry would have to be treated as lapsed and the employee would be entitled to full retiral benefits.

In the present case, instead of retirement, the petitioner has been removed from service and on such order being passed also the employer and employee relationship does not exist between the parties (Like in case of retirement). Therefore, there is no justification for the respondents to continue with the enquiry pursuant to the second charge memo dated 27.11.2015, after the petitioner was removed from service on 16.04.2016. Therefore, any order, even if passed pursuant to the said enquiry against the petitioner after he was removed from service, would be nullity and have no legal effect.

Accordingly, the writ petition is allowed; the order dated 20.10.2016 passed by the 6th respondent is declared null and void and without any jurisdiction; the charge memo dated 27.11.2015 issued by the 6th respondent is deemed to have lapsed consequent on the petitioner's removal from the service dated 16.04.2016 as a measure of punishment on the basis of enquiry conducted against him pursuant to the charge memo dated 16.09.2013; and the respondents are also restrained from making any recovery pursuant to the enquiry report submitted in the enquiry conducted in relation to the second charge memo dated 27.11.2015. There shall be no order as to costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 30.11.2016
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