

In the High Court of Judicature at Hyderabad
for the State of Telangana and the State of Andhra
Pradesh

Writ Petition No.10612 of 2016

Between:

M.Ramu

... Petitioner

and

–
The Commandant,
SAR CPL, Amberpet, Hyderabad and 3 others

... Respondents

–
Date of Judgment Pronounced: 07-04-2016

Submitted for Approval:

The Hon'ble Sri Justice C.V.Nagarjuna Reddy
and

The Hon'ble Sri Justice M.S.K.Jaiswal

1. Whether Reporters of Local newspapers
Yes/No
may be allowed to see the judgments ?

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2. Whether the copies of judgment may be
Yes/No
marked to Law Reporters/Journals

3. Whether Their Ladyship/Lordship wish to
Yes/No
see the fair copy of the Judgment ?

**_____
(C.V.Nagarjuna Reddy, J)**

**_____

(M.S.K.Jaiswal, J)**

*** The Hon'ble Sri Justice C.V.Nagarjuna Reddy**
and
The Hon'ble Sri Justice M.S.K.Jaiswal

+ Writ Petition No.10612 of 2016
% Dated 07.04.2016

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...Respondents

! Counsel for the petitioner: Mr.A.Tirupathi Goud

^ Counsel for respondent Nos.1 to 3: GP for Services (AP)

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>HEAD NOTE:

? Cases cited:

AIR 1964 SC 1419
AIR 1961 SC 1506
(1998) 8 SCC 1
(2003) 2 SCC 107
(2004) 3 SCC 553

The Hon'ble Sri Justice C.V.Nagarjuna Reddy
and
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Counsel for the petitioner :

Mr.A.Tirupathi Goud

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

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The Court made the following:

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

This Writ Petition is filed against Order, dated
16.03.2016, in OA.No.1059 of 2016 on the file of

the Andhra Pradesh Administrative Tribunal.

I have heard Mr.A.Tirupathi Goud, learned Counsel for the petitioner, and the learned Government Pleader for Services (AP).

The petitioner is an Armed Reserve Sub-Inspector. His pay scale was fixed as per PRC 1992 and also PRC 2003. However, by proceeding, dated 15-12-2015, respondent No.1 has revised his pay scale and by a separate order passed on 16.12.2015, he ordered recovery of a sum of Rs.3,24,976/- on the ground that due to wrong fixation of pay scale, the aforementioned sum was paid to the petitioner in excess of his entitlement for the period from 20-08-1998 to 30-11-2015. Feeling aggrieved by the said orders, the petitioner filed OA.No.1059 of 2016. By the impugned order, the Tribunal has dismissed the said OA on the ground that the petitioner has not availed the alternative remedy and therefore, the OA was barred by Section 20 of the Administrative Tribunals Act, 1985.

A perusal of the record shows that the main ground on which the petitioner assailed the

proceedings of respondent No.1 before the Tribunal was that the said respondent has unilaterally revised his pay scales without even issuing a notice to him. We have perused proceeding, dated 15.12.2015, of respondent No.1. It does not contain any reference to notice to the petitioner or any explanation being called from him. It is also not the pleaded case of respondent No.1 through the respective Government Pleaders before the Tribunal as well as before this Court that the said proceedings were issued after notice to the petitioner. By the said proceeding, respondent No.1 has not only made a downward revision of the pay scale of the petitioner but also ordered recovery of the alleged excess payment in 24 installments commencing from the month of December, 2015. The law is well settled that any order, which results in adverse civil consequences, must be preceded by a notice and an opportunity of being heard to the person, who is likely to be affected by such order.

The learned Government Pleader has fairly not disputed that Order, dated 15-12-2015, and the consequential Order, dated 16-12-2015, were not preceded by such notices to the

petitioner. Therefore, the order challenged before the Tribunal was a nullity. Once an order is a nullity, the same does not exist in law and the doctrine of alternative remedy has no application in a case where such an order is sought to be challenged (See **Thansingh Nathmal v. Superintendent of Taxes**^[1], **A.V.Venkateshwaran v. R.S.Wadhwani**^[2], **Whirlpool Corporation v. Registrar of Trade Marks**^[3], **Harbanslal Sahnia v. Indian Oil Corporation Ltd.**^[4] and **ABL International Limited v. Export Credit Guarantee Corporation of India Limited**^[5]).

The Tribunal has completely overlooked the above settled legal position of law and dismissed the OA on the purported ground of non-availing of the alternative remedy by the petitioner.

For the aforementioned reasons, the Writ Petition is allowed and both the orders, dated 05-12-2015 and 16-12-2015, are set aside, however, with liberty to respondent No.1 to initiate

fresh action by issuing a show cause notice to the petitioner and pass a speaking order after considering the explanation, if any filed by the petitioner.

As a sequel, WPMP.No.13374 of 2016, filed by the petitioner for interim relief, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

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(M.S.K.Jaiswal, J)

Dt: 7th April, 2016

Note:

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[\[1\]](#) AIR 1964 SC 1419

[\[2\]](#) AIR 1961 SC 1506

[\[3\]](#) (1998) 8 SCC 1

[\[4\]](#) (2003) 2 SCC 107

[\[5\]](#) ((2004) 3 SCC 553)