

*THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI*

WRIT PETITION No.30095 of 2016

ORDER: (per Hon'ble Sri Justice Sanjay Kumar)

With the consent of the learned Government Pleader appearing for the respondents, the matter is taken up for final disposal.

The petitioner is the unsuccessful applicant in O.A.No.3410 of 2016 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad. The said O.A. was dismissed by the Tribunal vide order dated 01.09.2016. Cause for the petitioner/applicant to approach the Tribunal by way of the subject O.A. was the proceedings dated 17.08.2016 passed by the Mandal Parishad Development Officer (MPDO), Eluru Mandal, West Godavari District, placing him under suspension.

The contention of the petitioner/applicant before the Tribunal was that the MPDO had no jurisdiction to pass such an order of suspension against him in terms of the Andhra Pradesh Panchayat Raj Subordinate Service Rules. The Tribunal however held against the petitioner/applicant on the ground that Rule 14 (1)(a)(i) of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (for brevity, 'the Rules of 1991'), indicates that the officer superior in rank to the member of the subordinate service, who is to be placed under suspension, would be competent to pass such an order. Holding so, the Tribunal dismissed the O.A.

Sri K. Chidambaram, learned counsel for the petitioner/applicant, would point out that separate rules were framed under Article 309 of the Constitution in relation to the Panchayat Raj Subordinate Services titled 'the Andhra Pradesh Panchayat Raj Subordinate Service Rules, 2010' (for

brevity, 'the Rules of 2010'). The petitioner/applicant would fall within Category (1) of Class-A Supervisory posts mentioned under Rule 2 of the Rules of 2010, dealing with the constitution of the service, being a Panchayat Secretary Grade-I. In terms of Rule 13 of the aforestated Rules, the disciplinary authority for the categories of Panchayat Secretaries Grade I and II is stated to be the Commissioner of Panchayat Raj and Rural Employment. Learned counsel would also point out that the Commissioner of Panchayat Raj and Rural Development, Andhra Pradesh, issued Circular Memo No.2587/CPR&RD/B1/2015 dated 28.04.2016 reiterating the aforestated legal position and instructing the Collectors/District Panchayat Officers in the State not to place Panchayat Secretaries Grade I and II under suspension directly and to submit suitable proposals to the Commissioner, Panchayat Raj & Rural Development, for taking necessary action as per the rules.

This being the legal position, Rule 14 of the Rules of 1991, which deals with disciplinary authorities and authorities competent to suspend in respect of subordinate services, would have to be categorised as general rules in the face of the special rules framed for subordinate services in the Panchayat Raj Department. Trite to state, the special rules would prevail over the general rules to the extent of contradictions, if any. The gaps in the special rules, if any, may be filled up by taking recourse to the general rules but to the extent that the special rule states to the contrary, the general rule must necessarily give way. In the light of the special rule stated supra indicating that it is only the Commissioner of Panchayat Raj and Rural Employment who would exercise the powers of a disciplinary authority over Panchayat Secretaries Grade I and II, the general rule under Rule 14 of the Rules of 1991, which states to the contrary, cannot

be applied. This is in keeping with the maxim *specialia generalibus derogant*.

In that view of the matter, we are of the opinion that the application of the general rule by the Tribunal to the exclusion of the special rule cannot be sustained. The proceedings dated 17.08.2016 are therefore erroneous in law and are accordingly set aside. This shall however not preclude the respondent authorities from taking recourse to appropriate measures, if warranted, in accordance with law.

The writ petition is accordingly allowed. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

M. SEETHARAMA MURTI, J

Date:07.09.2016

GJ

