

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

WRIT PETITION No.14217 of 2016

Date:28.4.2016

Between:

D.Venkatesham,
S/o Ramchandraiah and 14 others

....Petitioners

And:

The Commissioner of Intermediate
Education, State of Telangana and 38 others.

.....Respondents

Counsel for the petitioners: Mr. Srinivasa Rao Madiraju

Counsel for the Respondents:

The Court made the following:

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

The unsuccessful applicant in O.A.No.9458 of 2011 before the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'the Tribunal') filed the present Writ Petition assailing the order, dated 09.3.2016, of the Tribunal passed in the said O.A.

This case has a litigious background. The petitioner is a retired Junior Assistant. In the year 1994, disciplinary proceedings were initiated against him and he was placed under suspension. He was also prosecuted, vide C.C.Nos.15 and 36 of 1999 on the file of the learned IV Additional Judicial First Class Magistrate, Kakinada. On conclusion of the disciplinary proceedings, he was dismissed from service. Questioning his dismissal, he filed O.A.No.5482 of 1999, which was allowed by the Tribunal, vide its order, dated 31.01.2000, however, with liberty to the respondents to take further action in accordance with law. The respondents

have continued the disciplinary proceedings against the petitioner and also his suspension. Questioning his prolonged suspension, the petitioner filed O.A.No.7107 of 2001. By order, dated 10.10.2001, the Tribunal directed the respondents to review the suspension order and in compliance with the said order, the petitioner was reinstated into service.

The petitioner was convicted in the said criminal cases by the trial Court. Questioning his conviction, he filed Criminal Appeal before the appellate Court, which allowed the same holding that the charges against the petitioner are not proved, vide its judgment, dated 19.7.2006. Thereafter, the respondents resumed the disciplinary proceedings against the petitioner. Questioning the same, the petitioner filed O.A.No.6707 of 2008. The Tribunal has taken note of the entire facts including the interim order granted by it in O.A.No.6804 of 2000 staying the disciplinary proceedings and observed that in view of the said order the respondents could not conclude the disciplinary proceedings and disposed of the said O.A. with the following observations and directions:

“In view of these facts and circumstances, the letters addressed by respondent No.2 to respondent No.1 in making over the departmental proceedings file cannot be termed as unjust and illegal. Further more, the question of regularizing the period spent under suspension as well as out of service has to be considered only after termination of disciplinary proceedings. According to rules, once the disciplinary proceedings are initiated against a Government servant while in service, the same can be continued even after retirement, under Rule-9 of A.P. Revised Pension Rules, 1980. Further more, it is seen that the applicant has been released the pensionary benefits in accordance with G.O.Ms.No.1097, F & P, dated 22.6.2000 during the pendency of the disciplinary proceedings.

Having regard to these facts and circumstances and for the foregoing reasons, the impugned proceedings cannot be set aside. Now that the matter is pending before the Government, respondent No.1 is directed to consider and pass appropriate orders with regard to the departmental proceedings initiated against the applicant and pass appropriate orders within a period of two months from the date of receipt of a copy of this order. The O.A. is, accordingly, disposed of."

After the disposal of the said O.A., respondent No.1 has issued G.O.Ms.No.271, Home (Fire Services) Department, dated 19.11.2011, granting sanction for initiation of disciplinary proceedings against the petitioner in terms of sub-clause-(i) of Clause-(b) of Sub-rule-(2) of Rule-9 of the Andhra Pradesh Revised Pension Rules, 1980. Assailing the same, the petitioner filed O.A.No.9458 of 2011 before the Tribunal. The said O.A. was dismissed by the Tribunal. Feeling aggrieved thereby, the petitioner filed this Writ Petition.

Mr. Panduranga Rao, learned senior counsel appearing for the petitioner, submitted that the order, dated 12.9.2011, in O.A.No.6707 of 2008 of the Tribunal operates as *resjudicata*, thereby barring respondent No.1 from initiating further disciplinary proceedings, more so, when the petitioner was acquitted in the Criminal Appeal. On a careful consideration of this submission, we do not find any merit therein.

From the above re-produced portion of the order in the O.A., it is clearly evident that the Tribunal declined to interfere with the earlier proceedings, whereby the respondents continued the disciplinary proceedings against the petitioner. However, the Tribunal has directed respondent No.1 to consider and pass appropriate orders with regard to the disciplinary proceedings. Therefore, it cannot be said that G.O.Ms.No.271, dated 19.11.2011, issued by respondent No.1 was contrary

to the order, dated 12.9.2007, in O.A.No.6707 of 2008 and indeed, this order was passed in pursuance of the said order, whereunder the discretion was left with respondent No.1 itself to decide as to whether the disciplinary proceedings shall be continued against the petitioner or not.

Learned senior counsel for the petitioner further submitted that once the criminal proceedings ended in acquittal, the respondents were not entitled to proceed with the disciplinary proceedings. This ground was very much available to the petitioner even when he has filed O.A.No.6707 of 2008. However, the Tribunal has not interdicted the disciplinary proceedings despite being aware of the fact that the appellate Court has acquitted the petitioner. Far from doing so, the Tribunal has left the discretion with respondent No.1 itself whether to continue the disciplinary proceedings or not.

Learned senior counsel has admitted that a Criminal Revision Case was filed by the respondents against the judgment of acquittal of the petitioner and the same is pending before this Court.

Be that as it may, the law is well settled that the scope of the disciplinary proceedings stands on a different footing from that of the criminal proceedings. While in the criminal proceedings, proof beyond reasonable doubt is *sine qua non* for conviction of the accused, the degree of proof in the disciplinary proceedings is based on preponderance of probabilities. Therefore, the Tribunal has rightly declined to interfere with the order passed by respondent No.1, deciding to continue the disciplinary proceedings against the petitioner.

For the above mentioned reasons, we do not find any merit in the Writ Petition and the same is, accordingly, dismissed.

As a sequel to dismissal of the Writ Petition,

WPMP.No.17720 of 2016 filed by the petitioner for interim relief is dismissed as infructuous.

JUSTICE
C.V.NAGARJUNA REDDY

JUSTICE M.S.K.JAISWAL

28th April, 2016
DR