

HON'BLE SRI JUSTICE P.NAVEEN RAO

-

WRIT PETITION No.19957 of 2012

-

DATED : 11.02.2016

Between:

K.R.C. Naidu S/o.K.K. Naidu,

Aged about 58 yrs, Occu : Retired TI-II,

R/o.Nagari Village, Sambepally Post & Mandal,

Kadapa District.

.. Petitioner

AND

A.P.S.R.T.C. rep., by its VC & MD,

Musheerabad, Hyderabad & another.

.. Respondents

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

The Court made the following:

HON’BLE SRI JUSTICE P.NAVEEN RAO

-

WRIT PETITION No.19957 of 2012

-

ORDER:

-

Petitioner joined in service as conductor and promoted as Assistant Depot Clerk and Depot Clerk. While working as Depot Clerk the petitioner was served with charge sheet dated 08.09.2008 alleging negligence in performance of duties which resulted in misappropriation of the funds of the respondent-Corporation. Not satisfied with the explanation submitted by the petitioner, domestic enquiry was ordered. The enquiry officer held the petitioner as guilty rejecting the objections filed by the petitioner on the findings of the enquiry officer. After issuing further show cause notice and explanation final orders were passed on 24.03.2011 ordering recovery of an amount of Rs.1,12,642/- as the amount of loss caused to the Corporation on account of gross negligence while performing the duties. Petitioner challenges the said order in this writ petition.

2. Heard learned counsel for the petitioner and learned standing counsel for the respondents.

3. Learned counsel for the petitioner apart from making submission on merits contended that petitioner retired from service on 30.09.2010 and after retirement, the disciplinary proceedings are not maintainable and therefore the question of continuation of disciplinary proceedings after the retirement and imposing of punishment does not arise. Learned counsel further submits that against a retired employee no recovery can be effected. In support of his contention that no recovery can be made after retirement from service, he places reliance on a decision of the Hon'ble Supreme Court, in ***State of Punjab and Others vs Rafiq Masih (White Washer) and others***.

3. Learned Standing counsel submits that the provision of Regulation 8 of the Classification Control and Appeal Regulations (for short 'the CCA Regulations') provide various penalties including penalty of recovery. The disciplinary proceedings were initiated while petitioner was in service and therefore in valid exercise of power vested under Regulation 8, the penalty of recovery was imposed. As the finding is against the petitioner with reference to his delinquency, which resulted in huge financial loss to the Corporation, the Corporation is competent to recover the loss caused and in valid exercise of power, the order of recovery is passed.

4. The short question that arise for consideration in this writ petition is can an

employer resort to recovery of amount from the employee after retirement from service?

5. When specifically asked the learned Standing counsel to show the relevant provision which empowers the respondent-Corporation to continue the disciplinary proceedings after retirement and to take penal action against a retired employee, learned standing counsel fairly submits that there is no such provision. However he submitted that an inference can be drawn from the provisions contained in CCA Regulations. The respondent-Corporation does not pay pension to retired employees. Thus, after the retirement there is no relationship subsists with the employer. Ordinarily, if the employer takes the responsibility of providing monthly pension, it continues to regulate the conduct of such ex-employee even after his retirement.

6. Impugned order of recovery is as a consequence to disciplinary proceedings already initiated while petitioner was in service. Since on retirement relationship of master and servant do not subsist, disciplinary action cannot be continued and no punishment can be imposed after retirement.

7. It is not in dispute that order under challenge is passed in exercise of power vested by Regulation 8 and order of recovery is passed as a consequence to the disciplinary action. Thus, the recovery ordered in the impugned proceedings is *ex-facie* illegal, without competence and jurisdiction. It is also settled principle of law that no recovery can be effected against an ex-employee after the retirement.

8. Learned Standing counsel by placing reliance on the decision of the Hon'ble Supreme Court in ***State Bank of India Vs Ram Lal Bhaskar and another*** contends that after the retirement also employer can impose appropriate punishment. As seen from the judgment of the Hon'ble Supreme Court in ***Ram Lal's case*** (supra) a specific provision was made in State Bank of India Officers Service Rules, which vests power in the competent authority to continue the disciplinary proceedings and to impose appropriate punishment after retirement. As stated by the learned Standing counsel, no such provision is made in CCA Regulations. Thus the said decision do not come to the rescue of the respondent-Corporation.

9. For the aforesaid reasons, the order impugned is liable to be set aside and is accordingly set aside.

10. The writ petition is partly allowed. It is made clear that in view of the findings recorded on the maintainability of imposing of punishment of recovery after the retirement, the other issues urged in this writ petition are not considered. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

P.NAVEEN RAO, J

Date :11th February, 2016

Rds