

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No. 40530 of 2015

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Date: 05.01.2016

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Between:

V.Shivanna, s/o.Veerakatya Goud, Aged about 51 years,
Occu: Deputy Executive Engineer (under Deemed
Suspension), Andhra Pradesh State Housing Corporation
Limited, R/o. Postal Colony, Near V.M.C., Renigunta
Road, Tirupathi, Chittoor District.

.....Petitioner

And

The Andhra Pradesh State Housing Corporation Limited,
Rep.by its Managing Director, 3-6-184, Urdu Gall,
Himayathnagar, Hyderabad and another.

.....Respondents

The Court made the following:

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ORDER:

This writ petition is filed challenging the Proc.No.12076/Vig(3)/APSHCL/ATP/2009 dated 24.12.2009 with a consequential direction to reinstate the petitioner and to release all the benefits.

2. Petitioner was appointed as Work Inspector (Technical) in the year, 1992 by the 1st respondent Corporation and earned promotion as Assistant Engineer on 03.04.2006 and as Deputy Executive Engineer on 01.11.2008. On promotion, he was transferred and posted to C.K.Palli Sub-Division, Ananthapur district. While so, by proceedings No.12076/APSHCL/Vig(3)/ ATP/2009, dated 16.10.2009, he was placed under suspension on the allegations of misappropriation of amounts. Articles of charges were framed against him vide proceedings dated 24.12.2009. Petitioner has submitted his explanation on 02.02.2010 denying the allegations leveled against him to the said charges. Disciplinary action culminated in awarding penalty of dismissal from service vide orders dated 21.04.2012 along with recovery of Rs.1,21,46,880 under Rule 9(x) of the APCS (CCA) Rules.

3. The petitioner filed W.P.No.13610 of 2012 challenging the legality and validity of the orders dated 21.04.2012 of the Disciplinary Authority. By order dated 31.3.2015 the said writ petition was disposed of. This Court held the dismissal from service as illegal.

Court directed to treat the petitioner as under suspension from the date of dismissal from service. This Court further directed the

respondent corporation to entrust the enquiry once again to the Special officer or for any reason her services are not available, by appointing another Inquiry Officer. The Court further directed that petitioner would be entitled to subsistence allowance through out the period. The Court further directed that follow up action should be taken as expeditiously as possible preferably within three months.

4. Learned counsel for petitioner contended that the charge memo is not maintainable and is liable to be set aside as false allegations are leveled against the petitioner without any basis and justification and is being harassed and humiliated for more than six years. Learned counsel contended that in the first charge it is alleged that petitioner resorted to corrupt practices in collusion with the beneficiaries of C.K.Palli and Nasannakota villages and in the second charge it is alleged that petitioner has authorized to release the payments without actually having Mandal Housing Officer (MHO) recommendations with him, whereas petitioner did not give such authorization. He contended that as per the scheme envisaged in G.O.Rt.No.107 dated 05.06.2007, the Assistant Engineer/Work Inspector/Technical Work Inspector/Non-technical Work Inspector, as the case may be, were designated as Mandal-In-Charge (MIC) for the implementation of Indiramma Housing Programme and are made responsible for maintenance of accounts and receipts/issue of cement based on the guidelines issued. Learned counsel contended that payment procedure was decentralized and the MIC is responsible on all aspects of payments and petitioner is not the MIC. The MIC is required to incorporate the details of work into Online database and generate the Payment Release Order (PRO) for sending the same to the bank branch concerned. He, therefore, contended that on the allegation that work was not properly executed or there was collusion with the beneficiaries, ought to be made against the concerned MIC and illegally petitioner is implicated, though he is no way concerned.

5. With reference to the second charge, learned counsel contended that as per the orders of G.O.Rt.No.255 dated 22.09.2006, the Deputy Executive Engineer of the concerned division is required to undertake 10% of the payment made as test check through the PRO and to recommend appropriate action. He, therefore, contended that the G.O., indicated the check measurement and payment procedures for implementation of Housing Programme and the Mandal-In-Charge is a person responsible for any irregularities in the payments made. He submitted that no doubt petitioner addressed two letters on 28.02.2009 and 02.03.2009 requesting the bank authorities to release the payments, but having realized that there were some lapses in the assessment of amounts payable, on the next day itself i.e., 03.03.2009 he addressed another letter to the Branch Manager to stop further transfer of payments in supercession of the earlier request made by him. Learned counsel further contended that no amount was released before the letter dated 03.03.2009 was given by the petitioner and, therefore, no financial loss was caused to the respondent corporation and unnecessarily false allegations are made and petitioner is being harassed.

6. Learned counsel contended that this information was not available with the petitioner earlier and, therefore, the same could not be placed before this Court in the earlier round of litigation. Petitioner has applied under the Right to Information Act to ascertain information and the information now furnished including the letter dated 03.03.2009 clinches that false allegations are leveled and he is being harassed. In view of the two GOs mentioned above and the letter of the petitioner dated 03.03.2009, it is clear that petitioner has not committed any misconduct and therefore the charges are liable to be set aside with all consequential benefits.

7. In the instant case, the disciplinary action that commenced in the year 2009 culminated in the order of dismissal from service dated

21.04.2012. The said dismissal from service was challenged in W.P.No.13610 of 2012. As seen from the judgment of this Court in the above writ petition, the contentions now urged by the petitioner were not raised. It was contended before this Court that inquiry officer did not inform the examination of two witnesses and that no opportunity was provided to him. It was further contended that material obtained from Centre for Good Governance (CGG) was not put to the petitioner by providing due opportunity. Therefore, the enquiry was not conducted in accordance with the procedure envisaged in Andhra Pradesh Civil Services (CCA) Rules, 1991. Having regard to the said contentions, the Court set aside the punishment order and remitted to conduct further enquiry.

8. This Court while setting aside the punishment order, directed to conduct fresh enquiry into the very same charges. During the course of disciplinary action and till further orders are passed by competent authority, petitioner was directed to be placed under suspension. Learned standing counsel brought to the notice of this Court that against the order of this Court in W.P.No.13610 of 2012, petitioner filed W.A.No.347 of 2015. When Writ Appeal was taken up for consideration, it was represented before the Division Bench that the appellant did not want to press the writ appeal on merits. Thus, the judgment of learned single Judge of this Court has become final insofar as the petitioner is concerned.

9. This Court is not inclined to go into the merits of the issue. Suffice to note that the petitioner has undergone earlier round of litigation. This Court directed to continue disciplinary proceedings. Said directions are binding on the petitioner. Thus, having invited direction to hold enquiry and finalize the disciplinary action on the same set of charges, it is not open to the petitioner once again contend on the merits of the allegations, at this stage, even before the enquiry is completed and final decision is taken by the disciplinary authority.

10. In view of the same, I do not see any justification to interfere at this stage. It is always open to the petitioner to raise contentions now urged before the disciplinary authority. This Court cannot assume that disciplinary authority would not appreciate those contentions and entertain the writ petition and adjudicate the matter on merits at this stage. It is made clear that the observations made in the writ petition are only to dispose of this writ petition and it shall not come in the way of defence of the petitioner in the pending disciplinary proceedings.

11. Learned counsel further contended that even though this Court directed that the petitioner be treated as under suspension from the date of dismissal and further directed for payment of subsistence allowance, so far subsistence allowance is not paid. If what is contended by the learned counsel is correct, such action of the respondent authorities is not appreciated. In view of the order passed by this Court in W.P.No.13610 of 2012, it is mandatory for them to pay subsistence allowance due and payable before proceeding with the disciplinary action. Even without such a direction, whenever an employee is kept under suspension, disciplinary action cannot be proceeded further without paying the subsistence allowance to the employee. Thus, if arrears of subsistence allowance is not paid so far, it shall be paid as expeditiously as possible and before taking further disciplinary proceedings.

12. The writ petition is dismissed accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 05.01.2016

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8. This writ petition is instituted challenging the charge memo dated 24.12.2009. Ordinarily in exercise of power of judicial review under Article 226 of the Constitution of India, writ Court do not entertain the writ petition against the charge memo. It is competent for the disciplinary authority to initiate disciplinary proceedings whenever it comes to the notice of the competent authority that employee has committed misconduct. The Court cannot go into the merits of the allegations made even before the disciplinary proceedings are conducted and at the stage of the charge memo. The writ Court can interfere and set aside the charge memo where it is issued by incompetent authority or in the given case on the face of it the charges are wholly unsustainable and perverse. In such a case, Court can come to the rescue of employee and prevent him from undergoing the rigmarole of lengthy disciplinary procedure and save him from harassment. But, such a course to be exercised in extra-ordinary circumstances in a given case and is an exception to normal rule.

9. In the instant case, the disciplinary action that commenced in the year 2009 culminated in the order of dismissal from service dated 21.04.2012. The said dismissal from service was challenged in W.P.No.13610 of 2012. As seen from the judgment of this Court in the above writ petition, the contentions now urged by the petitioner were not raised. It was contended before this Court that inquiry officer did not inform the examinations of two witnesses and that no opportunity was provided to him. It was further contended that material obtained from Centre for Good Governance (CGG) was not put to the petitioner by providing due opportunity. Therefore, the enquiry was not conducted in accordance with the procedure envisaged in Andhra Pradesh Civil Services (CCA) Rules, 1991. Having regard to the said contentions, the Court set aside the punishment order.

10. In the impugned charge memo petitioner was leveled with two charges. The charges leveled against petitioner read as under:

ARTICLE - I :

That Sri V.Sivanna, Dy.EE (II) (U/s) of C.K.Palli Sub-Division of Ananthapur district committed certain grave misconduct in as much as he resorted to corrupt practices in collusion with beneficiaries of M.C.Palli and Nasannakota Villages of C.K.Palli Sub-Division and not started houses and without construction of houses to a tune of Rs.1,69,12,350/- and thereby violated provisions of the APCS (Conduct) Rules 1964 read with APSHCL, (Conduct) Rules 1997.

Sl.No.	Name of the Village	No.of houses not constructed	Amount misappropriated
1	M.C.Palli	459	1,03,66,350
2	Nasannakota	382	65,46,000
	Total	841	1,69,12,350

ARTICLE – 2:

That Sri V.Sivanna, Dy.EE (II) (U/s) of C.K.Palli Sub-Division of Ananthapur District, on 22.05.2009 & 26.02.2009 has requested the Branch Manager, SBH Dharmavaram to stop the payment to V.Os, since the Assistant Engineer (H) C.K.Palli Sub-Division has generated the PROs without MHOs recommendations. Subsequently, the Dy.Executive Engineer (H) C.K.Palli on 28.02.2009 and 2.3.2009 requested the Bank authorities to release the payments without actually having MHO recommendations with him. ”

11. It is strenuously contended by the learned counsel for petitioner that both charges are not maintainable in view of the orders in G.O.Rt.No.107, dated 05.06.2007; G.O.Rt.No.255, dated 22.09.2006 and letter of the petitioner addressed to the Branch Manager dated 3.3.2009.

12. The defence taken by the petitioner to challenge the charge memo at this stage is on the ground that these orders were not within the knowledge of the petitioner when the earlier writ petition was instituted and since the petitioner obtained information subsequently and as the same have material impact on the tenability of the charges, instant writ petition is filed. Such contention cannot be countenanced.

13. The G.O.Rt.No.107 delineates the designation of Mandal-In-Charge and duties and responsibilities entrusted to him. What is alleged in the charge no.1 is that petitioner has colluded with the beneficiaries causing loss to the respondent corporation. Whether the designation of the particular category of officers as Mandal-In-Charge for implementation of the Indiramma Programme and whether the petitioner was actually responsible for alleged allegations leveled in the first charge are matters of enquiry. A bare look at G.O.Rt.No.107, it cannot be assumed in favour of the petitioner as sought to be contended that since some other lower level employee is made Mandal-In-Charge the petitioner is not responsible for the allegations

leveled against him. Petitioner is superior authority having control over the concerned MICs. Therefore, the contention that petitioner is not responsible of the first charge cannot be appreciated. This being a matter of enquiry and as the disciplinary proceedings are pending as on today, Court cannot express any opinion on merits of the allegations and the defence of the petitioner which may prejudice the disciplinary action.

14. With reference to the second allegation, the defence of the petitioner is that he is not concerned with the release of amounts and the release of amounts depend on the issuance of PRO. Though petitioner earlier issued two letters for release of payments, but having noticed irregularities and, therefore, such amounts should not be released, immediately addressed letter to the Bank on 3.3.2009 to stop payments and no payments were made. Whether such letter was received by the bank and whether such letter was in the knowledge of the disciplinary authority before framing the charges is a matter which can be gone into during the course of the disciplinary enquiry. Therefore, the Court cannot express any opinion on this issue also. If what is stated by the petitioner is true, this can be a valid defence during the enquiry. However, it is not stated by the petitioner as to how petitioner was not aware of this letter and two GOs referred to above when he earlier instituted writ petition or his defence was set up.

15. As noticed above, based on the same set of charges he was dismissed from service, that was the subject matter of earlier Writ Petition. This Court while setting aside the punishment order, directed to conduct fresh enquiry into the very same charges. During the course of disciplinary action and till further orders are passed by competent authority, petitioner was directed to be placed under suspension. Learned standing counsel brought to the notice of this Court that against the order of this Court in W.P.No.13610 of 2012,

petitioner filed W.A.No.347 of 2015. When Writ Appeal was taken up for consideration, it was represented before the Division Bench that the appellant did not want to press the writ appeal on merits. Thus, the judgment of learned single Judge of this Court has become final insofar as the petitioner is concerned.

16. Thus, having invited direction to hold enquiry and finalize the disciplinary action on the same set of charges, it is not open to the petitioner once again contend on the merits of the allegations at this stage even before the enquiry is completed and final decision is taken by the disciplinary authority. Said directions are binding on the petitioner. In view of the same, I do not see any justification to interfere at this stage. It is always open to the petitioner to raise these contentions before the disciplinary authority. This Court cannot assume that disciplinary authority would not appreciate those contentions and entertain the writ petition and adjudicate the matter on merits at this stage.

17. It is made clear that the observations made in the writ petition are only to dispose of this writ petition and it shall not come in the way of defence of the petitioner in the pending disciplinary proceedings.

18. Learned counsel further contended that even though this Court directed that the petitioner be treated as under suspension from the date of dismissal and further directed for payment of subsistence allowance, so far subsistence allowance is not paid. If what is contended by the learned counsel is correct, such action of the respondent authorities is not appreciated. In view of the order passed by this Court in W.P.No.13610 of 2012, it is mandatory for them to pay subsistence allowance due and payable before proceeding with the disciplinary action. Even without such a direction, whenever an employee is kept under suspension, disciplinary action cannot be proceeded further without paying the subsistence allowance to the employee. Thus, if arrears of subsistence allowance is not paid so far,

it shall be paid as expeditiously as possible and before taking further disciplinary proceedings.

19. The writ petition is dismissed accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.