

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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WRIT PETITION No.13382 OF 2016

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed seeking the following relief:

“(a) declaring the inaction on the part of respondents 1 to 5 and 14 on my repeated representations including dated 07.08.2013, 05.02.2014, 24.07.2014 and 15.09.2014 and also FIR No.250/2014 stood registered on the file of 5th respondent, as illegal, irregular, irrational, amounts to non discharge of legal obligation conferred on them under the provisions of Andhra Pradesh Civil Services (Conduct) Rules, 1964 and Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 and also the Code of Criminal Procedure, 1973 and violative of Articles 14 and 21 of Constitution of India.

(b) directing the respondents 1 to 5 and 14 to initiate disciplinary proceedings and take penal action against the respondents 6 to 12 under the provisions of Andhra Pradesh Civil Services (Conduct) Rules, 1964 and Andhra Pradesh Civil Services (CCA) Rules 1991;

(c) directing the respondents 1 to 5 and 14 to prosecute respondents 6 to 12 for appropriate penal provisions of law under Indian Penal Code and cause recovery of sum of money fraudulently extracted from me, for payment in my favour under the provisions of the Code of Criminal Procedure, 1973 and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

2. The petitioner questioned the inaction of respondents 1 to 5 and 14 as they failed to take any action against respondents 6 to 12 despite representations, dated 07.08.2013, 05.02.2014, 24.07.2014 and 15.09.2014 and also registering a case in Crime No.250 of 2014 of Khammam- I (T) Police Station, Khammam.

The 7th respondent received a complaint from the petitioner's wife i.e., 13th respondent herein filed under the provisions of Domestic Violence Act, 2005 and upon that respondents 6 and 7 have issued notice to the petitioner to appear before them on 12.08.2010. Accordingly, the petitioner appeared on 12.08.2010 before

respondents 6 and 7, upon which the 6th respondent scolded the petitioner and demanded to deposit Rs.3.00 lakhs with her so that she can handover the same to 13th respondent, otherwise she will use her vast powers to get the petitioner arrested and send him to jail. Accordingly, the 6th respondent created a scene creating fear in the mind of the petitioner. The 6th respondent also abused the petitioner in filthy language in the presence respondent Nos.7, 11 to 12. Respondent Nos.6 and 11 to 12 also scolded and threatened with dire consequences. The 6th respondent being a female Advocate abused the petitioner in filthy language, for which respondent No.7 supported her. Thus, respondents 6 and 7 together threatened the petitioner with dire consequences and created apprehension in his mind. Respondents 6 and 7 in collusion with respondents 9 to 12, forced the petitioner to deposit a sum of Rs.2,80,000/- under the guise that they would pay to 13th respondent. The 6th respondent also demanded for payment of an amount of Rs.20,000/- to the 7th respondent for filing divorce petition by the 6th respondent, otherwise they will spoil the compromise. Accordingly, 6th respondent received a sum of Rs.5,000/- as advance in the presence of Talluri Narayana and M.Satyanarayana for filing divorce petition. While receiving a sum of Rs.5,000/-, 6th respondent promised to file divorce petition on the very next day, but she did not file divorce petition till today. Thus, she is guilty of professional misconduct.

The petitioner paid an amount of Rs.1,00,000/- to the 6th respondent on 10.01.2011 in the presence of respondents 7, 10 to 12 and other elders. Thereafter, the 6th respondent deposited the same in her account in State Bank of Hyderabad, Z.P. Branch. Thus, she collected total amount of Rs.3,00,000/- on two different dates, but she did not return the same despite the request.

As respondents 6 to 13 committed breach of promise, the petitioner gave a police complaint and the same was registered as a case in Crime No.250 of 2013 and later made representations to the respondents 1 to 5 and 14 to take necessary action by initiating disciplinary proceedings. But no purpose was served. Hence, the Writ Petition is filed.

3. Respondents did not file any counter.

4. Learned counsel for the petitioner, at the stage of admission, argued the writ petition, reiterating the allegations made in the affidavit filed in support of the petition, whereas the counsel for the respondents denied the liability while contending that on the representations of the petitioner, no departmental action is required to be initiated as per Rule 20 of the Andhra Pradesh Civil Services (Conduct) Rules, 1964; and that the 6th respondent is not amenable to CCA Rules, being an Advocate and at best the remedy of the petitioner is to give a complaint to the authorities concerned; similarly, the 13th respondent is wife of the petitioner, who is not a Government servant to initiate any proceedings under CCA Rules and prays to dismiss the petition.

5. Admittedly, the petitioner is husband of the 13th respondent and there is a marital dispute between them. According to the petitioner, he was summoned by respondents 6 and 7 basing on the application filed by the 13th respondent under protection of Women from Domestic Violence Act, 2005. Accordingly, the petitioner appeared before the respondents 6 and 7 and they allegedly abused the petitioner in filthy language and collected Rs.3,00,000/- i.e., Rs.2,80,000/- plus Rs.20,000/- towards payment to 13th respondent as final settlement and to file divorce petition by the 6th respondent on the next day itself. But, the 6th respondent did not file any divorce petition till today.

6. The prayer in the Writ Petition is to initiate disciplinary proceedings against respondents 1 to 5 and 14, who are Government officials and direct them to initiate disciplinary proceedings and take penal action against respondents 6 to 12 under CCA Rules and prosecute them under criminal law.

7. The 6th respondent is admittedly an Advocate, who is not amenable to CCA Rules and action to be taken against an Advocate for breach of Contract or trust is somewhere else not under CCA Rules. Therefore, this Court cannot issue a direction to respondents 1 to 5 and 14 to initiate proceedings under CCA Rules against 6th respondent and on this ground alone, the Writ Petition is liable to be dismissed against 6th respondent.

8. Insofar as respondents 7 and 8 are concerned, they are public servants and Governed by the Andhra Pradesh Civil Services (Conduct) Rules, 1964, whereas respondent No.10 is working as Scientific Officer in Department of Atomic Energy and he is not governed by CCA Rules. Similarly, respondents 9, 11 and 12 are not the employees and not amenable to jurisdiction of authorities to initiate departmental proceedings under CCA Rules. At best, the action can be taken against respondents 7 and 8 as per CCA Rules. If the Disciplinary authority is of the opinion that there are grounds to take action based on the imputation of misconduct or misbehaviour against a Government servant, proceedings can be initiated under the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991. In the present case, no misconduct is attributed directly against respondents 7 and 8 to take necessary action against them as per CCA Rules to satisfy the requirement under Rule 20 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991.

9. Rule 20 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991, prescribed certain procedure to be followed to initiate Disciplinary proceedings against a State Government employee. But, in the instant case, the petitioner is alleged to have deposited an amount of Rs.2,80,000/- with 7th respondent through 6th respondent. Unless the disciplinary authority satisfies that there is *prima facie* truth in the allegations amounting to misconduct against an employee, no proceedings shall be initiated based on bald allegation, without any substantial material. When the disciplinary authority did not take any action which is purely in its discretion and satisfaction about *prima facie* truth in the allegations, the Court while exercising powers under judicial review cannot issue such direction to initiate disciplinary proceedings, since it amounts to undue interference in the administration. No departmental enquiry shall be initiated against the 6th respondent, who is an Advocate and at best the remedy open to the petitioner is to file a complaint before the Bar Council to take appropriate action against her.

10. Hence, I find no material to issue any direction to respondents 1 to 5 and 14 to initiate proceedings under CCA Rules against any of the respondents 6 to 12.

11. In view of my foregoing discussion, the Writ Petition is dismissed at the stage of admission. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

M.SATYANARAYANA MURTHY, J

APRIL 25, 2016

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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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Date: 25.04.2016

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