

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

WRIT PETITION No.24775 of 2017

DATE:- 12-09-2017

Between:

The State of Andhra Pradesh,
Rep. by its Principal Secretary,
Environment, Forests, Science and Technology
Department, Secretariat, Velagapudi,
Guntur District and 2 others

..... PETITIONERS

AND

Kathi Venkata Swamy

.....RESPONDENT

COUNSEL FOR THE PETITIONERS: G.P.for SERVICES-I (AP)

COUNSEL FOR RESPONDENT : Sri GUNDRATI RAMAN GOUD



THE COURT MADE THE FOLLOWING:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

WRIT PETITION No.24775 of 2017

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

Order, dated 22.02.2017, in O.A.No.3905 of 2016, on the file of the Andhra Pradesh Administrative Tribunal at Hyderabad (for short "the Tribunal"), is questioned in this writ petition by the State and its Officers.

2. The brief facts leading to the filing of this writ petition are that the respondent, while working as Forest Range Officer, was placed under suspension, vide proceedings, dated 09.04.1999 of Petitioner No.3, pending initiation of the disciplinary proceedings. He was prosecuted under Section 13 (1) (a) read with Section 13 (2) of the Prevention of Corruption Act, 1988 in Calendar Case No.3/1999, on the file of the V Additional Chief Judge, City Civil Court, Hyderabad. The accusation against the respondent was that he possessed assets disproportionate to the known sources of income by Rs.3,08,224/-. By Judgment, dated 22.02.2002, the jurisdictional Criminal Court has acquitted the respondent of the charges. On the persistent representations made by the respondent, he was reinstated on 14.11.2002. The judgment of the trial Court was confirmed in CrI.A.No.634 of 2002 by this Court, by its judgment, dated 12.03.2010. Meanwhile, the respondent made representations to Petitioner No.1 for treating the period of his suspension as on duty. The said request was turned down by Petitioner No.1, vide Memo No.7505/For.IV/A1/2007-3, dated 24.10.2008. Feeling aggrieved

by the said order, the respondent has filed O.A.No.3905 of 2016. The Tribunal allowed the said O.A by the impugned order.

3. At the hearing, the learned Govt.Pleader has advanced the following submissions:

(1) That the O.A. suffered from laches, as the respondent has approached the Tribunal 8 years after his request was rejected; and

(2) That even on merits also, the respondent is not entitled to treat the suspension period as on duty, as in the view of the disciplinary authority, suspension was justified when it was made, and that mere acquittal would not automatically entitle the respondent for regularization of the suspension period by treating the same as on duty. In support of her submission, the learned Govt.Pleader placed reliance on the judgment of the Supreme Court in *Greater Hyderabad Municipal Corpn. V. M.Prabhakar Rao*¹.

4. Opposing the said submissions, Mr.Gundrati Raman Goud, learned counsel for the respondent, submitted that the reason on which Petitioner No.1 has rejected his client's claim is erroneous and perverse and that therefore, the Tribunal has rightly allowed the O.A.

5. As regards the first submission of the learned Govt.Pleader, the learned counsel for the respondent submitted that though the rejection order was passed on 24.10.2008 by Petitioner No.1, his client was making representations from time to time thereafter in the hope that Petitioner No.1 will reconsider his request, and that his client made a representation, which was received by the Minister for Environment, Forests, Science & Technology on 02.09.2010, and since then the Government has sought

¹ (2011) 8 SCC 155

information from the Principal Chief Conservator of Forests from time to time, and that having patiently waited till the year 2016, his client approached the Tribunal after losing hope that the justice will be done to him at the government level.

6. We have carefully considered the respective submissions of the learned counsel.

7. A perusal of the order, passed by the Special Chief Secretary to Petitioner No.1, shows that the following reasons have been assigned for rejection of the respondent's request:

“The matter has been examined in consultation with Finance Department and considered that the individual is not fully exonerated of the charge/guilty in terms of FR.54-B and treating the suspension period as leave itself is a greatest concession given to the Charged Officer. Therefore, the request of the Individual for treating the suspension period as duty not feasible of compliance.”

8. We have perused the judgment of the jurisdictional Criminal Court. On the following reasons, the Criminal Court has acquitted the respondent.

“The income of the accused during the check period was Rs.9,06,240/-, his expenditure was Rs.3,73,800/- and thus his likely savings were Rs.5,32,440/-.

Income	Rs.9,06,240-00
(-) Expenditure	Rs.3,73,800-00

Likely savings:	Rs.5,32,440-00
	=====

The assets of the accused were arrived at Rs.5,49,338/-. Thus the disproportionate assets of the accused are Assets 5,49,338 (-) likely savings 5,32,440 = 16,898/-. It may be stated here that in “Union of India and others vs B.C.Chaturvedi” reported in (1995) 6 SCC 749 it was held

by the Supreme Court that deduction of 10% of the total income in calculating disproportionate assets is the maximum benefit available to the delinquent. Then the 10% of the total income of the accused comes to Rs.90,624/-. Whereas the disproportionate assets is Rs.16,898/- which is less than the 10% of the total income. Therefore, it cannot be said that the accused acquired assets disproportionate to his known sources of income by adopting corrupt practices. Hence the prosecution failed to prove the charge against the accused beyond reasonable doubt.

In the result, the accused is found not guilty of the offence under Sec.13 (1) (a) of the P.C.Act, 1988 and is acquitted under Sec.248 (1) Cr.P.C. The bail bonds of the accused stand cancelled.”

9. It is evident from the above reproduced reasons, the Criminal Court has unequivocally held that the value of the disproportionate assets is only Rs.16,898/- while the respondent is entitled to hold the assets to a value of Rs.90,624/- over and above his income from known sources. On this reasoning, the Criminal Court held that the prosecution failed to prove the charge against the accused beyond reasonable doubt, and accordingly, held the respondent not guilty of the offences for which he was charged.

10. On a proper reading of the judgment of the jurisdictional Criminal Court, there can be no doubt that it is a case of honourable acquittal and therefore, the Special Chief Secretary to Petitioner No.1 has thoroughly misread and misunderstood the judgment of the Criminal Court, based on which, she has rejected the claim of the respondent. The Tribunal has rightly held that the rejection order is wholly erroneous.

11. As regards the judgment of the Supreme Court in *Greater Hyderabad Municipal Corpn.* (supra), there is no quarrel with regard to the view expressed by the Supreme Court that mere acquittal in a case

would not automatically entitle the public servant for regularization of the suspension period as on duty and payment of salaries and allowances for that period. In the case before the Supreme Court, illegal gratification amount was recovered. However, the respondent therein was acquitted on the ground that purpose for which the amount was paid to the public servant was not proved. In that context, the Supreme Court observed as under:

“15. Sub-rule (3) of F.R. 54B does not state that in case of acquittal in a criminal proceedings the employee is entitled to his salary and allowances for the period of suspension. Sub-rule (3) of F.R. 54B also does not state that in such case of acquittal the employee would be entitled to his salary and allowances for the period of suspension unless the charge of misconduct against him is proved in the disciplinary proceedings. Sub-rule (3) of F.R. 54B vests power in the competent authority to order that the employee will be paid the full pay and allowances for the period of suspension if he is of the opinion that the suspension of the employee was wholly unjustified. Hence, even where the employee is acquitted of the charges in the criminal trial for lack of evidence or otherwise, it is for the competent authority to form its opinion whether the suspension of the employee was wholly unjustified and so long as such opinion of the competent authority was a possible view in the facts and circumstances of the case and on the materials before him, such opinion of the competent authority would not be interfered by the Tribunal or the Court.”

12. In our opinion, the facts dealt with by the Supreme Court are distinct from and they bear no similarity with the facts of the present case. This is not a case where either there was a trap or serious misconduct on the part of the respondent justifying his suspension. It was only a case of the respondent allegedly holding assets disproportionate to his known sources of income. Therefore, it can be

said that the suspension of the petitioner was wholly unjustified within the meaning of Sub-rule (3) of Rule 54-B of the Andhra Pradesh Fundamental Rules.

13. As regards the second submission of the learned Govt.Pleader, the material filed by the respondent shows that after rejection of his claim by Petitioner No.1, he made a representation, based on which, the Government went on calling for report from Petitioner No.3 till the year 2016. As no report was submitted by Petitioner No.3 to Petitioner No.1, no further decision has been taken by the latter. This fact cannot be ignored by the Tribunal in judging as to whether the respondent has deliberately kept quiet for a period of 8 years before approaching the Tribunal. In any event, when the respondent has a strong case on merits, and in the absence of intervention of third party rights, the petitioner cannot be nonsuited on the ground of laches.

14. For the aforementioned reasons, we do not find any merit in the writ petition and the same is accordingly dismissed. No order as to costs.

As a sequel to dismissal of the writ petition, interim order, dated 31.07.2017, shall stand vacated and WVMP.No.3570 of 2017 shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY,J

M.S.K.JAI SWAL,J

Date: 12.09.2017
Dsr