THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

<u>WRIT PETITION No.29583 of 2015</u>

Between:

1. The State of Telangana, rep. by its Principal Secretary to Government, Revenue, Registration & Stamps, Secretariat, Hyderabad, and others.

PETITIONERS

And

1. Sri Syed Masood Ali, S/o. Mir Mahmood Ali, Occ: Retired Sub-Registrar, R/o. H.No.1-7-628, Behind subedari Post Office, Hanumakonda, Warangal District. and another.

RESPONSENTS

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION No.29583 of 2015

ORDER: (Per Hon'ble Sri Justice V. Ramasubramanian)

The State has come up with the above writ petition challenging an order of the A.P. Administrative Tribunal modifying a penalty imposed upon the 1st respondent, who retired about 10 years ago.

2. Heard learned Government Pleader for services (Telangana) and Mr. Ch. Srinivas, learned counsel for the 1st respondent.

3. The 1st respondent was employed as a Sub-Registrar Grade-I in Warangal District. A charge Memo dated 6.04.2004 was issued to him. The charges read as follows:

> "Charge-I
> The Charged Officer failed to discharge his duties as Government Servant in accordance with the Rules and instructions issued from time to time and failed to behave properly with the other employees of the Department, Registering Public and caused inconvenience to the parties.
>
> "Charge-II:
> The Charged Officer failed to scan some of the documents (As noted in the charge) on other than the date of presentation.
> Charge-III:
> The Charged Officer kept several documents pending for scrutiny and assigned regular numbers belatedly though the parties paid the deficit Stamp duty and registration fee on the day of presentation (list of documents as per charge enclosed). Minutes also not recorded in the Minutes Book.
> Charge-IV:
> The Charged Officer is not issuing Marked Value Assistance slips to all the parties. Rs.6,040/- were collected towards fee for 604 Market Value Assistant slips, but as per the system (Computer) 123 Market Value slips are issued.
> Charge-V:
> The Charged Officer levied 13% Stamp duty instead of 11% to the documents 1272/01, 1273/01, 3108/2000 and 3163/01 of Thimmapur (GP)."

4. Since there was no progress in the disciplinary proceedings for about two years, the 1st respondent was permitted to retire on 31.10.2006, upon reaching the age of superannuation. However, no retirement benefits were paid to him.

5. On 15.09.2010, a show cause notice was issued and the 1st respondent submitted a reply. After one year, an order dated 26.09.2011 was passed imposing a penalty of cut in the pension to the extent of 5% for a period of five years. However the said order was set aside by the Tribunal in O.A.No.9380 of 2011 by an order dated 08.08.2012.

6. Pursuant to the order passed by the Tribunal in O.A.No.9380 of 2011, the Government passed G.O.Rt.No.1753, dated 14.12.2012 again imposing a penalty of cut in the pension to the extent of 5% for a period of five years. Challenging this order, the 1st respondent filed a fresh application in O.A.No.825 of 2013. This application was allowed by the Tribunal by a final order dated 13.02.2015 modifying the penalty into one of cut in the pension to the extent of 5% for a period of one year. The Tribunal also directed all terminal benefits to be released with interest at 10% per annum from 1.11.2006. It is against the said order that the State has come up with the above writ petition.

7. There are two flaws in the order of the Tribunal. The first is that solely on the basis of delay in initiation and conclusion of proceedings, the Tribunal has modified the order of penalty. If on the ground of delay a person has been prejudiced, it is not even a case for imposition of any penalty. If on the ground of delay, the findings of guilt with respect to the charges cannot be interfered with, then the Tribunal could not have interfered with the order of penalty without even recording a finding in relation to proportionality of penalty. The issue of

proportionality is also not discussed in the relevant portion of the order of the Tribunal.

8. Apart from the above flaw, which has accrued to the benefit of the 1st respondent, there is one more flaw, which has gone against the 1st respondent himself. The statutory rules stipulate a particular rate of interest to be paid on the belated payment of terminal benefits. The Tribunal has now fixed the rate of interest at 10%. This is the second mistake committed by the Tribunal.

9. Interestingly, if one mistake committed by the Tribunal is rectified, the 1st respondent will stand benefited even if the order of penalty is sustained. Therefore, the writ petition is allowed, modifying the order of the Tribunal to the following effect.

a) The order of penalty imposed by the Government is upheld and the modified penalty suggested by the Tribunal is set aside.

b) Since the 1st respondent claims that he has not been paid any benefits so far, the petitioners shall settle all the terminal benefits upon the 1st respondent within a period of eight weeks from this date, together with interest as applicable from time to time as per the statutory rules during the period from 01.11.2006 up to the date of actual payment.

10. As a sequel, pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

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JUSTICE V. RAMASUBRAMANIAN

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JUSTICE G. SHYAM PRASAD

5th January, 2017
Js.

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

<u>WRIT PETITION No.29583 of 2015</u>

Date: 05-01-2017

Js.