

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE N. BALAYOGI

WRIT PETITION No.11400 of 2015

ORDER: (per Hon'ble Sri Justice Sanjay Kumar)

The Government of Andhra Pradesh and the Commissioner of Panchayat Raj and Rural Employment Department filed this writ petition aggrieved by the order dated 30.12.2014 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad, in O.A.No.6335 of 2013.

2. The said O.A. was filed by the 1st respondent herein assailing G.O.Rt.No.1327, Panchayat Raj and Rural Department (VIG.IV) Department, dated 16.08.2013, whereby he was dismissed from service and also visited with recovery of a sum of Rs.4,04,480/-. By the order under challenge, the Tribunal held that the punishment imposed upon the 1st respondent herein was not preceded by a proper enquiry and, therefore, the enquiry report on the basis of which the said punishment was imposed stood vitiated. The Tribunal further held that the enquiry officer completed the enquiry on 30.11.2011 in the absence of the 1st respondent and also undertook an inspection on the said date behind his back. The order of dismissal visited upon the 1st respondent under G.O.Rt.No.1327 dated 16.08.2013 was, therefore held to be illegal and unjustified. The Tribunal accordingly set aside the same and directed the authorities to reinstate the 1st respondent in service with all consequential benefits within a time frame.

3. Sri Vedula Srinivas, learned counsel appearing for the 1st respondent, asserted that his client was on medical leave from 03.11.2011 up to 11.03.2004 and could not therefore have participated in the enquiry.

4. Learned Government Pleader for Services (Andhra Pradesh), however, states despite leave sanction not being granted, the 1st respondent remained absent. She would further state that though the 1st respondent did not attend to duty, he participated in the enquiry proceedings.

5. Sri Vedula Srinivas, learned counsel, would point out that enquiry report manifests that the enquiry officer concluded the enquiry on 30.11.2011 with the assistance of the Presenting Officer and his client was never put on notice about the same.

6. Though the learned Government Pleader contended that this issue was not raised earlier, being of the opinion that this was a vital factor to be considered while determining as to whether the principles of natural justice were duly complied with, we called upon the learned Government Pleader to produce the notice issued to the petitioner with regard to the proposed enquiry hearing and inspection on 30.11.2011.

7. Today, the learned Government Pleader produced the original record and more particularly, the notice in R.C.3328/11/P7 dated 06.11.2011 informing the 1st respondent and others that the enquiry would be held on 30.11.2011. Significantly, though this notice is dated 06.11.2011, it was only signed on 26.11.2011 by the Secretary, Zilla

Praja Parishath (ZPP), Guntur, and the stamp on the first page to the effect that it had been despatched by post bears the date 28.11.2011. There is no evidence of this notice having been received by the 1st respondent. However, given the fact that it was despatched by post only on 28.11.2011, it is hardly possible that it would have been served upon the 1st respondent before 30.11.2011. The benefit of doubt in this regard would invariably have to be given to the 1st respondent. In effect, the finding of the Tribunal that the enquiry held against the 1st respondent was inadequate is borne out by the record. When the 1st respondent was not given proper opportunity to participate in the enquiry and more importantly, the inspection which was held by the Enquiry Officer, the entire process stood vitiated. We therefore find no ground to interfere with the order passed by the Tribunal holding to this effect and invalidating the punishment imposed upon the 1st respondent based upon such an enquiry.

8. The Writ Petition is devoid of merit and is accordingly dismissed.

Pending Miscellaneous Petitions, if any, shall also stand dismissed. There shall be no order as to costs.

JUSTICE SANJAY KUMAR

JUSTICE N. BALAYOGI

Date: 02.02.2017
INL