

**THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

WRIT PETITION No.16670 OF 2017

ORDER: *(Oral)*

(Per Hon'ble Sri Justice SURESH KUMAR KAIT)

Vide the present petition, the petitioners have assailed the order dated 31.05.2016 passed in O.A.No.6745 of 2014, whereby the petitioners were directed to pass appropriate orders regarding commutation of the pension of the respondent as per rules, and pass appropriate orders within a period of eight weeks from the receipt of a copy of the order.

2. Learned Government Pleader appearing on behalf of the State submits that, earlier the respondent has filed O.A.No.5387 of 2010 on the file of A.P. Administrative Tribunal, Hyderabad, to declare the action of the petitioners in not fixing the service pension even after lapse of more than two years from the date of his retirement i.e., on 30th June 2008 on the pretext of pending disciplinary proceedings which were initiated as long back as in the year 1998, as being illegal, arbitrary and consequently sought direction to direct the petitioners to forthwith release the service pension of the respondent.

3. Thereafter, in O.A.No.6745 of 2014, the respondent has prayed to set aside the Charge Memo vide A1/1264/96-11-18, dated 21.12.2000, Charge Memo No.A1/2273/98-3, dated 29.04.1999 and consequential proceedings in

Lr.No.A1/1997/2010, dated 18.10.2014 issued by the 1st petitioner. Consequently sought direction declaring that the respondent is entitled for retirement benefits with full pension, commutation of pension, release of increments and regularization of suspension period etc., with revised pay scales with arrears.

4. Learned counsel submits that when the respondent has filed first O.A.No.5387 of 2010 seeking the pensionary benefits, thereafter, there is an embargo in filing the subsequent O.A. No.6745 of 2014, whereby the Charge Memo dated 29.4.1999 was questioned.

5. The brief facts of the case are that:

The respondent, who was working as Hostel Welfare Officer, Grade-II, was retired from service on 30th June 2008. During the year 1999, a Charge Memo dated 29.4.1999 was issued to him along with other Hostel Welfare Officers framing charges with allegations that they had drawn excess amounts while managing the hostels and had shown shortage of rice etc. The respondent submitted his explanation on 15.03.2000 and thereafter, an enquiry officer was appointed. However, no enquiry was conducted.

6. Further case of the respondent is that another charge Memo dated 21.12.2000 was issued to him, for which, he submitted his explanation denying the charges. However, no enquiry was conducted, despite lapse of nearly 16 years.

Only on 18.10.2014, a notice was issued to the respondent seeking his explanation in pursuance of the enquiry report submitted by conducting a farce of enquiry.

7. It is pertinent to mention here that in similar circumstances, several Hostel Welfare Officers have questioned the charge memos dated 29.04.1999 and 21.12.2000 in a batch of O.As in O.A.No.7595 of 2010, dated 18.07.2012 and O.A.No.6197 of 2013 and batch, dated 13.09.2013 and they were all allowed by setting aside the charge memos, with a further direction to the petitioners herein to release the pensionary benefits to the applicants therein, along with interest.

8. It is also not in dispute that the respondent was retired from service on 30.06.2008, no retirement benefits were paid to him, and therefore, he was constrained to file O.A.No.5387 of 2010 before the Tribunal, which was disposed of on 03.11.2010 in favour of the respondent.

9. Being aggrieved, the petitioners herein challenged the aforesaid order vide W.P.No.11803 of 2011 before this Court and the same was dismissed vide order dated 21.10.2013.

10. It is not in dispute that O.A.No.7595 of 2010 and O.A.No.6197 of 2013 and batch, decided vide order dated

18.07.2012 are not challenged by the petitioners' herein, and accordingly, they attained finality.

11. The learned Tribunal accordingly opined that the present O.A.No.6745 of 2014 is squarely covered by the orders passed in O.A. No.7595 of 2010 and O.A.No.6197 of 2010 and batch dated 18.7.2012.

12. In addition to above, the respondent vide communication dated August 27, 2009 wrote a letter to District Collector & Magistrate, Ranga Reddy District, submitted as under:

“Sub : S.Sudharshan, H.W.O Retired – Request for the pension Terminal benefits and finalization of pending enquiry-application-submitted reg.

“Respected Sir,

I submit that, I have been retired on superannuation on 30.06.2008, i.e., one year ago, but I could not submit my pension paper because of the pending enquiry. As per the reference district Collector (SW) RR Proc. No.A1/2273/PP.

The enquiry would not complete because, “The file which contains memo issued has been misplaced in the office.” This is been creating financial problems for me and my family.

Further, I submit that, I have been kept under suspension from November 20, 1998 and reinstated into service on June 15, 1999-Pending settlement of disciplinary case regarding the excess draws of funds.

I have already submitted my defence statement on March 15, 2000 for the dropping of the charges. Since then no correspondence is taking place regarding the case due to misplace of the file.

Kindly finalize the case urgently as I am ready to take up any action taken against me. I could not tolerate the mental and financial agony after his retirement life for about one year without any pension.

I kind collector requesting to look into the matter on the humanitarian grounds keeping in view of the natural justice in finalization of the above case urgently in order to facilitate for the submission of pension papers at least now.”

13. Thereafter, the respondent vide representation dated 30.4.2016 to the Secretary, Government of Telangana, Schedule Caste Development (SER.A2) Department, Secretariat Building, Hyderabad, submitted as under:

“I submit that when the entire file relating to the charge memo is not available in the Office, the question of proceeding with the enquiry without furnishing any documents which will cause much prejudice to the charged officer. I submit that since the Joint director was the preliminary enquiry officer and whose report is the basis for issuance of the Charge Memo and very same person can’t act as an enquiry officer on the same issue. I submit with respect that since there is a delay of more than 14 years and the file pertaining to his issue is available (except my explanation) either with me or in the Department, and in the absence of records conducting of an enquiry is not fair and it is against to principles of natural justice.

At that stage I made representation dt.20.10.2014 to this Hon’ble authority and also the District collector, Ranga Reddy for the following reliefs:-

- i) *The present Joint director of Social Welfare, Ranga Reddy District Sri Suresh Reddy garu shall not act as an Enquiry Officer, as he is the Preliminary Enquiry Officer in the present case and he should be replaced by any other Officer with immediate effect.*
- ii) *To furnish the copy of the Preliminary Enquiry Report dt 19.11.1998 and the copy of the charge memo dt.29.04.1999 along with annexure since these documents were not available with me*

due to the inordinate delay 14 years and I retired from service on 30.06.2008 on attaining the age of superannuation.

- iii) *The report said to have been submitted by the present Joint Director of Social Welfare, Ranga Reddy District should be rejected, as it is contrary to law and basing on the preliminary enquiry report dated 19.11.1998 without giving any opportunity as CCCA Rules.*
- iv) *The present Joint Director who is acting an Enquiry Officer has not given any opportunity and he himself prepared the statement as per his whims and choices, basing on the records available with him dictated the so called my statement and those contents have come from his mouth and I have not deposed any thing which was reflected in the statement.*
- v) *The Lr.No.A1/1997/2010; dt.18.10.2014 along with alleged enquiry report was served on me only on 18.10.2014 evening to submit my explanation by 20.10.2014 failing which it will construed that I have no explanation, this itself clearly shows that the present Joint director/Enquiry Officer is bored grudge against me and submitted his preliminary report in 1998 and no reasonable time given for explanation.*
- vi) *I further pray that in view of 14 years of inordinate delay in concluding enquiry and any steps at his stage to start with an enquiry without relevant documents and witness will cause much prejudice to my defence and requested to drop further proceedings.*

I submit that no action has been taken on my representation and hence I am constrained to file another OA No.6745/2014 questioning the charge Memo's dt.21.12.2000 and 29.04.1999 and also Lr.No.A1/1997/2010 asking to submit explanation pursuant to the enquiry conducted by Joint Director (Sri Suresh Reddy Garu) as contrary to Rules and OA was allowed on 27.11.2014 against which Department filed WP No.16799/2015 and the Hon'ble High Court was pleased to remand the case to the Hon'ble Tribunal for fresh disposal after filing the counter by the department.

I submit that after remand the District Collector has filed counter in O.A.No.6745 of 2014 in the month of August, 2015. The Hon'ble tribunal was pleased to admit the OA and finally heard the OA on

20.11.2015 and reserved for judgment and the orders are yet be pronounced by the Hon'ble Tribunal. In view of the above stated facts I submit the following on the memo in the reference cited.

1) *Since OA No.6745/2014 on the same issue is already admitted and reserved for judgment on 20.11.2015 and therefore all the issues connected the subject matter relating to the charge memo and present Shown cause notice in Memo No.952/SCD.Ser.A2/2011, dt.06.04.2016 is abated no action can be taken by any authority as per Sec,19(4) Administrative Tribunal Act, 1985.*

2) *The show cause notice issued in Memo No.952/SCD.Ser.A2/2011 dt06.04.2016 is contrary to Sec.19(4) Administrative Tribunal Act, 1985 and therefore request to drop further action pursuant to so called enquiry Conducted by Sri Suresh Reddy, Joint Director as it is contrary to judgment of the Hon'ble Apex Court.*

3) *OA No.6745/2014 is still pending and it was finally heard on 20.11.2015 and orders are yet to be passed by the Hon'ble tribunal.*

4) *That Sri Suresh Reddy, Joint director is targeted me from the year 1998 the working place of Ghatkesar Hostel and he is harassing me like anything since I belong to SC community and I am reserving my right to proceed against him before appropriate forum."*

14. It is not in dispute that the charge memos were issued on 29.04.1999 and 21.12.2000, however till date, the enquiry has not been completed. The respondent was retired on 30.06.2008 and the direction dated 31.05.2016 passed in O.A.No.6745 of 2014 has not been complied with till date.

15. In view of the above, we find no merit in the instant petition and the same is accordingly dismissed.

16. Before parting from this order, the tribunal while quashing the Charge Memo No.A1/2273/98-3 dated 29.04.1999 and Charge Memo No.A1/1264/96-II-18, dated 21.12.2000 and the consequential proceedings in Lr.No.A1/1997/2010, dated 18.10.2014, directed the petitioners to settle the pensionary benefits of the respondent and further directed to pass appropriate orders regarding the pensionary benefits and pension of the respondent as per rule.

17. Accordingly, we hereby direct the petitioners to comply with the order passed by the tribunal in *toto* within four (04) months from the date of receipt of a copy of the order with interest @ 6% p.a. from the date of retirement i.e., 30.06.2008.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE SURESH KUMAR KAIT.

JUSTICE U. DURGA PRASAD RAO.

Date : 05-07-2017
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