

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.12077 of 2014

ORDER:

The petitioner filed this Criminal Petition under Section 482 Cr.P.C. to quash the proceedings against him pending in C.C.No.27 of 2013 on the file of Additional Special Judge for SPE & ACB Cases, Hyderabad.

2. It is the submission of the learned counsel for the petitioner that the petitioner worked as Special Tahsildar (Land Reforms) at Kurnool and retired from service on superannuation on 31.08.2008 and he has put in unblemished service for more than 33 years and he was never subjected to any charge sheet or any departmental action. After his retirement, the Joint Collector-cum-competent authority felt his services are necessary to attend the residuary land acquisition work relating to NH-7 and NH-18 and accordingly addressed a letter dated 05.09.2008 to NHAI seeking ratification of his action. Though no such ratification was received from NHAI, the Joint Collector utilized the services of the petitioner as outsourcing employee and paid Rs.10,000/- per month as remuneration. While things stood thus, the petitioner was arrested by the authorities of ACB on 22.03.2009 and he was released on bail on 22.04.2009 and a charge sheet was filed on 31.05.2010 alleging that the petitioner while working on out-sourcing basis has demanded bribe of Rs.3,000/- from one Mr. Chand Basha, Advocate who approached the petitioner seeking certified copies of 42 Awards pertaining to the lands acquired on NH-7.

3. On the complaint made by said Chand Basha, the ACB officials registered the complaint as crime No.5/RCT-KUR/2009 under Section 7 of the Prevention of Corruption Act, 1988 (for short 'the PC Act') and took up investigation. On 21.03.2009, a trap was laid and the complainant approached the petitioner and he was asked to come out of the office and went to a distance of 50 feet from the office and there, the amount of Rs.3,000/- was handed over by the complainant to the petitioner and he has kept the same in the right side pocket of his trouser and the hands of the petitioner, the inner lining of the right side pockets of the trouser and his hand kerchief were subjected to phenolphthalein test, which yielded positive result and the currency notes also have been tallied. Accordingly, the charge sheet was filed alleging the offences punishable under Sections 7 and 13(1)(d) read with 13(2) of the PC Act.

4. It is also the contention of the petitioner that the case is still pending without even the commencement of trial and the petitioner has paid only 75% of pension on account of pendency of the criminal case and he is put to severe hardship financially and is subjected to mental agony and also he was removed by the Joint Collector by order dated 28.03.2009.

5. It is further submitted that the petitioner is not a public servant as he was retired from service and was employed as outsourcing employee and he is being paid remuneration out of the project account and also within the meaning of Section 2(c) of the PC Act so also the Government has opined that no sanction is required as he was retired from service and hence the prosecution

itself is not maintainable. Once he is prosecuted under the PC Act by treating him as a public servant, it is necessary to obtain prior sanction for his prosecution and in the absence of which, the prosecution is impermissible and illegal and sought for to quash the proceedings by allowing the criminal petition. The learned counsel for the petitioner relied upon the expression in **State Bank of India Vs. K.P. Subbaiah**¹, where a matter in relation to service law in fixation of pay, the two Judge Bench of the Apex Court considered generally as to what is meant by pay and pay scale and what is the difference in between with reference to the fundamental rules particularly FR-9(21) and Paras 15 to 21 of the judgment relevant for the purpose speaks that:

“In Service jurisprudence the expressions 'pay' and 'Pay scale' are conceptually different connotations. Pay is essentially a consideration for the services rendered by an employee and is the remuneration which is payable to him. Remuneration is the recurring payment for services rendered during the tenure of employment. Pay and salary are necessarily not interchangeable concepts. Their meanings vary depending upon the provisions providing for them.

As per Concise Oxford Dictionary 8th Edn. (1990), the word 'pay' in its ordinary significance in relation to service means "to give what is due for services done". However, in the Service Jurisprudence, the expression 'pay' has technical connotation of its own. Fundamental Rule 9(21) throws some light on this aspect. The definition itself is as follows:

"9(21)(a)- Pay means the amount drawn monthly by a Government servant as-

- (i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reasons of his position in a cadre, and
- (ii) overseas pay, special pay and personal pay, and

¹ (2003) 11 SCC 646

(iii) any other emoluments which may be specially classed as pay by the President."

There are different types of pay like substantive pay, special pay, additional pay, personal pay and presumptive pay.

Public services comprise of different grades and, therefore, different pay scales are provided for different grades. The pay of an employee is in that background fixed with reference to a pay scale. This is necessary to be done because the pay of an employee does not remain static.

It has to be noted that an employee starts with a particular pay which is commonly known as initial pay and the periodical increases obtained by him are commonly known as increments. When the highest point is reached, the concerned employee becomes entitled to what is known as ceiling pay. It is, therefore, a graded upward revision.

The fixation of pay scales is essentially a function of the executive. They are closely inter-linked with evaluation of duties and responsibilities attached to the posts and the pay scales are normally linked with conclusions arrived at by expert bodies like the Pay Commission.

The degrees of skill, strain of work, experience involved, training required, responsibility undertaken, mental and physical requirements, disagreeableness of the tasks, hazard attendant on work and fatigue involved are some of the relevant factors which go into the process of fixing the pay scale. [**See Delhi Veterinary Association v. Union of India and Ors.** (1984 (3) SCC 1)]"

6. From the above expression pay is essential consideration for the services rendered by an employee and to mean to give what is due for the services done though as per the FR-9(21-a) different kinds of pay referred also for different cadres or grades and the pay fixation is on the pay scale for uniformity.

7. Sri Udaya Bhaskar Rao, learned Standing Counsel for ACB opposed the petition and sought for dismissal saying no grounds to quash the proceedings, for the petitioner is a public

servant within the meaning of Section 2 of the PC Act and the decisions relied on by the petitioner have no application.

8. Heard both sides at length and perused the material on record.

9. Learned counsel for the ACB relies on the expression in **State of Maharashtra Vs. Smt. Sulbha Copalrao Kulkarni (Vaidya)**² a single Judge of Bombay High Court observed that the Assistant Public Prosecutor receiving remuneration for services rendered from the State Government and whose functions are controlled by Director of Prosecution of the State is a public servant within the meaning of Section 2(c)(i) of the PC Act. In the judgment, the learned Judge of Bombay High Court referred at Para 7 that so far as Assistant Public Prosecutor concerned, they are employees of the State holding civil posts whose appointments are governed by service rules as laid down in **Samarendra Das Vs. State of West Bengal**³. It also referred at Para 10 of the judgment, the expression of the Apex Court in **G.A. Monterio Vs. The State of Ajmer**⁴ of who is a public servant as to determine whether he is in the service or pay of the Government and he is entrusted with performance of any public duty. The two Judge Bench expression of the Apex Court in **Manish Trivedi Vs. State of Rajasthan**⁵ with reference to Section 2(c) of the PC Act that Councilor and Member of Municipal Board holds office and are performing public duties and are public servants within the meaning of Section 2(c) clause (viii) of the PC Act from its reading

² 2010 Cri.L.J. 1479

³ AIR 2004 SC 2924

⁴ AIR 1967 SC 13

⁵ 2014 Cri.L.J. 429

with reference to Section 3 and 87 of Rajasthan Municipalities Act. It is observed therein that the definition of public servant under Section 21 IPC is substantially different to the definition of public servant in Section 2(c) of PC Act. In **Naval Kishore Vs. State**⁶ the learned Single Judge of the Delhi High Court held with reference to Section 2 of PC Act that a licensed stamp vendors of the Government under the Stamp Act or Court Fees Act or any subordinate legislation would be a public servant under Section 2(c)(i) of PC Act since it is a public duty of which defined in Section 2(b) of PC Act saying State, public and community at large are having interest in the said duty. The other decision referred is **Ranganath Vs. State of Karnataka**⁷ of Gulbarga Bench where in dismissal of the quash petition on the contention of the petitioner charge sheeted was not the public servant being a licensed surveyor, it was held a license surveyor appointed under the statute is a public servant within the meaning of Section 2(c) of PC Act.

10. Before deciding whether the petitioner is a public servant or not and the proceedings under Sections 7 and 13(1)(d) read with Section 13(2) of PC Act are unsustainable and liable to be quashed concerned, it is necessary to reproduce the definitions of public duty and public servant under Sections 2(b) and 2(c) of PC Act respectively which reads as follows:

“2(b) **“public duty”** means a duty in the discharge of which the State, the public or the community at large has an interest. Explanation.—In this clause “State” includes a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the

⁶ 2015 Cri.L.J. 207

⁷ 2015 Cri.L.J. 3704

Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

2(c) **“public servant”** means,—

(i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;

(ii) any person in the service or pay of a local authority;

(iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

(v) any person authorized by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;

(vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;

(vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

(viii) any person who holds an office by virtue of which he is authorized or required to perform any public duty;

(ix) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;

(xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;

(xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority. Explanation 1.—Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not. Explanation 2.—Wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.”

11. This Court cannot ignore the fact that the Prevention of Corruption Act 1947 concerned, the definition of public servant was restricted to Section 21 IPC, but under Section 2(c) of PC Act 1988 the definition is some what different and the definition of public servant in Section 21 IPC is different from the definition of public servant in Section 2(c) of PC Act and it has to be taken note of in considering a particular person is public servant or not under PC Act as also laid down by the Apex Court in **Manish Trivedi Supra.**

12. From the above so far as the definition under Section 2(c)(i) of PC Act concerned even any person in the service or pay of the Government or even remunerated by Government by fees or commission for the performance of any public duty is a public servant and public duty as referred in Section 2(b) of PC Act means duty in the discharge of which the State, public or the community at large has an interest. It can thus be said that the

post retirement duty in respect of National Highway land acquisition proceedings to perform for continuation of the petitioner concerned is part of public duty to perform and even a fee or commission or remuneration is sufficient and need not always in the form of pay for any person in service and even a person in service or pay of local authority or corporation established by or under Central or Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company are within the meaning of public servants as per Section 2(c) clauses (2) and (3) referred supra. Clause (12) of Section 2(c) of PC Act speaks from the above any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority is a public servant and the Explanation 2 of it says wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

13. Having regard to the above and in the result, from the legal position supra and without need of further discussion, but for left open to decide during trial, the Criminal Petition is dismissed for not a fit case at this stage to come to a definite conclusion of the petitioner is a public servant or not, much less to quash the proceedings therefrom for the fact that he is not getting the remuneration in the form of pay or pay scale is alone not criteria. It is also left open the alternative contention of

requirement of sanction by the time cognizance for the offences taken by the Court and the unsustainability of prosecution of him for want of sanction to decide finally by the trial Court from trial of the case.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 11.04.2017
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