

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.5491 of 2017

ORDER: (per MGR,J)

The Government filed the present writ petition against the order of Andhra Pradesh Administrative Tribunal (for short 'the Tribunal') passed in O.A.No.6693 of 2013, dated 23.02.2016 stating that the 1st respondent had worked as Principal of Government Junior College (Boys), Mahabubnagar, from 01.08.2002 to 31.01.2006 and retired from service on 31.01.2006. During verification of the College records with regard to vocational staff, it was noticed that the 1st respondent had violated the Rules and Regulations and drawn the salaries, thereby caused loss to the State exchequer. Accordingly, a detailed report was submitted to the Government on 14.11.2006 and on 04.06.2007. Since the first respondent had retired from service, the Government is the competent authority to initiate disciplinary action against the first respondent. Thereafter, basing on the said report, the Government vide G.O.Rt.No.39 dated 09.01.2008 had framed the following Article of Charges:-

Article-I: That Sri Mohd.Hassan, Principal (Retired), Government Junior College (Boys), Mahabubnagar while working as Principal at Government Junior College (Boys), Mahabubnagar has submitted the proposals for sanction of minimum time scale to Part Time Junior Lecturer, Sri Shyam Sunder Rao, Part Time Junior Lecturer in SEA course and Sri H.Srinivasa Rao, Part time Junior Lecturer in CT Course and Sri P.Nijalingappa, Part Time Junior

Lecturer in EWC Course of the College to the competent authority. They did not possess the requisite qualification on the date of their appointment which resulted in sanctioning of Minimum Time Scale to the Part Time Junior Lecturers irregularly. He has thus misused official powers and neglected his primary duties. The Government exchequer has been put to loss. Hence, his action is contrary to Rule 3 (1) (3) and (7) of APCS (Conduct) Rules, 1964.

Article-II: That said Sri Mohd.Hassan, Principal (Retired) Government Junior College (Boys), Mahabubnagar while working as Principal at Government Junior College (Boys), Mahabubnagar has appointed certain Part Time Junior Lecturers / Part Time Lab Attenders without requisite qualification. He has also appointed the Part Time Junior Lecturers / Part Time Lab Attenders in the College on consolidated pay after 25.11.1993 which is against the Act 2 of 1994. He has acted in an irresponsible way towards his duties and in violation of rules. Hence, his action is contrary to Rule 3 (1) (3) and (7) of APCS (Conduct) Rules, 1964.”

2. The Government on 22.11.2008 had appointed the Regional Joint Commissioner of Intermediate Education, Warangal, as an Enquiry Officer to conduct a regular departmental enquiry against the first respondent. The Enquiry Officer had submitted his report on 07.09.2009 concluding that based on evidence accrued through verification and the enquiry held against first respondent, the appointments made by him as well as the proposals sent by him for regularization and extension of minimum time pay scale/consolidated pay to vocational staff are in violation of the existing Rules and Regulations and charges were held proved.

3. The Government, based on the Enquiry Officer's report, issued a show cause notice on 15.04.2010 to the 1st respondent stating as to why a penalty of 50% cut in pension permanently besides recovery of Rs.10.48 lakhs should not be imposed on him. The 1st respondent submitted his explanation to the said show cause notice. The 2nd petitioner sent a detailed report on 22.06.2011 to the Government. The Government vide Memo dated 19-11-2012 had released the pensionary benefits like FBF, GPF, APGLI to the 1st respondent. The 2nd petitioner as per the interim order dated 30.01.2013 of the Tribunal passed in O.A.No.281 of 2013 to conclude the disciplinary proceedings, submitted a detailed report on 05.03.2013 to the Government to issue final orders. The Government had issued G.O.Ms.No.69, dated 31.07.2013 imposing the punishment of 50% cut in pension permanently besides recovery of Rs.10,48,826/- and withholding the encashment of E.L., Gratuity and pension and if the said amounts are not sufficient, by invoking the Revenue Recovery Act for attachment of the properties to recoup the loss sustained to the Government, as per the orders issued in G.O.Rt.No.1097 dated 22.06.2000 under Rule 9 of A.P. Revised Pension Rules, 1980.

4. The 1st respondent filed O.A.No.6693 of 2013 before the Tribunal seeking to set aside G.O.Ms.No.69, dated 31.07.2013. The Tribunal allowed the O.A on 23.02.2013 setting aside G.O.Ms.No.69, dated 31-07-2013, and directed the writ petitioners to release the pension and pensionary benefits to the

first respondent within a period of four months from the date of receipt of a copy of the said order, against which, the present writ petition is filed by the Government.

5. The 1st respondent filed a counter affidavit stating that the writ petition is devoid of merits and the impugned order does not warrant interference of this Court under Article 226 of Constitution of India. The Tribunal set aside G.O.Ms.No.69, dated 31.07.2013 holding that the Enquiry Officer has not conducted the inquiry as per Rule 20 of Andhra Pradesh civil Services (Classification, Control & Appeal) Rules, 1991 (for short 'CCA Rules'); while marking the documents referred in Annexure-II, no witness was examined from the Commissioner's Office; and the enquiry is vitiated for non-examination of the witnesses, in support of the documents against the first respondent. The Tribunal further held that the Enquiry Officer, based on the statement of the first respondent and the records available with the petitioners, had come to a conclusion that the charges are held proved against the first respondent. In the absence of conducting inquiry, as per Rule 20 of the CCA Rules, the enquiry is vitiated and basing on the enquiry report imposition of penalty is illegal and arbitrary.

6. Heard the learned Government Pleader for Services for the petitioners and Sri Vedula Srinivas appearing for the first respondent.

7. The learned Government Pleader would contend that the first respondent worked as Principal in Government Junior College (Boys), Mahabubnagar, from 01.08.2002 to 31.01.2006 and retired from service on 31.01.2006. During verification of the records of the College with regard to appointment of vocational staff it came to light that the first respondent had violated the Rules and Regulations in appointment of vocational staff and drawn salaries, wasted funds and thereby caused loss to the State exchequer. Based on the report dated 05.03.2013 of the 2nd petitioner, the 1st petitioner-Government had issued a charge memo and appointed an Enquiry Officer. The Enquiry Officer conducted enquiry as per Rule 20 of the CCA Rules, submitted his report to the first petitioner, holding that the charges are proved. Based on the Enquiry Officer's report, the Government had issued a show cause notice to the first respondent, to which the first respondent submitted his explanation. After considering the explanation of the first respondent to the show cause notice only, he was imposed the punishment through G.O.Ms.No.69, dated 31.07.2013 of 50% cut in pension permanently besides recovery of Rs.10,48,826/- by withholding the encashment of E.L., Gratuity and Pension under Rule 9 of A.P. Revised Pension Rules, 1980.

8. Sri Vedula Srinivas, counsel for the first respondent, would contend that the first respondent worked as Lecturer and Principal for 31 years without any adverse remarks. He worked as Principal in Government Junior College (Boys),

Mahabubnagar, from 01.08.2002 to 31.01.2006 and retired on attaining the age of superannuation. He was charge-sheeted on the allegations like sending the proposals for sanction of time scale pay to some of the Junior Lecturers of the College in the vocational courses and also for appointment of some of the staff members in the vocational courses. He submitted his explanation to the charge sheet on 06.04.2008. The Junior Lecturers mentioned in the first charge have submitted their representation directly to the department for grant of minimum time scale of pay, the competent authority sanctioned the minimum time scale of pay and the first respondent had not recommended the names of the Junior Lecturers for sanction of minimum time scale of pay. With regard to the second charge, he contended that the first respondent had never appointed Junior Lecturers/ Lab Attenders of departments on contingent basis/ time scale of pay. Further contended that G.O.Ms.No.69 dated 31.07.2013 was issued imposing punishment on the first respondent, based on the Enquiry Report submitted without there being any evidence much less legal evidence and contrary to the principles of natural justice. Further the punishment imposed is contrary to Rule 20 of the CCA Rules. The entire action against the first respondent was unwarranted and unjustified without any evidence. The Tribunal passed well considered order and it does not warrant interference of this Court under Article 226.

9. We have carefully perused the record, considered the submissions of the counsel for both the parties and come to a conclusion that the 1st Petitioner-the Government had issued G.O.Ms.No.69 dated 31.07.2013 without independent application of mind to the Enquiry Officer's report. The Enquiry Officer conducted Enquiry contrary to Rule 20 of the CCA Rules and in violation of principles of natural justice. The Enquiry Officer's report holding that the Charges are proved against the first respondent is based on no evidence much less legal evidence in support of the charges.

10. The aspect of requirement of evidence and its consideration, while submitting the Enquiry Officer's report, was considered by the Hon'ble Supreme Court in *Roop Singh Negi vs. Punjab National Bank and Others*⁽¹⁾. The Apex Court while dealing with the role of the Enquiry Officer, held in para.14 as follows:-

“ 14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereon. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.”

¹ (2009) 2 SCC 570

11. In the very same judgment, the Apex Court referred to its earlier decision in *Narinder Mohan Arya v. United India Insurance Co. Ltd.*,⁽²⁾ wherein it was held that:-

“ 44. No such finding has been arrived at even in the disciplinary proceedings nor was any charge made out as against the appellant in that behalf. He had no occasion to have his say thereupon. Indisputably, writ court will bear in mind the distinction between some evidence or no evidence but the question which was required to be posed and necessary should have been as to whether some evidence adduced would lead to the conclusion as regards the guilt of the delinquent officer or not. The evidence adduced on behalf of the management must have nexus with the charges. The enquiry officer cannot base his findings on mere hypothesis. Mere ipse dixit on his part cannot be a substitute of evidence.

45. The findings of the learned Single Judge to the effect that ‘it is established with the conscience (sic) of the Court reasonably formulated by an enquiry officer then in the eventuality’ may not be fully correct inasmuch as the Court while exercising its power of judicial review should also apply its mind as to whether sufficient material had been brought on record to sustain the findings. The conscience of the court may not have much role to play. It is unfortunate that the learned Single Judge did not at all deliberate on the contentions raised by the appellant. Discussion on the materials available on record for the purpose of applying the legal principles was imperative. The Division Bench of the High Court also committed the same error.”

12. In the present case also, no witnesses were examined and no documents were relied upon by the Enquiry Officer except the verification report, which was not supplied to the first respondent. Therefore, the enquiry conducted against

² (2006) 4 SCC 713

the first respondent and findings of the Enquiry Officer cannot be held to be tenable and legal.

13. Hence, we see no illegality or arbitrariness in the order passed by the Tribunal in O.A.No.6693 of 2013 warranting our interference under *Certiorari* jurisdiction of Article 226 of the Constitution of India. Therefore the Writ Petition is liable to be dismissed.

14. Accordingly Writ Petition is dismissed. No costs. Miscellaneous petitions pending in this writ petition, if any, shall stand closed.

V. RAMASUBRAMANIAN, J

M.GANGA RAO, J

5th December, 2017
TSNR

