

**IN THE HIGH COURT OF JUDICATURE AT HYDERBAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADERSH**

WRIT PETITION No.4525 of 2013

Between:

G. Kanthimathi

.....Petitioner

And:

Government of A.P. Law Dept., A.P. Secretariat,
Hyderabad, represented by its Secretary and another

..... Respondents

JUDGMENT PRONOUNCED ON : 04-07-2017

HON'BLE SRI JUSTICE : V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE : N. BALAYOGI

1. Whether Reporters of local

Newspapers may be allowed to see

the Judgments?

: Yes

2. Whether the copies of judgment

may be marked to Law Reporters/

Journals?

: Yes

3. Whether their Ladyship/Lordship

wish to see the fair copy of the

judgment?

: Yes

*** HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE N.BALAYOGI**

+ Writ Petition No.4525 of 2013

% 04-07-2017

Smt. G.Kanthimathi, W/o.Dr. G.Bhaskar Rao,
Aged: 53 years, R/o.H.No.18-4-8,
Railway Colony, Tirupathi, Chittoor District

... Petitioner

Vs.

\$ 1. Govt. of A.P., Law Dept., A.P. Secretariat,
Hyderabad, Rep. by its Secretary,
Legislature Affairs & Justice (FAC)

2. High Court of A.P., Hyderabad,
Rep. by its Registrar (Vigilance)

... Respondents

! Counsel for the Petitioner: Mr. G.Vidya Sagar,
Senior Counsel, representing
Smt. K.Udaya Sri

Counsel for the Respondent: Mr. S. Sri Ram,
Standing Counsel

< Gist:

> Head Note:

? Cases referred:

1. (2006) 13 SCC 1
2. (2001) 2 SCC 386
3. (1995) 6 SCC 749

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

Delivered on: 04-07-2017

Coram:

**The Hon'ble Sri Justice V.RAMASUBRAMANIAN
and
The Hon'ble Sri Justice N. BALAYOGI**

Writ Petition No.4525 of 2013

Between:

Smt. G. Kanthimathi, W/o Dr. G. Bhaskar Rao,
Aged: 53 years, R/o.H.No.18-4-8,
Railway Colony, Tirupathi, Chittoor District

... Petitioner

Vs.

And:

1. High Court of Judicature at Hyderabad,
represented by its Registrar (Vigilance),
High Court Buildings, Hyderabad.
2. The State of Andhra Pradesh, represented
by its Chief Secretary, Law (LA & JSCF)
Department, Secretariat, Velagapudi, Amaravathi,
Guntur District.
3. The State of Telangana, represented by its
Chief Secretary, Law (LA & JSCF) Department,
Secretariat, Hyderabad.

.. Respondents

For Petitioner : Mr. Ashok Ram Kumar

For Respondents : Mr. Swaroop Oorilla, standing
counsel for the High Court

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE N.BALAYOGI

Writ Petition No.4525 of 2013

Order: *(per V.Ramasubramanian, J.)*

The petitioner, who was a Junior Civil Judge, has come up with the above writ petition challenging the penalty of removal from service imposed upon her, pursuant to disciplinary proceedings.

2. Heard Mr. G.Vidya Sagar, learned Senior Counsel appearing for the petitioner and Mr. S.Sri Ram, learned counsel appearing for the Registry of the High Court.

3. The petitioner was appointed as a Junior Civil Judge in March, 2004 and her first posting was at Pulivendula, Kadapa District.

4. It appears that while working as Junior Civil Judge at Pulivendula, she had to record a dying declaration of one Gajjela Gangi Reddy on 18-10-2005. After nearly 4 months of the recording of the dying declaration, 2 complaints one dated 10-02-2006 and another dated 28-4-2006 were received alleging that the petitioner committed grave irregularities in the matter of recording of the dying declaration.

5. A discreet enquiry followed and the Registrar (Vigilance) submitted a report.

6. The petitioner was given an opportunity by proceedings dated 09-02-2008 to offer her remarks against the complaints and she accordingly submitted her remarks on 28-02-2008.

7. Not satisfied with the remarks offered by the petitioner, the High Court initiated disciplinary proceedings with the issue of a Charge Memo dated 14-8-2008. The Charge Memo contained 4 Articles of Charges, which read as follows:

“Articles of Charge No.1

That you Smt G.Kanthimathi, Junior Civil Judge, while working as Junior Civil Judge, Pulivendula, Kadapa district, on receipt of requisition from the Area Hospital, Andhra Pradesh Vydy Vidhan Parishad, Pulivendula on 18.10.2005 at about 1.00 P.M. you proceeded to the said hospital along with your attender viz Sri M.Jayachandra, and while recording the dying declaration of Sri Gajjela Gangi Reddy, R/o Chintala, Jutur Village of Vemula Mandal, who was injured seriously due to gun shot, the said injured person died at 2.30 PM. still you obtained his left thumb impression after his death and later after arrival to your chamber in the court of Junior Civil Judge, Pulivendula, and after having a meeting with Sri M.Obul Reddy, Advocate and Sri Erra Gangi Reddy, a leader of Congress party, Pulivendula, you changed the version in the dying declaration of Sri Gajjela Gangi Reddy to suit certain person who belongs to one political party for extraneous consideration; that thus you indulged in corrupt activities, which act of yours if proved or established would amount to grave misconduct, Judicial dishonesty and unbecoming of a Judicial Officer within the meaning of Rule 3 of A.P. Civil Services (Conduct) Rules, 1964.

Articles of Charge No.2

That you Smt G.Kanthimathi, Junior Civil Judge, while working as Junior Civil Judge, Pulivendula, Kadapa district, recorded the dying declaration of Sri Gajjela Gangi Reddy, R/o Chintala, Jutur Village of

Vemula Mandal, who was admitted in Area Hospital, Andhra Pradesh Vydy Vidhan Parishad, Pulivendula, due to gun shot injuries on 18.10.2005 and while concluding the dying declaration you made endorsement on the said dying declaration which is as follows:

“At the time of recording proceedings no one was present, except the patient, myself, my attender, the duty doctor and the duty nurse. Proceedings concluded at 2.30 P.M.”

However, contrary to the above endorsement you obtained the signatures of two persons viz, Sri G.Venkata Narayana Reddy and Sri G.Venkata Rama Reddy, brothers of the deceased Sri G.Gangi Reddy, below the Left Thumb Impression of the deceased on the said dying declaration which is unknown and foreign procedure followed by you while recording the dying declaration of the deceased; thus you did not act diligently while recording the dying declaration of the deceased which act of yours if proved or established would amount to grave misconduct, negligence in discharging your duties and unbecoming of a Judicial Officer within the meaning of Rule 3 of A.P. Civil Services (Conduct) Rules, 1964.

Articles of Charge No.3

a) That you Smt G.Kanthimathi, Junior Civil Judge, while working as Junior Civil Judge, Pulivendula, Kadapa district, used to permit Sri M.Obul Reddy, Advocate, to meet you in your chambers frequently for the reasons best known to you, and the said Advocate also used to have conversation with you by telephone to the telephone numbers provided to your office and residence (226174 and 226356 respectively) from his

mobile phone No.9440210868. (Details of phone calls shown in Annexure – A).

b) That you also used to contact frequently through your office Phone No.226174 to the mobile phone No.9440210868 relating to Sri M.Obul Reddy, Advocate. (Details of phone calls shown in Annexure A.)

c) That you used to contact telephonically Sri M.Humain Saheb, Junior Assistant, Junior Civil Judge's Court, Pulivendula, frequently through your residential telephone No.226356 and he too used to contact you with cell No.9440161668, as he used to act as a mediator between you and Sri M.Obul Reddy, Advocate and used to settle the cases, pending before you. (Details of phone calls shown in Annexure – B)

That thus you developed contacts with Sri M.Obul Reddy, Advocate and allowed him to meet personally, and contact by phone for doing favour to him in the cases filed by him for extraneous consideration which acts of yours, if proved or established would amount to grave misconduct, Judicial dishonesty and unbecoming of a Judicial Officer within the meaning of Rule 3 of A.P. Civil Service (Conduct) Rules, 1964.

Articles of Charge No.4

That you Smt G.Kanthimathi, Junior Civil Judge, while working as Junior Civil Judge, Pulivendula, Kadapa district, hatched a plan to get a false insurance claim to your damaged Car bearing No.AP 03 3006, with the collusion of Police Constable of Pulivendula Police Station, and took the vehicle to by pass road, Pulivendula, and took photographs of the car as if, your car dashed to a tree and claimed damages from the insurance company basing on the said photos, that thus you fraudulently drawn damages from the insurance company and stopped to a level which a Judicial Officer

ought not have to done, which act of yours if proved or established would amount to grave misconduct, and unbecoming of a Judicial Officer within the meaning of Rule 3 of A.P. Civil Service (Conduct) Rules, 1964.”

8. The petitioner submitted her explanation to the charges on 11-9-2008. Not satisfied with the explanation, the matter was referred to the Registrar (Enquiries).

9. Before the Registrar (Enquiries), 9 witnesses were examined on the side of the Registry and 18 documents were marked as Exts.P-1 to P-18. The petitioner examined herself as D.W.1 and filed one document, namely, the requisition received from the Area Hospital on 18-10-2005 for recording of the dying declaration, as Ext.D-1.

10. In his enquiry report dated 09-11-2010, the Enquiry Officer held charges 1 and 3 not proved and charges 2 and 4 proved.

11. The enquiry report was forwarded to the petitioner under a memo dated 28-9-2011 and the petitioner submitted an explanation on 21-10-2011.

12. Though a final order could have been passed after the receipt of the further representation to the enquiry report, the Registry issued a show cause notice dated 03-12-2011 calling upon the petitioner to show cause against the proposal to impose the penalty of dismissal from service. The petitioner submitted a representation dated 07-01-2012 to the said show cause notice.

13. After considering all the material on record, the High Court decided to recommend a penalty of removal from service to be

imposed upon the petitioner. Accepting the said recommendation, the Government issued G.O.Ms.No.136, Law Department, dated 15-12-2012, imposing upon the petitioner the penalty of removal from service. It is against the said order that the petitioner has come up with the above writ petition.

14. The contentions of Mr. G.Vidya Sagar, learned Senior Counsel for the petitioner, are:

(i) that 2 out of the 4 charges framed against the petitioner which were grave in nature, have been held by the Enquiry Officer to be not proved and hence the imposition of a major penalty of removal from service was highly disproportionate to the gravity of the misconduct held proved.

(ii) that the 2nd charge held proved by the Enquiry Officer tantamounted at the most to a minor misconduct, committed by an officer at the place of her first posting, without any knowledge about the procedure prescribed, which when viewed in the context of the fact that the officer was sent for training to the Judicial Academy only after the completion of her first posting, coupled with the fact that the practice prevalent in that particular district was what was followed by the petitioner, the imposition of a major penalty was uncalled for and

(iii) that though the charges 1 to 3 revolved around the same incident, charge No.4 which was unrelated to the incident was also included, on the basis of a report received after 3 years of the incident that led to the framing of charges 1 to 3.

15. In response to the above contentions, Mr. S. Sri Ram, learned Standing Counsel for the Registry, submitted:

(i) that despite charges 1 and 3 having been held not proved, the conduct of the petitioner in the background of facts forming part of all the 3 charges, should be taken into consideration,

(ii) that the case on hand is not one of no evidence or perversity of findings and that therefore the question of interference may not be called for and

(iii) that there is no prohibition in the departmental enquiry to club different acts of misconduct into a single enquiry.

16. The learned Standing Counsel for the Registry also relied upon the following decisions of the Supreme Court:

- (i) GOVT. OF INDIA v. GEORGE PHILIP¹,
- (ii) OM KUMAR v. UNION OF INDIA² and
- (iii) B.C. CHATURVEDI v. UNION OF INDIA³.

17. We have carefully considered the above submissions.

18. Before adverting to the rival contentions, it may be necessary to take note of a few facts that led to the initiation of disciplinary proceedings against the petitioner. Admittedly, the petitioner recorded the Dying Declaration of one Gajjela Gangi Reddy at the Area Hospital in Pulivendula on 18-10-2005. The case was one of murder due to political rivalry. Though a complaint was received after 4 months of the recording of the dying declaration, the allegations contained in the complaint were so serious that impelled the Chief Justice to order a discreet enquiry. The discreet enquiry report led to the framing of the charges.

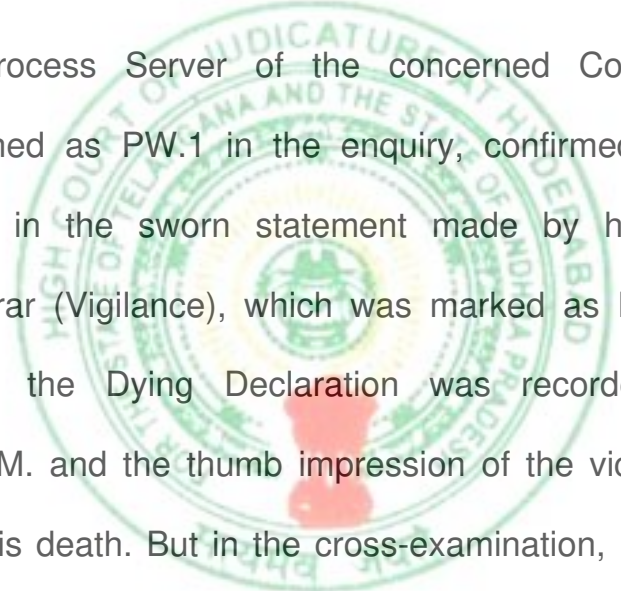
¹ (2006) 13 SCC 1

² (2001) 2 SCC 386

³ (1995) 6 SCC 749

19. It is true that the Articles of Charges 1 and 3 are very serious in nature and that they have been held not proved by the Enquiry Officer. But Article-2 of the Charges has a link to Articles 1 and 3 of the Charges and hence, the charge held proved cannot be seen in isolation.

20. Keeping the above in mind, if we look at the proceedings of the enquiry, it appears that there are several twists and turns that had taken place in the course of the enquiry. In brief they can be enlisted as follows:

- 
- i) the Process Server of the concerned Court, who was examined as PW.1 in the enquiry, confirmed whatever he stated in the sworn statement made by him before the Registrar (Vigilance), which was marked as Ex.P.1. As per Ex.P.1 the Dying Declaration was recorded at around 4.00P.M. and the thumb impression of the victim was taken after his death. But in the cross-examination, PW.1 retracted by claiming that the Dying Declaration was recorded at about 11.00 A.M. or 12.00 noon. But interestingly he maintained even during cross-examination that his statement before the Registrar (Vigilance) that the Charged Officer obtained the thumb impression of the victim after his death was true. There was no retraction on this score. It must be pointed out that PW.1 admittedly accompanied the Charged Officer to the hospital for the purpose of recording the Dying Declaration;
 - ii) One Mr. G. Venkata Narayana Reddy, who was the younger brother of the deceased, was examined as PW.3. He deposed

that after the Dying Declaration was recorded, the Charged Officer called them inside and obtained his signature and the signature of another person. PW.3 identified his signature in the Photostat copy of the Dying Declaration marked as Ex.P.3. In cross-examination PW.3 claimed that his brother was alive when the Magistrate called him in and obtained his signature.

- iii) The second person, who also signed the Dying Declaration and who was the younger brother of the deceased, was examined as PW.4. After identifying his signature in Ex.P.3 Dying Declaration, PW.4 admitted in cross-examination that the victim was in conscious condition and was able to speak. But in cross-examination he came up with two versions viz., (a) that at the time of recording of Dying Declaration, he was sent out and (b) that he was present at the time of recording of Dying Declaration. But later he stated in cross-examination that his first statement was correct and that at the time when he put his signature, the victim was alive but able to breathe hardly.
- iv) One Record Assistant in the Court of Junior Civil Judge, who accompanied the Charged Officer to the hospital for recording the Dying Declaration, was examined as PW.6 and he identified the sworn statement made by him before the Registrar (Vigilance) and the same was marked as Ex.P.5. He stated in his chief-examination as follows:

“I accompanied the Charged Officer when she had been to Government Hospital, Pulivendula for recording the Dying Declaration of Gajjala Gangi Reddy, but I do not remember

the time at which I accompanied her. I went near to the said Gajjala Gangi Reddy when the Charged Officer went there for recording his Dying Declaration. At that time the said Gajjala Gangi Reddy was hardly struggling for life i.e. "Kona Upiritho". **While giving statement and before the completion of recording of the statement the said Gajjala Gangi Reddy died. After the death of Gajja Gangi Reddy I obtained his thumb impression on the Dying Declaration.** Sri Obul Reddy and Sri Narasimha Reddy, Advocate were outside the hospital at that time."

In cross-examination, PW.6 did not go back on his statement made in chief examination. All that he stated in cross-examination was as follows:

"Myself and the Charged Officer alone went to the hospital for recording the Dying Declaration of Gajjala Gangi Reddy by the Charged Officer. We went there at about 11.30 A.M. or 12.00 noon. But I do not remember the date and year. While the Charged Officer was recording the Dying Declaration I alone was present along with the charged officer. The condition of the injured at that time was, he was about to die and he was not in a position to give a statement freely as to what all he wanted to state and thus his condition was critical. I stated before Registrar (Vigilance) that by the time we went to record the Dying Declaration of Gajjala Gangi Reddy, the said Gangi Reddy was in coma. It is not true to suggest that my evidence that after the death of Gajjala Gangi Reddy his thumb impression was taken is incorrect."

- v) The Registrar (Vigilance) who obtained the sworn statements of witnesses and who gave a discreet enquiry report, was examined as PW.8. The relevant portion of his chief examination both with regard to the manner in which the Dying Declaration was recorded and also with regard to the contacts made by a few advocates through telephone, may be relevant

and hence, the said portion of the deposition of PW.8 is extracted as follows:

"In the dying declaration of Gajjala Gangireddy (Ex.P.3) at the end of the statement at page No.2 the Officer made a declaration that "at the time of recording the proceedings no one was present except the Patient, myself, my attender the Duty doctor and the duty nurse. Proceedings concluded at 2.30 p.m." Whereas, at the first page of Ex.P.3 the Charged Officer obtained signatures of G. Venkata Narayana Reddy (PW.3), G. Venkata Rami Reddy (PW.4), brothers of Gangi Reddy. According to me recording of DD was completed at 2.30 p.m., death took place at 2.30 p.m., intimation was given at 2.30p.m., as per record on 18-10-2005.

As per Ex.P.9 and P.10 telephone Number 226174 was installed in the chamber of Junior Civil Judge, Pulivendula and two calls were made to cell phone No.9440210868 belonging to Sri Obul Reddy, Advocate, Pulivendula. Similarly on 22-10-2005 two calls were made to the same number from 226356 which is installed at the residence of Junior Civil Judge, Pulivendula (Charged Officer). On 21-10-2005, 23-10-2005, 14-11-2005, 22-12-2005, 19-2-2006, 7-3-2006, six calls were made to telephone number 226356 (residential phone number of JCJ, Pulivendula) from the mobile phone number of Obul Reddy, Advocate. On 9-11-2005 one call was received from the mobile number of Obul Reddy to the chamber phone number. Similarly, 11 calls were made from land line number 226356 to cell phone number 9440161668 belonging to Hussain Saheb, Junior Assistant in JCJ Court, Pulivendula. 17 calls were made to phone number 226174 (chamber phone) from 9440161668. Similarly, 36 calls were received by land line number 226356 (residential phone) from 9440161668."

- vi) The Civil Assistant Surgeon working in the Area Hospital, who issued Ex.P.13 requisition for the recording of the Dying Declaration, was examined as PW.9. He claimed that Ex.P.13 requisition for recording of Dying Declaration was sent to the Charged Officer at 12.10 p.m. and that it reached the Charged Officer by 12.20 p.m. but at the same time PW.9 admitted that as per Ex.P.14 death intimation, the declarant was admitted in

the hospital at 1.20 pm. and expired by 2.30 p.m. He claimed that the left thumb impressions of two other persons were taken later and that he was not present at that time.

21. Actually on a cumulative consideration of the oral and documentary evidence, it was possible especially in a departmental enquiry to come to the conclusion, on the basis of preponderance of probabilities, that even Charges 1 and 3 are proved. But the Enquiry Officer had been kind enough to hold both these charges not proved, by applying the yardstick that a Criminal Court would normally apply. To the good fortune of the writ petitioner, the High Court did not choose to take a different view from that of the Enquiry Officer in relation to Charges 1 and 3.

22. Nevertheless the second charge, which is held proved by the Enquiry Officer, should be seen as part of the whole and cannot be looked at in isolation. If Charge No.2 is seen merely as a procedural irregularity committed by the Charged Officer, it may lead to disastrous consequences. A procedural irregularity in such a serious matter as to the recording of the Dying Declaration may actually prove fatal to the case of the prosecution before the Criminal Court. Some irregularities are not capable of any redemption and any irregularity with respect to the recording of the Dying Declaration, which may actually affect the very credibility of the Dying Declaration, cannot be treated very lightly. Therefore, even the finding with regard to Charge No.2, which is not assailed as perverse, is sufficient for the High Court to come to the conclusion

that the officer deserved a major penalty. Hence, the first two contentions of Mr. G. Vidyasagar, learned senior counsel for the petitioner that Charge No.2 at the most tantamounted to a minor misconduct, for which the major penalty of removal from service is disproportionate, cannot be accepted.

23. In so far as Charge No.4 is concerned, the only attack is on the ground that there was a long gap between the date of the alleged incident and that the said incident, which is unconnected with the incident that gave rise to Charges 1 to 3 has been wantonly roped in, to fix the officer.

24. But we do not think so. Merely because the High Court chose to include a charge relating to an incident that was not connected to the other charges, it cannot be concluded that there was an attempt to fix the officer.

25. The finding on Charge No.4 was on the basis of the evidence of PW.2 who admitted to have driven the car at the time when it met with an accident. Any abuse of official position cannot be washed away on the ground that the incident happened long time ago. So long as the findings in relation to Charge No.4, are not found to be perverse, it is not possible for this Court to interfere with the penalty imposed.

26. As rightly pointed out by Mr. S. Sri Ram, learned standing counsel for the Registry, the disciplinary authority was bound to take note of the entire background of facts and the totality of the circumstances for deciding the quantum of penalty. The disciplinary authority has done this and even the charges held proved cannot be

stated to be minor in nature warranting any leniency of treatment. The law is well settled and does not require the citation of any case law to the effect that unless the punishment imposed by the disciplinary authority shocks the conscience of the court, the same cannot be interfered with in a writ petition under Article 226 of the Constitution.

27. Therefore, we find no merits in the writ petition, and hence, it is dismissed. There will be no order as to costs. The miscellaneous petitions, if any, shall stand closed.

V.RAMASUBRAMANIAN, J

N.BALAYOGI, J

Date: 04-07-2017

Ak/Ksn

Note: L.R. copy to be marked.

B.O./Ksn

