

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.30105 of 2014

ORDER: (Per MGR,J)

This Writ Petition is filed to issue a Writ of *Certiorari* and call for the records relating to and connected with the order dated 28.08.2014 passed in O.A.No.7470 of 2012 by the Andhra Pradesh Administrative Tribunal, Hyderabad, wherein the applicant's removal was set aside with a direction to reinstate the applicant into service and to release all the consequential benefits to him and also regularize the period of his suspension as 'on duty'.

2. For convenience, the parties hereinafter would be referred to as they were arrayed in O.A.

3. The case of the applicant, in brief, is that he was appointed as a Station Fire Officer in the year 1993 in the Fire Service Department of Government of Andhra Pradesh by direct recruitment. He had put in unblemished record of service. The 2nd respondent had placed the applicant under suspension vide letter No.4708/E2/2010 dated 11.06.2010 and directed the District Fire Officer, Kakinada, to conduct a preliminary enquiry and submit report. The Preliminary Enquiry Officer submitted a report holding that there is no *prima facie* case against the applicant. In spite of the same, the 2nd respondent had issued a charge memo dated 01.10.2010 to the applicant with the following charge:

“That the said Sri U.Sarath Babu, Station Fire Officer
(under suspension), Fire Station, Peddapuram, East

Godavari District while functioning as Station Fire Officer, Fire Station, Kakinada, East Godavari district has exhibited Grave misconduct, gross neglect and dereliction of duty by issuing No Objection Certificate to the existing Multi Storeyed Buildings in violation of Section 13 of A.P. Fire Service Act, 1999 and acted as unbecoming of Government Servant which was against Rule (3) of A P C S (Conduct) Rules, 1964.”

4. Pursuant to the same, the applicant submitted his explanation. Not satisfied with the same, the 2nd respondent appointed one P.Ravinder Reddy, Regional Fire Officer, Eastern Region, Hyderabad, as an Enquiry Officer. The applicant submitted vide representation dated 30.11.2010 raised objection for appointing said Ravinder Reddy as an Enquiry Officer, as he had already appointed his own man in his place, showing as vacant place, for which the Enquiry Officer may be biased. But, the Enquiry Officer was not changed. During the interregnum period, the applicant was reinstated into service and he jointed duty on 13.01.2011, pending enquiry. Subsequent thereto, the Enquiry Officer conducted the enquiry and submitted his report holding that the charge is proved, contrary to the evidence available on record. The 2nd respondent being disciplinary authority, without independent application of mind, solely based on the Enquiry Officer's report, had issued show cause notice dated 22.05.2012 to the applicant seeking his explanation as to why a suitable disciplinary action should not be taken against him.

5. The applicant submitted his explanation on 11.06.2012 duly submitting his objections to the Enquiry Officer's report, in particular to the findings of the Enquiry Officer that the applicant

had caused financial loss to the tune of Rs.6,12,893/- approximately to the department for non-receipt of Fire Precaution Fee with penal interest thereon due to serious negligence and dereliction of duty and deliberate failure to follow the departmental Rules and the orders issued in G.O.Ms.No.154 Municipal Administration & Urban Development (M1) Department dated 13.03.2007. But, the second respondent without independent application of mind to the Enquiry Officer's report and contrary to the evidence available on record, without objective consideration of applicant's objections to the Enquiry Officer's report and show cause notice, on erroneous appreciation of facts and law, came to the wrong conclusion that the charge is proved and passed the orders removing the applicant from service, which is impugned in the O.A. The Tribunal passed an interim order on 18.09.2012 directing the respondents to continue the appellant in service.

6. The second respondent filed counter, while reiterating the facts stated supra, mainly contending that he got conducted the departmental enquiry by the Enquiry Officer. The enquiry was conducted as per Rule 20 of Andhra Pradesh Civil Services (CCA) Rules, 1991. The Enquiry Officer submitted report holding that the charge is proved beyond reasonable doubt. Based on the Enquiry Officer's report, a show cause notice of removal was given to the applicant to submit his explanation. After considering the applicant's explanation, he was removed from service for the proved misconduct and there is no illegality in removing the applicant.

7. The Tribunal allowed the O.A. after considering the rival contentions and the evidence on record, by considering the evidence of P.W.1, who stated that he had not regularized the building based on the so-called No-Objection Certificate issued by the applicant and that the Enquiry Officer had not examined the builders as witnesses in the enquiry. The Tribunal found that there is no evidence before the Enquiry Officer to the effect that the applicant had issued No-Objection Certificates for illegal gratification; unless the applicant had violated the provisions of A.P. Fire Services Act, it cannot be said that he had committed misdeeds; the basis for initiating departmental enquiry in this case is the so-called No-Objection Certificate, in fact, it is not NOC for constructing the building as laid down in the A.P. Fire Services Act, 1999.

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

9. The counsel for the writ petitioners would contend that the applicant was removed from service, after conducting departmental enquiry, in strict adherence to the Rules of the departmental enquiry. The disciplinary authority, after due application of mind to the Enquiry Officer's report, independently came to the conclusion that the charge against the applicant was proved and then only the applicant was removed as per law. The Tribunal erred in setting aside the removal order and directing to reinstate the applicant into service and release all the consequential benefits to him and also to regularize the period of suspension as 'on duty'.

10. The counsel for the applicant would contend that the disciplinary authority got conducted an enquiry into the charge against the applicant. Solely based on Enquiry Officer's report holding that the charge is proved, which is not supported by any evidence much less legal evidence, removed the applicant from service. The Enquiry Officer held that the applicant had caused financial loss of Rs.6,12,893/- to the department without therebeing any charge against the applicant to that effect and the disciplinary authority also without independent applicant of mind to the Enquiry Officer's report and without considering the applicant's explanation to the show cause notice and his objections to the Enquiry Officer's report and Enquiry Officer's findings, erroneously removed the applicant from service against which applicant filed O.A. The Tribunal rightly, after holding that the removal of applicant is illegal, directed the respondents to reinstate the applicant with all consequential benefits. The counsel further contended that when there is no charge of loss cause to the department, the Enquiry Officer went beyond the charge and submitted his report holding that the applicant had caused loss, which is illegal. Learned counsel also contended that the second writ petitioner had not raised any valid ground for interference of this Court under *Certiorari* jurisdiction under Article 226 of the Constitution of India.

11. In the impugned order, the Tribunal elaborately discussed the issue and gave detailed reasons for its conclusions. The Tribunal observed that the certificate issued by the applicant was only a No-Objection certificate in respect of first aid fire

fighting. The applicant was expected to inspect the first aid fire fighting equipment stored in the building and express his opinion about the compliance of the Rules. In the No-Objection Certificate what all the applicant has stated that he had no-objection for first aid fire fighting. As such, the disciplinary authority ought not have construed the said certificate as No-Objection certificate and initiate disciplinary enquiry against the applicant for no fault of his. The preliminary enquiry officer appointed initially had rightly held that the certificates issued by the applicant are not No-Objection certificates. The Disciplinary authority ought to have accepted the findings of the Preliminary Enquiry Officer. But, instead of accepting the same, the Disciplinary authority initiated a departmental enquiry and ultimately removed the applicant from service. The Tribunal also observed that there are no grounds for initiating departmental enquiry against the applicant. The Tribunal held that issuance of No-Objection certificate by the applicant does not amount to mis-conduct as it was categorically stated that Director of Fire Services alone is competent authority to issue No-Objection certificate. Since there is no mis-conduct, the whole enquiry and the consequential proceedings based on it cannot be upheld.

12. We have carefully considered the submissions of both the counsel and came to the conclusion that the disciplinary authority erred in accepting the Enquiry Officer's report, holding that it is proved that the applicant had caused loss to the department without therebeing any such charge framed against the applicant. The disciplinary authority committed grave illegality

in removing the applicant from service without independent applicant of mind to the Enquiry Officer's report when he was solely based on the Enquiry Officer's report.

13. On appreciation of the entire material available on record, it appears the respondent-Government misconstrued the certificate issued by the applicant and wrongly came to the conclusion that the applicant, without any power or authority, issued the NOC as per Section 13 of the Act even though the NOC issued by the applicant is not meeting the requirements of the proforma prescribed in the Rules. The 2nd writ petitioner totally erred in construing the letter issued for fire fighting equipment to that of NOC for building as required under Section 13 of the Act. At best, the alleged NOC issued by the applicant may mislead the authority, but it is not the case of the disciplinary authority to construe the same as misleading NOC. There is no *prima facie* evidence to issue charge memo as the preliminary Enquiry Officer submitted his report that there is no evidence to construe that the alleged NOC was issued for which it is required to be issued by the Director General of Fire Services under Section 13 of the Act and Rules.

14. It is well settled law that under Article 226 of the Constitution of India, in *Certiorari* jurisdiction, this Court has to interfere only when there is any error of law, perversity, illegality or irregularity in the order of the Tribunal ordering reinstatement of the applicant into service and the impugned order does not warrant our interference under *Certiorari* jurisdiction under Article 226 of the Constitution of India.

15. Hence, the Writ Petition is dismissed.

16. Consequently, miscellaneous petitions, if any, pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

M.GANGA RAO, J

29th December, 2017
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