

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

+ Writ Petition No.22124 of 2011

% 04-8-2017

S.M. Ahmed, S/o late Sheik Hussain,
Aged 40 years, R/o D.No.4-76/1,
Revenue Colony, Kothapeta, East Godavari District
... Petitioner
Vs.

\$ 1. High Court of A.P., Hyderabad,
Rep. by the Registrar Administration
2. The District Judge, Rajahmundry,
East Godavari District (Disciplinary Authority)
... Respondents

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

Counsel for Respondents 1&2: Mr. Bathula Raj Kiran,
Standing Counsel for High Court

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> Head Note:

? Cases referred:

1. (1998) 7 SCC 84
2. (2013) 4 SCC 301
3. (1985) 3 SCC 398

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Writ Petition No.22124 of 2011

Order: (per V.Ramasubramanian, J.)

The petitioner has come up with the above writ petition challenging an order of dismissal from service.

2. Heard Mr. G.Vidya Sagar, learned Senior Counsel appearing for the petitioner and Mr. Bathula Raj Kiran, learned Standing Counsel for the High Court.

3. The petitioner was originally appointed as an Attender in the District Judiciary on 09-4-1993 and later promoted as Record Assistant in 1997. He was promoted to the post of Amin in the year 2002. This post is now designated as Field Assistant.

4. By the proceedings dated 03-4-2007, grave charges were framed against the petitioner alleging that while he was working as Amin in the Principal Junior Civil Judge's Court, Kothapet, he demanded a sum of Rs.20,000/- from one Namavarapu Shanthamma for redelivery of a property to her when she filed E.P.No.45 of 2006 in O.S.No.52 of 1991. The petitioner submitted his explanation to the charges on 25-4-2007.

5. The Additional Judicial Magistrate of First Class, Amalapuram, was appointed as the Enquiry Officer. Before the Enquiry Officer, the complainant Namavarapu Shanthamma was examined as P.W.1. The Senior Civil Judge,

who worked at Kothapet at the relevant point of time, was examined as P.W.2. The sworn statement made by the complainant Shanthamma before the Senior Civil Judge, Kothapet (P.W.2) was filed as Ex.A-1. The Official Memo dated 14-02-2007 issued by the District Court calling for the report of the Judicial Officer was filed as Ex.A-2. The reply of the petitioner to the charge memo was taken on record as Ex.A-3. The preliminary enquiry report and the statement made by the complainant Shanthamma at the time of preliminary enquiry was taken on record as Ex.A-4.

6. By a report sent on 16-11-2007, the Enquiry Officer held the charge not proved. Thereafter, the Disciplinary Authority issued a proceeding dated 27-10-2009, giving it a caption as "Final Order", but actually directing the petitioner to show cause. Instead of asking the petitioner to show cause as to why a different finding should not be recorded, the Disciplinary Authority called upon the petitioner to show cause against the proposal to impose the punishment of dismissal from service.

7. The petitioner submitted a reply dated 18-12-2009. Thereafter, the Disciplinary Authority passed a final order dated 07-01-2010, dismissing the petitioner from service.

8. The petitioner filed a statutory appeal, but the same was dismissed by the High Court by an order dated 23-12-2010. Therefore, aggrieved by the said order, the petitioner has come up with the above writ petition.

9. The main contention of Mr. G.Vidya Sagar, learned Senior Counsel for the petitioner, is that instead of calling upon the petitioner to show cause as to why the Disciplinary Authority should not differ from the findings of the Enquiry Officer, the 2nd respondent straightaway issued a show cause notice proposing to impose the penalty of dismissal from service. This is completely contrary to the procedure established by law and that therefore in view of the decisions of the Supreme Court in *Punjab National Bank v. Kunj Behari Misra*¹ and *Nirmala J. Jhala v. State of Gujarat*², the impugned order is liable to be set aside.

10. We have carefully considered the above submissions.

11. There are no disputes on facts. After the receipt of the enquiry report dated 16-11-2007 holding that the charge against the petitioner was not proved, the Disciplinary Authority issued only one proceeding dated 27-10-2009. This proceeding was titled as "Final Order". In this proceeding dated 27-10-2009, the Disciplinary Authority analysed the evidence *in extenso* and eventually held in paragraphs-16 to 18 as follows:

"16. By virtue of Rule 21(2) of A.P.C.S (CCA) Rules, 1991, when the report of the Enquiry Officer is not acceptable and the material available warrants imposing of punishment against the charged employee, accordingly modified report can be prepared by the disciplinary authority. Accordingly

¹ (1998) 7 SCC 84

² (2013) 4 SCC 301

the report of the Enquiry Officer is rejected. Therefore, the charged employee is liable for necessary punishment.

17. In view of the gravity of the charge which involves demanding of Rs.20,000/- to deliver the property, he deserves punishment not less than that of dismissal from his service. Accordingly punishment of dismissal of service is to be imposed against him.

18. Hence, issue final show cause notice directing the charged employee to submit his final statement for taking further course of action in the matter within 15 days from the date of receipt of this notice, failing which, it shall be deemed that he has no written representation to offer.”

12. From the portion of the proceeding dated 27-10-2009 extracted above, it would be clear that the Disciplinary Authority chose to differ from the findings of the Enquiry Officer. Instead of giving an opportunity to the petitioner to show cause against the proposal to take a different view, the Disciplinary Authority straightaway rejected the findings of the Enquiry Officer, held the charge proved and issued a show cause notice only as against the penalty proposed.

13. It is needless to point out that after the 42nd amendment to the Constitution, which was upheld by a Constitution Bench in *Union of India v. Tulsiram Patel*³, there is no necessity to issue a second show cause notice relating to penalty. But the law is well settled that if the Disciplinary Authority chooses to differ from the findings of the Enquiry Officer, he must first issue a show cause notice,

³ (1985) 3 SCC 398

calling upon the petitioner to show cause as to why a different view should not be taken. But in this case it was not done.

14. In *Punjab National Bank (cited supra)*, the question that arose for consideration before the Supreme Court was “when the enquiry officer, during the course of disciplinary proceedings, comes to a conclusion that all or some of the charges alleging misconduct against an official are not proved then can the disciplinary authority differ from that and give a contrary finding without affording any opportunity to the delinquent officer”. After taking note of the development of law from *Union of India v. Mohd. Ramzan Khan* [(1991) 1 SCC 588] and *Managing Director, ECIL v. B.Karunakar* [(1993) 4 SCC 727], the Supreme Court held in the second last paragraph of its judgment as follows:

“19. whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

15. The law laid down in *Punjab National Bank* has not so far undergone any change. The Disciplinary Authority

unfortunately recorded his findings, contrary to the findings recorded by the Enquiry Officer. The Disciplinary Authority did so, even before giving an opportunity to the charged officer, namely, the petitioner to file a representation before recording the Disciplinary Authority's findings. Hence, the impugned order is liable to be set aside.

16. Mr. G.Vidya Sagar, learned Senior Counsel, also found fault with the Disciplinary Authority for looking into the statements made before the officer who conducted the preliminary enquiry and cited the observations of the Supreme Court in para-1 of the decision in *Nirmala J. Jhala*. But we do not think that the said question need to be gone into, in view of the fact that we have found fault with the Disciplinary Authority for recording a finding without giving an opportunity to show cause as to why the findings of the Disciplinary Authority should not be set at naught.

17. Once it is found that the impugned order of dismissal is liable to be set aside on the ground of violation of the procedure established by law, then the petitioner is entitled to be reinstated into service as a corollary. But the question as to whether he should be entitled to all consequential benefits, is something that we have to ponder over. In normal circumstances, the petitioner may be entitled to full pay and allowances and all other consequential benefits. But in the case on hand, we do not think that the petitioner can be granted the benefit of full pay and

allowances. The reason as to why we would not grant him full pay and allowances is that the charge framed against the petitioner was very serious in nature. The complainant, who alleged that the petitioner demanded money, was examined as P.W.1. Her sworn statement made before the Senior Civil Judge was marked as Ex.A-1 and the Senior Civil Judge was also examined as P.W.2. In such circumstances, it is not possible to grant full pay and allowances to the petitioner, but it is possible only to direct reinstatement with a further direction to place him under suspension, with liberty to the respondents to proceed afresh from the stage at which the irregularities crept in.

18. Therefore, the writ petition is allowed, the impugned order of dismissal from service is set aside and there will be a direction to the respondents to reinstate the petitioner into service. After reinstatement, the Disciplinary Authority may have a fresh look at the enquiry report. After having a fresh look at the enquiry report, the Disciplinary Authority may choose either to accept the report or to take a different view. In case the Disciplinary Authority chooses to take a different view, he shall first issue a notice containing reasons as to why it may be possible for him to take a different view and call upon the petitioner through the show cause notice to show cause as to why a view other than the one taken by the Enquiry Officer should not be taken. After receipt of the reply from the petitioner to the show cause notice, the

2nd respondent may record his reasons and proceed to pass final orders in a manner as prescribed by Rule 20 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991. The petitioner will be entitled to subsistence allowance at the rates admissible to him, from the date of the order of dismissal, namely, 07-01-2010 up to the date of reinstatement and the arrears of the subsistence allowance shall be paid within a period of 8 (eight) weeks from the date of receipt of a copy of this order. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

N.BALAYOGI, J.

04th August, 2017.
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AND
HON'BLE SRI JUSTICE N.BALAYOGI

Writ Petition No.22124 of 2011
(per VRS, J.)



04th August, 2017.
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