

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

* * * *

Writ Petition No.31283 of 2017

Between:

The District Collector (BCW), West Godavari
District and 3 others.

..Petitioners

And

Smt K.V. Ramana

..Respondent

DATE OF JUDGMENT PRONOUNCED: 24.10.2017

SUBMITTED FOR APPROVAL:

HON' BLE SRI JUSTICE C. V. NAGARJUNA REDDY
AND
HON' BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

1. Whether Reporters of Local newspapers
may be allowed to see the Judgment ? Yes/ No
2. Whether the copies of judgment may be
marked to Law Reporters/ Journals Yes/ No
3. Whether Your Lordships wish to
see the fair copy of the Judgment ? Yes/ No

C. V. NAGARJUNA REDDY, J

KONGARA VIJAYA LAKSHMI, J

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AND
HON' BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

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Between:

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!Counsel for petitioners : Government Pleader for Services (AP)

^Counsel for Respondent : None appeared

< **Gist:**

> **Head Note:**

? **Cases referred:**

1.(2013) 6 SCC 530



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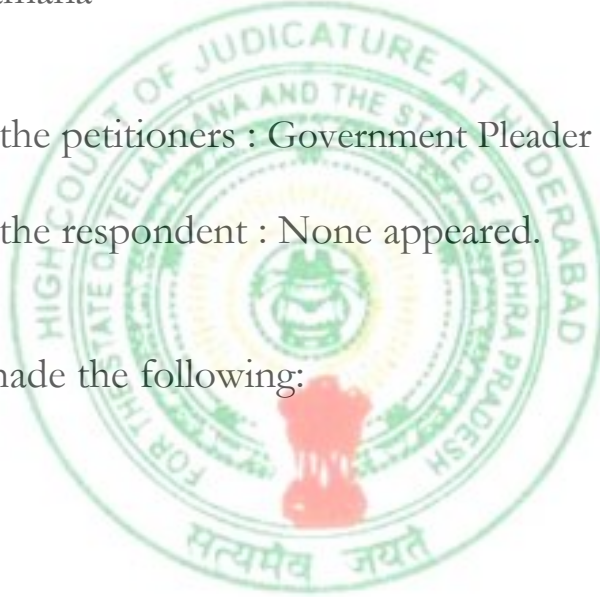
Smt K.V. Ramana

..Respondent

Counsel for the petitioners : Government Pleader for Service(AP)

Counsel for the respondent : None appeared.

The Court made the following:



ORDER: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This writ petition is filed for issue of *Certiorari* to quash order dated 18.11.2016 in O.A.No.2407 of 2014 on the file of the Andhra Pradesh Administrative Tribunal at Hyderabad (for short 'the Tribunal').

Learned Government Pleader for Services (AP) filed a memo vide USR No.32136 of 2017 along with proof of service of notice on the respondent on 11.10.2017. In spite of receipt of notice, the respondent has not entered appearance.

We have heard the learned Government Pleader for Services (AP) and perused the record.

While the respondent was working as Hostel Welfare Officer, Grade-II, he was subjected to disciplinary proceedings, during the pendency of which, he was placed under suspension on 04.01.2001. Charge memo dated 18.01.2011 was issued comprising seven charges. The respondent has submitted his written statement to the said charge memo. Not satisfied with the explanation, the Disciplinary Authority appointed an Enquiry Officer. Based on the enquiry report submitted by the Enquiry Officer, the Disciplinary Authority imposed penalty of withholding of two increments with cumulative effect vide proceedings dated 06.09.2011 on the respondent. While the

appeal filed by the respondent was pending before the Commissioner, she has retired from service on attaining the age of superannuation on 31.01.2014 and thereafter, the petitioner has filed the aforementioned O.A.

The Tribunal has allowed the O.A. on the short ground that the Enquiry Officer has not followed the procedure prescribed under sub-rule 10(a) to (e) of Rule 20 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (for short, “the Rules”). In support of its finding, the Tribunal has referred to the method followed by the Enquiry Officer, namely, placing reliance on the preliminary enquiry report dated 10.12.2010 submitted by the Thasildar and his failure to record the statements of any of the witnesses during the enquiry.

The learned Government Pleader for Services (AP) has not disputed the fact that the Enquiry Officer has not followed the procedure of recording of the evidence of the witnesses to be presented by the Presenting Officer and giving an opportunity of cross-examining of such witnesses by the respondent as envisaged under sub-rule 10(c) of Rule 20 of the Rules. She has, however, submitted that while the petitioners

are not aggrieved by the order of the Tribunal to the extent of setting aside the order of the Disciplinary Authority, they are dissatisfied with the approach of the Tribunal in not remanding the case to the Disciplinary Authority to get a fresh enquiry held by following the procedure under Rule 20 of the Rules. In support of her submission, she relied upon the judgment of the Supreme Court in '*Chairman, Life Insurance Corporation of India and others vs. A. Masilamani*¹.

In *Chairman, Life Insurance Corporation of India* (supra), the Supreme Court framed the following questions:

“15.1. When a court/tribunal sets aside the order of punishment imposed in a disciplinary proceeding on technical grounds i.e. non-observance of statutory provisions, or for violation of the principles of natural justice, then whether the superior court, must provide opportunity to the disciplinary authority to take up and complete the proceedings from the point that they stood vitiated; and

15.2. If the answer to Question 1 is that such fresh opportunity should be given, then whether the same may be denied on the ground of delay in initiation, or in conclusion of the said disciplinary proceedings.”

The Supreme Court has answered the above framed questions as under in paras 16 & 18:

“16. It is a settled legal proposition, that once the court sets aside an order of punishment, on the ground that the enquiry

¹ (2013) 6 Supreme Court Cases 530

was not properly conducted, the court cannot reinstate the employee. It must remit the case concerned to the disciplinary authority for it to conduct the enquiry from the point that it stood vitiated, and conclude the same. (Vide [ECIL v. B. Karunakar](#) [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704 : AIR 1994 SC 1074] , [Hiran Mayee Bhattacharyya v. S.M. School for Girls](#) [(2002) 10 SCC 293 : 2003 SCC (L&S) 1033] , [U.P. State Spg. Co. Ltd. v. R.S. Pandey](#) [(2005) 8 SCC 264 : 2006 SCC (L&S) 78] and [Union of India v. Y.S. Sadhu](#) [(2008) 12 SCC 30 : (2009) 1 SCC (L&S) 126] .)

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18. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is dehors the limits of judicial review. In the event that the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show-cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by the court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question have to be examined taking into consideration the gravity/magnitude of charges involved therein. The essence of the matter is that the court must take into consideration all relevant facts and to balance and weigh the same, so as to determine if it is in fact in the interest of clean and honest administration, that the judicial proceedings are allowed to be terminated only on the ground of delay in their conclusion. (Vide [State of U.P. v. Brahm Datt Sharma](#) [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , [State of M.P. v. Bani Singh](#) [1990 Supp SCC 738 : 1991 SCC (L&S) 638 : (1991) 16 ATC 514 : AIR 1990 SC 1308] , [Union of India v. Ashok Kacker](#) [1995 Supp (1) SCC 180 : 1995 SCC (L&S) 374 : (1995) 29 ATC 145] , [Prohibition & Excise Deptt. v. L. Srinivasan](#) [(1996) 3 SCC 157 : 1996 SCC (L&S) 686 : (1996) 33 ATC 745] , [State of A.P. v. N. Radhakishan](#) [(1998) 4

SCC 154 : 1998 SCC (L&S) 1044 : AIR 1998 SC 1833] , [M.V. Bijlani v. Union of India](#) [(2006) 5 SCC 88 : 2006 SCC (L&S) 919 : AIR 2006 SC 3475] , [Union of India v. Kunisetty Satyanarayana](#) [(2006) 12 SCC 28 : (2007) 2 SCC (L&S) 304] and [Ministry of Defence v. Prabhash Chandra Mirdha](#) [(2012) 11 SCC 565 : (2013) 1 SCC (L&S) 121 : AIR 2012 SC 2250] .)"

In the light of the ratio laid down in the **Chairman, Life Insurance Corporation of India** (supra), the order of the Tribunal is set aside and the petitioners are permitted to conduct a fresh enquiry in accordance with the Rule 20(10) (a) to (e) of the Rules and pass appropriate orders within three months from the date of receipt of a copy of this order.

Writ petition is, accordingly, disposed of. No order as to costs.

As a sequel to disposal of the writ petition, WP MP No.38969 of 2017 is disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

KONGARA VIJAYA LAKSHMI, J

Date: 24.10.2017

Note: L.R. copy to be marked.

(BO)

Bss/Gk.

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

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WRIT PETITION No.31283 of 2017
(per Hon'ble Sri Justice C.V. Nagarjuna Reddy)



Date: 24.10.2017

Bss/Gk.