

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 22533 of 2008

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus directing the respondents to pay the petitioner his full pay and allowances with effect from 01.04.2007 till 30.09.2008 and to continue to pay until further orders by declaring that the orders issued by the 3rd respondent in Rc.No.A4/ 3817/ 2004, dated 01.08.2006 which communicated to party on 31.03.2007 and the orders of 1st respondent in Rc.No.SVST/ 9/ 2007 dated 31.03.2007, as illegal, unjustified, arbitrary and violative of articles 14, 16 and 21 of the Constitution of India.

2) The averments in the affidavit filed in support of the writ petition would show that previously the petitioner worked as Junior Assistant in Parsa Anantaramaiah Trust, Yellandu, Khammam District. The allegation against the petitioner is that he has misappropriated an amount of Rs.34,108-75 ps. which was collected from the ryots, being the lease amount and failed to remit the same. A preliminary enquiry was conducted by the Superintendent of the office of the Assistant Commissioner and the explanation of the petitioner was called for. The petitioner submitted an explanation denying the allegations made against him. Not being satisfied with the explanation given, a charge memo was issued to the petitioner, to which the petitioner

submitted his explanation. It is stated that the oral enquiry conducted by the authorities is not in accordance with the Rules and no opportunity was given to the petitioner to cross examine the witnesses. Thereafter, the Enquiry Officer submitted his report to the Assistant Commissioner of Endowments. Basing on the enquiry report, a show-cause notice came to be issued on 31.03.2007 and finally disciplinary action was initiated against the petitioner vide proceedings dated 21.01.2008 by imposing punishment of stoppage of two increments with cumulative effect. It is also stated in the affidavit that copy of the enquiry report was not furnished to the petitioner to enable him to submit a detailed explanation. Challenging the procedure in holding the petitioner guilty of the charges leveled and the recovery made, is subject matter of challenge in this writ petition.

3) By an order, dated 16.10.2008, while admitting the writ petition, this Court suspended the impugned proceedings.

4) The 1st respondent filed counter denying the averments made in the affidavit filed in support of the writ petition. It is stated that the petitioner herein misappropriated an amount of Rs.34,018.75 ps. which was collected from the ryots towards lease amount pertaining to the trust and failed to remit the same. The Superintendent working in the office of the Assistant Commissioner, Endowments Department, Khammam, enquired into the charges leveled against the petitioner and submitted a report on 08.04.2006. Basing on the report of the enquiry officer,

the 1st respondent issued show-cause notice on 31.03.2007 and finally initiated disciplinary action against the writ petitioner vide proceedings No.9/ 2007, dated 21.01.2008. After considering the material on record, the authority imposed a punishment of stoppage of two increments with cumulative effect. Challenging the same the present writ petition came to be filed.

5) The main ground urged by the learned counsel for the petitioner is that principles of natural justice are not being followed while conducting the enquiry. It is his case that no notice was given to the petitioner and was not given an opportunity to disprove the charges leveled against him. It is his case that everything happened behind his back. It is urged that even the report of the enquiry officer was not communicated to him and as such he could not give a proper explanation to the show-cause notice. He further submits that the Superintendent is not an appropriate authority to conduct the enquiry.

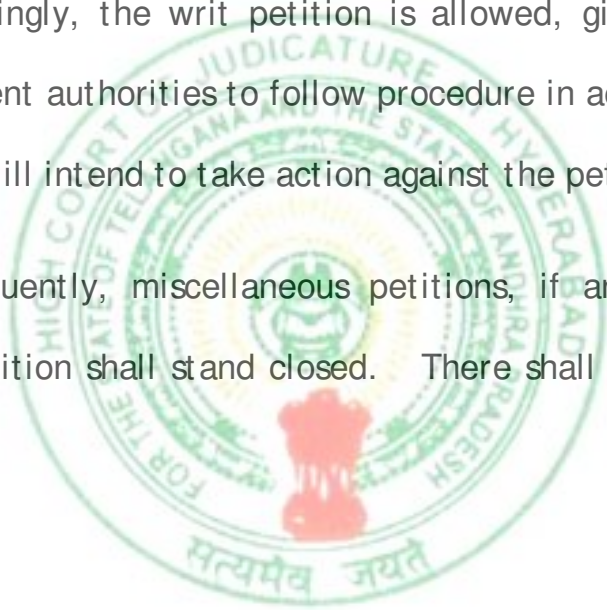
6) The counter which has been filed by the Executive Officer is silent with regard to the comment made by the petitioner with regard to following the procedure. It is not even stated in the counter that the procedure as required has been followed. In the absence of any denial, it is to be presumed that the averments made in the affidavit to the effect of non-furnishing of the enquiry report and not giving any opportunity to the petitioner appears to be correct.

7) In fact, the learned counsel for the respondents does not dispute the above aspects except stating that the record is not available. It is to be noted that he took sufficient time to get the record, but failed to do so.

8) Having regard to the above and as the principles of natural justice are not followed by giving an opportunity to adduce evidence and since the enquiry report which is made the basis is not furnished to the petitioner, the entire exercise gets vitiated.

9) Accordingly, the writ petition is allowed, giving liberty to the respondent authorities to follow procedure in accordance with law if they still intend to take action against the petitioner.

10) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.



JUSTICE C. PRAVEEN KUMAR

27.03.2017
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