

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

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND

* HON'BLE SRI JUSTICE M. GANGA RAO

+ W.P.NO.242 of 2016

% Date: 08-11-2017

Between:

K. Satish Kumar, S/o. Narayana,
O/o. Municipal Office, Tadepalligudem,
West Godavari District.
R/o. H.No.2-5-8, Tadepalligudem,
West Godavari District.

.... Petitioner

And

1. The Regional Director cum Appellate Commissioner, Municipal Administration, Rajahmundry, East Godavari district.
2. The Commissioner and Director of Municipal Administration, A.P., Hyderabad.

... Respondents

! Counsel for the Petitioner : Mr. K. R. Srinivas

^ Counsel for Respondent No.1 : G.P. for MA & UD (A.P)

^ Counsel for Respondent No.2 : G.P. for Services-I (AP)

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? Cases referred

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE M. GANGA RAO

WRIT PETITION No.242 of 2016

ORDER: (Per VRS,J)

Aggrieved by the dismissal of his Original Application challenging an order of dismissal from service, the petitioner has come up with the above writ petition.

2. Heard Mr. K.R. Srinivas, learned counsel for the petitioner and the learned Government Pleader for Services (A.P.).

3. The petitioner was appointed as a Junior Assistant in Tadepalligudem Municipality, way-back in the year 1994. He was later transferred to Machilipatnam Municipality in the year 2005.

4. It appears that the petitioner was entrusted with cash along with vouchers, to be deposited into the Provident Fund Account of the employees, on 31.07.2003. But out of the total amount of Rs.9,55,941/- withdrawn from the Secondary Education Funds, under different vouchers, to be deposited into the Provident Fund Account, a sum of Rs.1,63,092/-, went missing. This came to light only in October, 2004. Therefore, the petitioner was placed under suspension on 15.10.2004. Within three days of being placed under suspension, the petitioner remitted the money into the treasury, on 18.10.2004.

5. Thereafter, a charge memo was issued on 29.05.2006. The charges read as follows.

“Charge No.1: That the said Sri K. Satish Kumar, former Junior Assistant (Shroff i/c), Tadepalligudem Municipality and presently working in Machilipatnam Municipality, has misplaced voucher Nos.118, 119, 120 & 121 and misappropriated an amount of Rs.1,63,092/- which relates to Provident Fund for the year 2003-2004, while he was working as Shroff (I/c) in Tadepalligudem Municipality.

Charge No.II: That during the aforesaid period and while functioning in the aforesaid office, the said Sri K. Satish Kumar, former Junior Assistant (Shroff I/c), Tadepalligudem Municipality, and presently working in Machilipatnam Municipality, had caused financial loss of huge amount to a tune of Rs.1,63,092/- which was remitted back by him to the Municipal Treasury vide challan No.18.10.2004 only after he was kept under suspension by the Municipal Commissioner, vide proceedings Roc.No.1600/2004-CI, date 15.10.2004.

Charge No.III: That during the aforesaid period and while functioning in the aforesaid office, the said K. Satish Kumar, former Junior Assistant (Shroff I/c), Tadepalligudem Municipality, and presently working in Machilipatnam Municipality, has exhibited his lack of integrity, devotion to duty and conduct there by contravened Rule 3 of APCS (Conduct) Rules, 1964."

6. An enquiry followed, in which the charges were held proved, leading to the penalty of dismissal from service. The order of dismissal was challenged by the petitioner before the A.P. Administrative Tribunal. The A.P. Administrative Tribunal dismissed the Original Application forcing the petitioner to come up with the above writ petition.

7. The main ground of attack to the order of penalty and to the order of the Tribunal, is that no enquiry in accordance with Rule 20 of the A.P. Civil Services (Classification, Control & Appeal) Rules was held and that no oral evidence was recorded. Therefore it is contended that the procedure laid down for the conduct of the enquiry, was not followed at all.

8. But the aforesaid contention cannot be accepted for the reason that we shall indicate. As stated earlier the articles of charges were issued on 29.05.2006. We have already extracted the articles of charges. In response to the articles of charges, the petitioner submitted an explanation. In the explanation, what the petitioner stated was as follows:

"It is fact that an amount of Rs.1,63,092/- was drawn through Cheque 766425, dated 31.07.2003 relating to 21 vouchers. When I drawn the amount from Bank and bringing it to office, the handbag contained the amount, was snatched by somebody and ran away. I was feared

and not revealed the fact in office due to my ignorance and thought that the amount will be replaced by raising loans from my friends and relatives. Unfortunately I could not recoup the amount due to non-availability. The matter was revealed to the regular Shroff Sri Md. Karimullah Khader at the time of joining after expiry of leave and promised to recoup the amount within a short period and requested him to adjust the amount till then.”

9. In response to the second charge, the explanation offered by the petitioner was as follows:

“It is a fact that the amount was drawn from Bank during the month of July 2003 in last. But it could not be remitted back due to non-raising of loans and due to financial stringencies of my family and irregular payment of salaries and ill-health of family members. However, I have sold the gold of my wife including the chain of Mangala Sutrams and remitted back the amount to the Municipal Treasury on 18.10.2004. In this regard, I beg to submit that I have not misappropriated the amount willfully. Due to my bad luck the theft of amount was occurred and due to my ignorance I have neither revealed the matter in the office nor made a Police Case against the theft. So I humbly requesting the enquiring authority to be kind enough and excuse me as the first case.”

10. As a matter of fact, after the conclusion of the enquiry, a show cause notice was issued enclosing the copy of the enquiry report. While responding to the show cause notice and the findings of the Enquiry Officer, the petitioner did not contend that no enquiry worth the name was conducted in terms of Rule 20. On the other hand, he submitted an explanation on 04.10.2007 in response to the enquiry report stating that he wanted to remit the money before the theft was found out, and he pleaded his ill-luck that it did not happen.

11. Therefore, today the petitioner cannot invent reasons to assail the order of dismissal, after having taken such a defence before the disciplinary authority/Enquiry Officer. The Tribunal was correct in dismissing the Original Application and we see no reason to interfere with the same. Hence the writ petition is dismissed.

12. As a sequel, miscellaneous petitions pending in this writ petition, if any, shall stand closed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J.

M. GANGA RAO, J.

8th November, 2017
Js.



HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE M. GANGA RAO

WRIT PETITION No.242 of 2016



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