

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

WRIT PETITION Nos. 21919 AND 29994 OF 2017

WRIT PETITION No. 21919 OF 2017

Between:

B.Bhadraiah

... Petitioner

AND

The State of Telangana,
Rep. by its Principal Secretary,
Home Department, Secretariat,
Hyderabad, and others

... Respondents

Date of Order Pronounced : 12-09-2017

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

1. Whether Reporters of Local newspapers
May be allowed to see the order? Yes/No
2. Whether the copy of order may
be marked to Law Reporters/Journals? Yes/No
3. Whether Their Lordships wish to see the
Fair copy of the order? Yes/No

C.V.NAGARJUNA REDDY, J.

M.S.K.JAISWAL, J.

***THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

AND

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

+WRIT PETITION Nos. 21919 AND 29994 OF 2017

WRIT PETITION No. 21919 OF 2017

%Dated: 12-09-2017

#B.Bhadraiah,

S/o Narayana, 59 years, Retd. A.S.I.,

III Town Police Station, Nizamabad,

Nizamabad District

... Petitioner

VERSUS

\$The State of Telangana,

Rep. by its Principal Secretary,

Home Department,

Secretariat, Hyderabad, and others

... Respondents

!Counsel for the petitioner : Sri G.Venkata Krishnaiah

^Counsel for the respondents : G.P. for Services (T.S.)

<GIST :

>HEAD NOTE :

?Cases referred :

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

WRIT PETITION Nos. 21919 & 29994 OF 2017

DATED 12TH SEPTEMBER, 2017

WRIT PETITION No. 21919 OF 2017

Between:

B.Bhadraiah

... Petitioner

AND

The State of Telangana,
Rep. by its Principal Secretary,
Home Department, Secretariat,
Hyderabad, and others

... Respondents

Counsel for the petitioner

:

Sri G.Venkata Krishnaiah

Counsel for the respondents

:

G.P. for Services (T.S.)

WRIT PETITION No. 29994 OF 2017

Between:

The State of Telangana,
Rep. by its Principal Secretary,
Home Department, Secretariat,
Hyderabad, and others

... Petitioners

AND

B.Bhadraiah

... Respondent

Counsel for the petitioners

:

G.P. for Services (T.S.)

Counsel for the respondent

:

Sri G.Venkata Krishnaiah

THE COURT MADE THE FOLLOWING

COMMON ORDER: (per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

W.P.No. 21919 of 2017 is filed by the applicant in O.A.No. 5322 of 2012 feeling aggrieved by the inaction of the respondent in implementing order dated 04-02-2016 passed by the Andhra Pradesh Administrative Tribunal at Hyderabad (for short, 'the Tribunal') in the said O.A. W.P.No. 29994 of 2017 is filed by the respondents in the said O.A. assailing the aforementioned order, the enforcement for which W.P.No. 21919 of 2017 is filed. Therefore, they are heard and disposed of together by common order.

2. For convenience, the parties are referred to as they are arrayed in W.P.No. 21919 of 2017. The petitioner at the relevant time was working as Police Constable. A charge memo was issued to him on 23-12-1998 which reads as follows:

"State of Imputations of misbehaviour in support of the article of charge framed against Sri Bhadraiah PC 619 of Madnoor P.S.

ARTICLE

Sri Bhadraiah PC 619 is working at Madnoor P.S. Through the report No. 157/L8/98, dt: 20.11.1998, the SIP Madnoor P.S. has reported that on 15.11.1998 at 6 P.M., the said PC 619 was mounted on P.S. rear sentry duty from 6 P.M. to 8 P.M. by guard in charge Sri M.Joseph HC 236 while on duty the said PC 619 was abusing in filthy language at about 6.40 P.M. Then the HC 236 asked PC 619 the reason for abusing. The PC replied that he was abusing the SIP and told that the HC 236 can do whatever he likes. Then the PC 619 lit the 303 rifle on the ground and thrown it which was witnessed by the PCs 1641, 1323, 1208 and one Barikhan, S/o M.A.Majeed, and HC 781. The HC 236 admonished the act of PC 619, on which he roared on HC 236, caught hold of his collar and hit him against the wall. At 18.45 hours, the SIP returned to P.S. from patrolling duty and on coming to know about the facts through HC 236, found the PC 619 in intoxication stage. Therefore, the SIP was drafting a requisition to the Medical Officer, Bichkonda for sending the PC 619 for medical examination. Then the PC 619 absconded from P.S. Sentry leaving the rifle on

the ground and took away (20) rounds with him. Later, he came to P.S. at about 22.45 hours when the intoxication was diluted. Then he handed over the rounds to the SIP and left the P.S. Being the member of disciplined force, he is alleged for most irresponsible behaviour in intoxication state while on sentry duty."

As the petitioner has denied the charge, the Deputy Superintendent of Police (A.R.) was entrusted with holding of inquiry. After completion of inquiry, he has submitted his report on 21-02-2012 holding the charge as proved. After calling for explanation of the petitioner, the disciplinary authority has imposed penalty of withholding increment for one year with effect on future increment and pension with the direction that the suspension period from 10-12-1998 to 04-02-1999 shall be treated as not on duty. Feeling aggrieved by the said order, the petitioner has filed an appeal which was dismissed by the appellate authority on 11-11-2002. The revision petition filed by him was also rejected on 20-01-2003. The petitioner thereafter sought to submit a mercy petition which was returned as not maintainable on 30-05-2003. After a lull of about 8 years, the petitioner made a fresh bid to question the order by submitting another mercy petition which was also returned on 12-12-2011. About 9 months thereafter, the petitioner filed O.A.No. 5322 of 2012 challenging the proceedings dated 10-04-2000 of the disciplinary authority and the subsequent orders dismissing the appeal and revision and returning the mercy petitions. On behalf of the respondents, counter affidavit is filed opposing the O.A. The Tribunal however allowed the O.A. and set aside the order of the disciplinary authority imposing penalty on the petitioner. The Tribunal also directed to treat the suspension period as on duty for all purposes including seniority and promotion except giving monetary benefits during the suspension period. As noted hereinbefore, the petitioner filed W.P.No. 21919 of 2017 seeking enforcement of the said order and the respondents filed W.P.No. 29994 of 2017 assailing the same.

3. As could be seen from the above narrated facts, the petitioner was unsuccessful in the appeal and revision filed by him. After the first mercy petition was returned as far back as 30-05-2003, the petitioner appeared to have given up and accordingly kept quiet. Suddenly 8 years thereafter, he made a fresh attempt obviously to create a cause of action by filing another mercy petition. After return of the said mercy petition, he has approached the Tribunal. Under Section 21 of the Andhra Pradesh Administrative Tribunals Act, 1985 (for short, 'the Act'), there is a bar on the Tribunal admitting an application if the same is not filed within one year from the date on which a final order, as mentioned in clause (a) of sub-section (2) of Section 20 of the Act, was made and in a case where an appeal or representation as mentioned in clause (b) of sub-section (2) of Section 20 of the Act was pending, wherein a final order was not passed, if the application is not filed within one year after the expiry of six months from filing of such appeal or representation. Under clause (a) of sub-section (2) of Section 20 of the Act, a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance. Thus, the limitation of one year for filing an application before the Tribunal would commence from the date of passing of final order rejecting any appeal preferred or representation made under the rules in connection with the grievance.

4. Admittedly, as per the extant rules, only appeal and revision are maintainable and mercy petition is alien to the rules. Therefore, on a combined reading of Section 20 (2) (a) and Section 21 of the Act, limitation started running

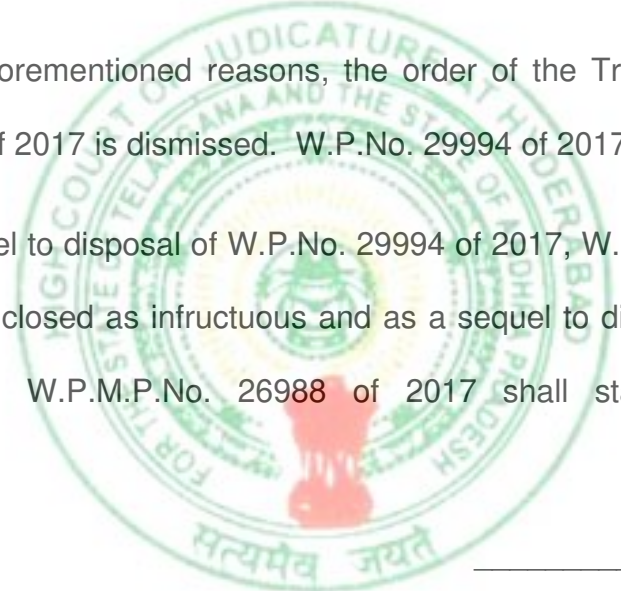
in the present case from 20-01-2003 when the revision was rejected. The return of mercy petitions, which are not contemplated by the extant rules, therefore neither creates cause of action nor extends the limitation for filing application. Unfortunately, the Tribunal failed to take this crucial aspect into account and entertained the O.A. obviously by treating 12-12-2011, the date on which second mercy petition was returned, as the starting point of limitation. Learned counsel for the petitioner submitted that the objection regarding limitation was not raised by the respondents in their counter affidavit. As a principle of law, a Court or Tribunal is bound to examine whether the litigation before it is not barred by limitation or not. Indeed, Section 3 of the Limitation Act, 1963, casts such an obligation on Courts although limitation has not been set up as a defence. Though the provisions of the Limitation Act may not in terms apply to the Tribunal, the principle underlying therein must be followed. Otherwise, there is a likelihood of litigants approaching the Tribunal with stale claims based on artificial causes of action. For the aforementioned reasons, we hold that the applicant's O.A. itself was hopelessly barred by limitation.

5. Even on merits also, we are unable to accept the view taken by the Tribunal that mere abusing a higher officer should not result in imposition of stringent punishment. Though we are conscious of the fact that P.W.2 i.e. M.Joseph, H.C. 236, on whose complaint the charge memo has been issued, did not support his complaint to the extent of the petitioner catching hold of his collar and pushing him against the wall, to the extent of the petitioner abusing him and the Sub Inspector of Police, his evidence is consistent and the same has been corroborated by other witnesses such as P.Ws.1, 3 and 5. The petitioner has not even suggested to P.W.2 in his cross-examination that his statement that the petitioner has abused him and the Sub Inspector of Police is false. Though the

inquiry officer has found the entire charge as proved, the disciplinary authority however took into consideration that part of the charge alone, whereby the petitioner has abused the Sub Inspector of Police and the Head Constable and thrown his rifle on ground. We are therefore of the opinion that imposition of penalty of withholding one increment with cumulative effect is an appropriate punishment commensurate with the gravity of the charge proved against the petitioner. The Tribunal in our opinion has committed a serious error terming the inquiry report as perverse and imposition of penalty on the petitioner as unreasonable.

6. For the aforementioned reasons, the order of the Tribunal is set aside. W.P.No. 21919 of 2017 is dismissed. W.P.No. 29994 of 2017 is allowed.

7. As a sequel to disposal of W.P.No. 29994 of 2017, W.P.M.P.No. 37354 of 2017 shall stand closed as infructuous and as a sequel to dismissal of W.P.No. 21919 of 2017, W.P.M.P.No. 26988 of 2017 shall stand dismissed as infructuous.



C.V.NAGARJUNA REDDY, J.

M.S.K.JAISWAL, J.

Date: 12-09-2017.

Note:

L.R. Copies to be marked.

B/O

JSK