

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT APPEAL No.393 OF 2017

JUDGMENT: (Per Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This Appeal, under clause 15 of Letters Patent, is preferred against the order passed by the learned Single Judge in W.P.M.P. No.3385 of 2017 in Writ Petition No.2875 of 2017 dated 13.02.2017.

The appellant herein is the petitioner in the writ petition. In the order under appeal, the learned Single Judge has noted that the appellant was removed from the rolls of Home Guards Organisation, Mahabubnagar District, by order dated 16.02.2015; the order of removal was subjected to challenge in the writ petition on various grounds including the ground that he was not given reasonable opportunity and that, subsequently, he was acquitted in the criminal case; the order of removal showed that the notices were issued prior to the decision being taken; the question, whether subsequent acquittal can have a bearing on the prior order of removal, required consideration in the writ petition; and the writ petition was instituted two years after the impugned order. On the ground that the balance of convenience was not in the petitioner's favour, the W.P.M.P. was dismissed.

It is not in dispute that the petitioner was removed from service by order dated 16.02.2015. The writ petition was filed on 25.01.2017 nearly two years after the order of removal was passed. The learned Single Judge has held that the balance of convenience was not in favour of the petitioner. The petitioner cannot seek an *ex parte ad interim* order after

having invoked the jurisdiction of this Court nearly two years after the order of removal was passed. In any case, the question, whether or not an order of punishment, for the grave and serious charge of murder, should be set aside, can only be examined after the respondents are given an opportunity to file their counter-affidavit.

The learned Single Judge, in the exercise of his discretionary jurisdiction under Article 226 of the Constitution of India, has refused to grant an *ex parte ad interim* order. In an intra-Court Appeal, under Clause 15 of Letters Patent, interference is justified only if the order under appeal suffers from a patent illegality. We find no such infirmity in the exercise of discretion by the learned Single Judge. The writ appeal fails and is, accordingly, dismissed.

Needless to state that this order shall not preclude the petitioner from making an application for an early hearing of the writ petition. As a sequel, pending miscellaneous petitions, if any, shall stand dismissed. No order as to costs.

RAMESH RANGANATHAN, ACJ

Dr. SHAMEEM AKTHER, J

Date: 28-03-2017.
DSH/SIVA

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WRIT APPEAL No.393 OF 2017

(Judgment of the Division Bench delivered by
Hon'ble the Acting Chief Justice Ramesh Ranganathan)

Date.28-03-2017

DSH