

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

WRIT PETITION Nos.30102 & 30192 of 2017

DATE:- 06-10-2017

Between:

V.Vasanth Bala (Petitioner in WP.30102/2017)
Gottam Chandra Sekhar Rao (Petitioner in WP.30192/2017)

..... PETITIONERS

AND

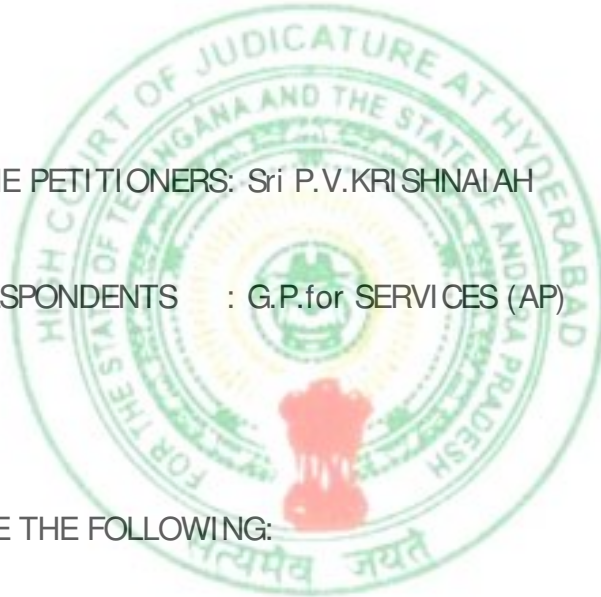
The Special Commissioner of Women Development
& Child Welfare, State of Andhra Pradesh,
Amaravathi, Guntur, Guntur District,
Andhra Pradesh and 3 others

.....RESPONDENTS

COUNSEL FOR THE PETITIONERS: Sri P.V.KRISHNAIAH

COUNSEL FOR RESPONDENTS : G.P.for SERVICES (AP)

THE COURT MADE THE FOLLOWING:



THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

WRIT PETITION Nos.30102 & 30192 of 2017

COMMON ORDER: (per Hon'ble Sri Justice M.S.K.Jaiswal)

1. These two writ petitions arise out of common order, dated 28.08.2017, in O.A.Nos.1908 and 1909 of 2017, on the file of the Andhra Pradesh Administrative Tribunal, at Hyderabad (for short "the Tribunal") by and under which, the Original Applications filed by the writ petitioners challenging their suspensions were dismissed.
2. Brief facts leading to the filing these two writ petitions are that on the ground that the petitioners, who were working as Assistant Project Director and Project Director in Women Development and Child Welfare Department respectively, are responsible for misappropriation of Government funds to the tune of crores of rupees in Gudur District, during their tenure, in purchase of Oil, Dal, Milk and Eggs and indulging in other corrupt practices, they were placed under suspension, vide proceedings Nos.537/E2/2016-1 and 537/E2/2016-2, dated 17.10.2016 respectively of the 1st respondent. Vide proceedings dated 12.06.2017 of the 1st respondent, the suspension period of the petitioners was further extended.
3. The period of the alleged misappropriation is from 22.05.2013 to 30.11.2015.
4. Petitioner in WP.No.30102/2017-V.Vasantha Bala was initially appointed as Child Development Project Officer on 04.02.1995. Subsequently, she was promoted as Assistant Project Director in November 2012 and worked as such at Vijayawada till 06.02.2013. Thereafter, she was transferred to Eluru and worked there upto 26.11.2014. Further she was transferred to Guntur on 01.12.2014 and worked there upto 22.10.2016.

5. Petitioner in WP.No.30192/2017-Gottam Chandra Sekhar Rao was initially appointed as Child Development Project Officer on 25.09.1984. Subsequently, he was promoted as Assistant Project Director in November 2011 and worked as such at Guntur till 26.11.2014. Thereafter, he was transferred to Eluru and joined there on 27.11.2014 and he is due to retire in December, 2017.

6. On 08.07.2015 a news item was published in Eenadu Telugu daily in Guntur District edition as "Nunenu Tagesaru". On that news item, the local MLA of Thadikonda, Sri Sravan Kumar, on 25.07.2015, addressed a letter to the Principal Secretary to Government, Department for Women, Children, Disabled and Senior Citizens, Andhra Pradesh, requesting to conduct enquiry and take action against the responsible employees.

7. A local citizen of Guntur, by name, K.V.R.Shivramprasad, made a complaint before the Upa-Lokayukta for the States of Andhra Pradesh and Telangana at Hyderabad, vide complaint No.3821/2015/B2 against the Project Director, District Women & Child Development Agency, Guntur, alleging that public funds have been paid in excess to the contractors pertaining to supply of eggs and palmolein oil to the Anganwadi centers in Guntur District and the officers concerned have not been taking any action. The said complaint was registered and a report was called for from the District Collector, Guntur District. The matter was got enquired by the Joint Collector-II, Guntur District and he recommended to file a criminal case against the contractor-Adithya Traders in misleading the officials and claiming excess amounts. Penalty was imposed against the contractor who remitted the difference of amount, penalty and security deposit. As recovery of excess payment was made with regard to Oil, and no excess payment was made with regard to supply of Eggs, as per the report of the District Collector, Guntur, and no objections were raised by the complainant, the complaint before the Upa-Lokayukta was closed, vide orders, dated 07.12.2016.

8. However, pending enquiry, the Department had taken action against the employees who worked during the said period. In that course of action, the petitioners were placed under suspension along with other two officers, and memos of charges were issued to other Officers/employees responsible for the alleged irregularities, inaction and negligence, which resulted in loss to exchequer and benefit to the Traders/suppliers.

9. The stand of the petitioners is that they were not at all responsible and in the enquiry report also there were no specific findings against the petitioners. Therefore, they made representations to the Department for revoking their suspension and for their reinstatement into service. As there was no response, the petitioners approached the Tribunal, which on the ground that there are grave allegations of misappropriation involving crores of rupees, dismissed the original applications filed by the petitioners. Hence, the petitioners filed these two writ petitions questioning the order of the Tribunal and also questioning the proceedings placing them under suspension w.e.f. 17.10.2016 and subsequent extension of their suspension.

10. The point for consideration is as to whether placing the writ petitioners under suspension pending enquiry is unjustified so as to direct their reinstatement pending enquiry?

11. Before placing an employee under suspension, the competent authority should appreciate the material on record gathered till date and arrive at a justifiable opinion that continuing the delinquent employee in service pending enquiry is likely to prejudice the enquiry or there is any possibility of tampering of documents, influencing the witnesses and his continuance is undesirable in public interest. Suspension should not be resorted to unless the allegations *per se* constitute grave misconduct which will be further aggravated if an employee is allowed to discharge his duties pending determination of his culpability or otherwise in the charges which are proposed to be enquired into. Therefore,

heavy duty is cast upon the competent authority to consider all aspects before placing an employee under suspension or extending the same.

12. A detailed preliminary enquiry was carried out by the Regional Joint Director, Women Development and Child Welfare, who has gone into the entire gamut of the insinuations and submitted his report which led to initiation of departmental proceedings against several employees of the department.

13. We have gone through the entire material on record and it is noticed that the process of purchasing essentials, fixing the prices and checking the stocks and scrutinizing the bills submitted by the suppliers is with different authorities of the department. The petitioners being the Project Director and Assistant Project Director and also the Drawing and Disbursing Officer are alleged to have blinked and allowed excess payments to be made to the suppliers. The irregularities are said to have been spread over a period from 2013 to 2015. It is also not disputed that the petitioner-Chandra Sekhar Rao was the Project Director only till 26.11.2014 and the excess payments were made in February, March and April of 2015. The petitioners are not the persons, who have either finalized the tenders, fixed the prices of commodities, scrutinized the stocks or verified the bills. There are different sets of employees whose responsibility it is to check the same before sending the bills for sanction and payment to the Project Director. The petitioner-Chandra Sekhar Rao was actually Assistant Project Director holding the full-additional charge of the post of the Project Director from 22.05.2013 to 30.11.2014 and the other petitioner-Vasanth Bala was Assistant Project Director from 01.12.2014 till her suspension.

14. The inspection report of the Office of the Project Director carried out by the Regional Joint Director of the Department and submitted in Rc.No.402/A/2015, dated 24.08.2016, clearly states that while the two petitioners and one Nirmala are the Drawing and Disbursing Officers during the relevant period, it was one Harnath Babu and Ramalingam who were the Office Superintendents incharge of overall supervision and one MSK Dastagiri was the

Senior Assistant who was required to check the bills submitted by the suppliers. Similarly, one Subba Rao was also the Senior Assistant who was entrusted with the responsibility of the Purchase Committees and Establishments. The report further takes note of the excess payments made in February, March and April 2015. It is further found that an excess payment of Rs.24,66,645/- was made to the supplier of oil. This amount was subsequently recovered from the supplier in addition to forfeiting the Earnest Money Deposit of Rs.8 lakhs of the supplier and also blacklisting him. Insofar as the role of the petitioners is concerned, the report found that they did not observe the acknowledgment and stock entries at the time of drawl of the bills and did not maintain stock receipts in the Office. The Enquiry Officer further opined that the Project Director may be irresponsible in drawing the bills giving scope to the supplier namely M/s.Aditya Traders to deceive the Government. The report further states that the Project Director, the Senior Assistant and the Superintendent in the Office of the Project Director have not taken adequate steps for verification of the original bills and approved the same for payment.

15. After making an in-depth enquiry and verification of the records, the Enquiry Officer gave the report on different items as under:-

“Palmolein Oil:- In the District of Guntur, there are 4,405 Anganwadi Centres functioning under 23 ICDS Project. As per the requirement of the Child Development Project Officers (CDPOs), the Office of the Project Director issued indent for supply of Oil to the contractor M/s.Aditya Traders. The CDPOs concerned are required to sign on the bills issued by the contractor in token of receipt of Oil duly keeping one copy of the bill with them and give another copy of the bill to the contractor. The Enquiry Officer further found that there is no evidence in the Office of the Project Director with regard to the allocation of the stocks project-wise. Since the Office of the Project Director did not issue delivery indent with particulars of batch number, maximum retail price and the rate fixed by the Purchase Committee to the CDPOs concerned who received the stocks, it gave scope for the supplier to cheat the Department as has been done by the contractor – M/s.Aditya Traders. It is the duty of the Project Director to verify the rates claimed by the contractor at the time of drawl and payment of the bills by the establishment and the Drawing and Disbursing Officer. The Enquiry

Officer found that an excess payment of Rs.24,66,645/- was made to M/s.Aditya Traders in February and March 2015.

As already observed, this amount has already been recovered from the Traders by adjusting his future bills.

With regard to the second item **Dal**, it is found that the District Administration has not taken into consideration the Circular which requires that the Dal should be supplied in packets of 1 KG., and should be labelled as “ICDS Supply – Not for Sale”. This instruction was not followed by the Office of the Project Director and other authorities who received the stocks.

With regard to **EGGS**, the Enquiry Officer found that there is no deviation in the matter of payment to the suppliers.”

16. Having conducted a detailed preliminary enquiry, the Enquiry Officer found the following lapses on the part of the Office of the Project Director where the petitioners and others were working. The Project Director, the Assistant Project Director, the Superintendent and a Senior Assistant are responsible for excess payments which were made without proper verification. It is also found that the Project Director failed to verify the Maximum Retail Price before issuing the proceedings for drawl of the amounts. The other Officers in the Office of the Project Director did not supply the particulars to the CPDOs who were required to verify the same before receiving the stocks. The Enquiry Officer further found that there was no proper supervision by the petitioners before issuing the Sanction Orders in the matter of supply of the commodities to the CDPOs. The Superintendent and the Senior Assistant were negligent in the issue of preparation of bills and obtained the Orders of the Project Director. The Enquiry Officer finally concluded observing that the petitioners and the Superintendent and the Senior Assistant have failed to verify the certification of the Child Development Project Officers in respect of the stocks and claim of bill amounts and hence they are responsible for the lapses. Significantly, in the teeth of the said findings, the authorities suspended only the petitioners but no such action is taken against several other Officers/employees of the Department whose alleged complicity, *prima facie*, is as much as that of the petitioners.

17. A careful perusal of the above fact finding report, which is the basis for initiation of proceedings is that the petitioners are allegedly negligent in supervising the work by the other officials of the Department. *Prima facie*, nothing is found against the petitioners which would indicate that they indulged in misappropriation of funds. The record, *prima facie*, discloses that the supplier has submitted improper bills, which were scrutinized by the subordinates of the petitioners and were approved by the latter being the Project Director and the Assistant Project Director. The supplier, as a matter of fact, admitted that he has drawn the excess amounts due to mistake on the part of his staff in taking into consideration the Maximum Retail Price of the Oil. It is said that instead of charging Rs.67/- per litre, the bills were prepared for Rs.71/- per litre. These excess payments were made in February and March of 2015 and by that date, admittedly, neither of the petitioners were the Drawing and Disbursing Officers, who have approved and sanctioned the bills.

18. The above are the *prima facie* observations which are made only for the purpose of adjudging as to whether placing the petitioners under suspension pending enquiry is justifiable or not. We are of the opinion that continuing the petitioners under suspension pending enquiry is not justified for the reasons stated above, more particularly, the fact that the allegations against the petitioners *prima facie* are about their negligence in performing their duties; that the excess payments were made to the supplier at the time when the petitioners were not the concerned Officers; and that the entire excess amount paid to the supplier together with the penalty of Rs.10 lakhs and forfeiture of the security of Rs.8 lakhs have been realized/recovered. The petitioners were placed under suspension on 17.10.2016 and the authorities are yet to commence the enquiry.

19. For the above reasons, we hold that continuing the petitioners under suspension pending enquiry is not in the public interest nor is there any justification for it. Since the entire allegations revolve around the documentary evidence, there is no possibility of them being tampered with if the petitioners are

continued in service. That apart the petitioner-Chandra Sekhar Rao has already been transferred from the said place in November, 2014 itself, i.e., even before the scandal was exposed. If there is any apprehension that continuance of the petitioners in service may result in tampering of any evidence, it is always open to the authorities to transfer them to another District. Therefore, the Order of the Tribunal cannot be sustained and the same is liable to be set aside. Needless to observe that none of the observations made herein above shall, in any way, influence the enquiry proceedings against the petitioners for the reason that they are made only for the purpose of determining as to whether continuing the petitioners under suspension is justifiable and is in the public interest or not.

20. In the result, both the writ petitions are allowed directing that the petitioners be reinstated into service forthwith. No order as to costs.

As a sequel to the disposal of writ petitions, W.P.M.P.Nos.37507 and 37620 in the respective writ petitions are disposed of as infructuous.



G.V.NAGARJUNA REDDY,J

M.S.K.JAI SWAL,J

6th October, 2017
Dsr/smr