

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SMT JUSTICE K.VIJAYA LAKSHMI

WRIT PETITION No.32407 of 2017

Date:21.9.2017

Between:

Ajab Singh Nagi,
S/o Darban Singh Nagi

..... Petitioner

And:

The Union of India, repled by
Secretary, Ministry of Home,
New Delhi and three others.

....Respondents

Counsel for the petitioner: Mr. K.Sudhakar Reddy

Counsel for respondent Nos.1 to 3: Dr. K.Lakshman

Assistant Solicitor General

Counsel for respondent No.4: GP for Services (TS)

The Court made the following:

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

Order, dated 04.4.2017, in Miscellaneous Application No.713 of 2014 in Original Application No.983 of 2013 on the file of the Central Administrative Tribunal, Hyderabad Bench at Hyderabad (for short 'the Tribunal') is assailed by the unsuccessful applicant therein in this Writ Petition.

The facts recorded by the Tribunal, with respect to which there does not appear to be much dispute, are rather disturbing.

The petitioner, who was appointed as Police Constable, was sent on deputation to the Subsidiary Intelligence Bureau, Ministry of Home Affairs, Government of India, Dehradun (for short 'the SIB'). For its own administrative reasons, the SIB by office order, dated 09.12.2009, relieved the petitioner with effect from 15.12.2009 with instructions to him to report to the Superintendent of Police, Krishna. Instead of doing so, the petitioner went on indulging in vexatious litigation. He approached the Government of Andhra Pradesh for issuing 'No Objection Certificate' for his absorption into the SIB. His request was turned down by the Government of Andhra Pradesh, vide memo No.13356/Ser.II/A2/2008-5, dated 02.02.2010, on the ground that there is no provision for permanent absorption of State Government employees into the Government of India. Three years thereafter, the petitioner filed the afore-mentioned

O.A. before the Tribunal questioning the office order, dated 09.12.2009, of the SIB and the memo, dated 02.02.2010, of the Government of Andhra Pradesh. In spite of the fact that the learned Standing Counsel for the respondents requested for time for filing counter-affidavit (reply), without giving an opportunity for filing the same, the Tribunal has allowed the said O.A. by order, dated 08.8.2013, purporting to follow its order in previous batch of O.As., viz., O.A.No.234 of 2004 and batch. Subsequently, the petitioner filed M.A.No.713 of 2014 seeking implementation of the order of the Tribunal in the said O.A. This Miscellaneous Application has been dismissed by the Tribunal by order, dated 04.4.2017, assailing the validity of which, the applicant therein filed this Writ Petition.

On behalf of the Union of India, a counter-affidavit was filed in the said MA., wherein it was stated that the petitioner was relieved to his parent department from the SIB, Dehradun, vide order, dated 09.12.2009, with effect from 15.12.2009, i.e., much before the filing of the said O.A. and that, since then, the petitioner neither approached the SIB nor reported to his parent Department. It was further averred that the petitioner was no more in the strength of the SIB and therefore, they were not in a position to absorb him even if the State Government issues 'No Objection Certificate' for his absorption into the SIB. It was

further stated that the petitioner's whereabouts are not known after he was relieved from the SIB; that the Tribunal has also not given any findings on the said aspect; and that the petitioner has concealed the status of his repatriation from the SIB. A grievance was also expressed that O.A.No.983 of 2013 was allowed by the Tribunal without giving an opportunity to the respondents to file a reply and as such, the afore-mentioned facts could not be brought to its notice.

Having considered the pleadings of the respective parties, the Tribunal observed that the petitioner has filed the said O.A. on 01.8.2013, *i.e.*, four years after he was relieved from the SIB; that the said O.A. was allowed summarily without hearing the respondents; and that the petitioner has not disclosed about his relieving from the SIB nor obtained any specific orders with regard to the same. It was further observed that after the disposal of the said O.A. also, the petitioner neither reported to the Superintendent of Police, Krishna nor to the SIB, Dehradun; that he was declared as 'deserter' by the Government of Andhra Pradesh, vide order, dated 13.7.2015, with effect from 15.12.2009; and that a charge memo was issued on 03.9.2015 for his unauthorised absence from 15.12.2009. The Tribunal also referred to the fax message, dated 08.12.2015, sent by the SIB expressing its unwillingness for absorption of the petitioner

into it. The Tribunal further observed that the petitioner's conduct disentitles him for implementation of the order in O.A.No.983 of 2013. Accordingly, while dismissing the said Miscellaneous Application, the Tribunal has, however, observed that the said order shall not preclude the petitioner from questioning the orders, if any, passed by the respondents, if he is so advised, in accordance with law and that the observations made in the said order shall not have any bearing on the O.A. if any, to be filed by him questioning such orders.

Mr. K.Sudhakar Reddy, learned counsel for the petitioner, strongly urged that the respondents having allowed the order, dated 08.8.2013, in O.A.No.983 of 2013 to attain finality, cannot go behind the said order and refuse to implement the same.

There is no gainsaying of the fact that the order of the Tribunal in O.A.No.983 of 2013 was not questioned either by the SIB or by the State Government of Andhra Pradesh. However, that, by itself, cannot be a determinative factor for implementation of the Tribunal's order in O.A.No.983 of 2013. Mere laxity on the part of the respondents should not confer undue advantage on the petitioner if his conduct otherwise disentitles him to reap the benefit of the order of the Tribunal in the afore-mentioned O.A. Admittedly, the petitioner was

relieved from the SIB as far back as 09.12.2009. When this Court has pointedly asked the learned counsel for the petitioner as to what the petitioner was doing since then, he stated that in the year 2011, his client has filed a Writ Petition before the Uttarakand High Court and that the same was dismissed in the year 2013.

The petitioner being a part of the disciplined force is not expected to remain in vacuum. When he was relieved on 09.12.2009 by the SIB, he did not report to duty before the Superintendent of Police, Krishna. Having spent more than four years, during which period, he has neither reported back to the SIB nor to his parent Department, he has filed O.A.No.983 of 2013 before the Tribunal. The Tribunal has allowed the said O.A. without allowing the respondents to file a counter-affidavit though a request for granting time for that purpose was made by the respondents, purporting to follow its order in previous batch of O.As, *i.e.*, O.A.No.234 of 2014 and batch. After the petitioner filed M.A.No.713 of 2014, the parent Department has declared him as 'deserter', vide order, dated 13.7.2015, with effect from 15.12.2009 and even issued a charge memo for his unauthorised absence from 15.12.2009. More over, the SIB has sent a fax message, dated 08.12.2015, expressing its unwillingness for the petitioner's absorption into it. The

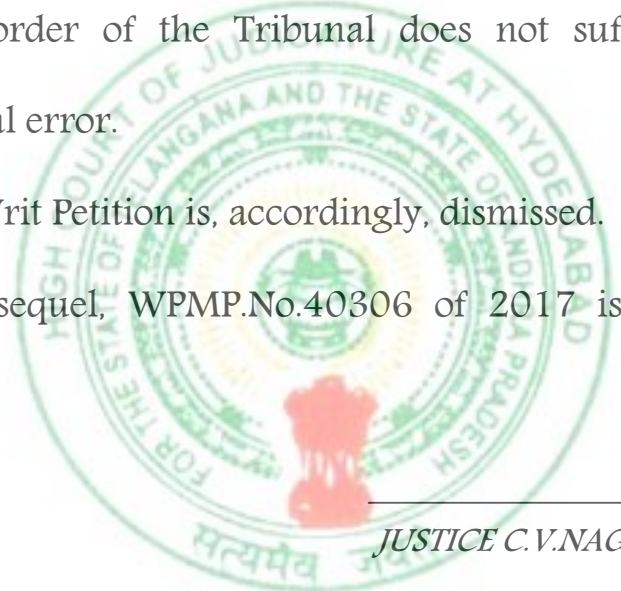
abhorrent conduct of the petitioner and the afore-mentioned subsequent events have weighed with the Tribunal in declining to execute its own order passed in the afore-mentioned O.A.

On the aforementioned facts of the case, this Court exercising discretionary jurisdiction under Article-226 of the Constitution of India does not feel inclined to interfere with the well-reasoned order of the Tribunal.

For the foregoing reasons, we are of the opinion that the impugned order of the Tribunal does not suffer from any jurisdictional error.

The Writ Petition is, accordingly, dismissed.

As a sequel, WPMP.No.40306 of 2017 is dismissed as infructuous.



JUSTICE C.V.NAGARJUNA REDDY

JUSTICE K.VIJAYA LAKSHMI

21st September 2017

DR