

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

Writ Petition No.10333 of 2004

DATED:15-12-2017

Between:

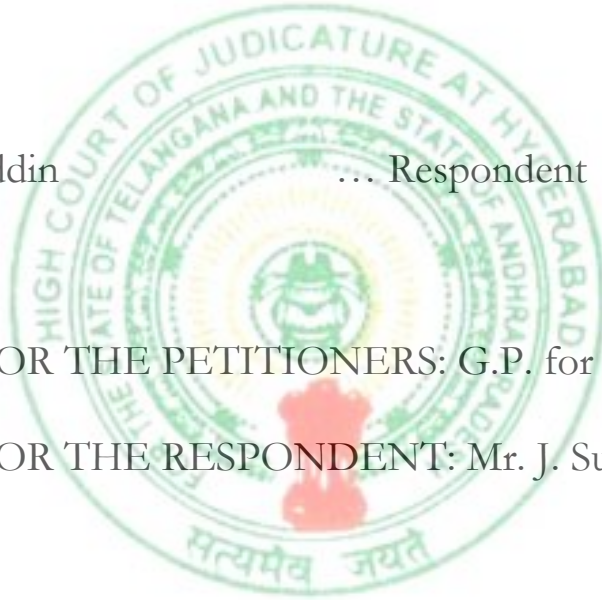
Government of Andhra Pradesh  
Rep. by its Secretary  
Home Department  
Secretariat, Hyderabad  
and others ... Petitioners

And

M.D. Wahajuddin ... Respondent

COUNSEL FOR THE PETITIONERS: G.P. for Services (TS)

COUNSEL FOR THE RESPONDENT: Mr. J. Sudheer



THE COURT MADE THE FOLLOWING:

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

A victim of fate or that of the circumstances, the respondent, who had a smooth sail as a Police Constable, his whole world turned topsy-turvy, overnight. Unsuspecting that 06.12.1989 would be the day, which would push him along with his family into the dark days, he went on his duty as usual. As his ill fate would have it, he was entrusted with the work of escorting a young but wily under-trial prisoner, by name, Gandikota Lachamma, W/o. Venkataiah, aged 25 years, from Jangaon Police Station to Central Prison, Warangal, along with another Police Constable (P.C.502).

2. The respondent along with P.C.502 took the remand prisoner from Jangaon Police Station to Warangal. After alighting at Hanamkonda, they have boarded the local bus to reach the Central Prison. Before they reached the destination, the remand prisoner has quietly given a slip and escaped from the scene. Panicked, the respondent made a frantic search for tracing out the prisoner but in vain. Twenty-four hours thereafter, not left with any other option, he lodged a report at the Hanamkonda Police Station. Registration of First Information Report notwithstanding, the prisoner was not to be traced. P.C. No.502 (since deceased) nowhere in picture from 06.12.1989 reported back to duty only on 09.12.1989.

3. Departmental proceedings were initiated against the respondent for his alleged lethargic attitude, gross negligence and irresponsible behaviour. By order dt.18.12.1989 petitioner No.4 has kept the respondent under suspension. On 26.05.1990, a single charge was framed and an enquiry officer was appointed for holding enquiry. During the enquiry, the Presenting Officer has produced seven witnesses – P.Ws.1 to 7 on the department's side. The respondent – delinquent has produced D.Ws.1 to 3 on his side.

4. The defence of the respondent is briefly stated hereunder. When he was instructed to escort the woman prisoner, the respondent has expressed that it is desirable to have a woman constable as escort and handcuffs may be provided to secure the prisoner during the transit, but, however, his request was not heeded to and as a result the prisoner had to be escorted by himself and PC 502, another Male Constable, without handcuffs. That as per the instructions of the Head Constable (HC 468) – P. Jayapal Reddy, a battery was handed over to the respondent for handing over the same to the Inspector (Communications), Warnagal. That in order to handover the said battery, they alighted the bus at RTC Cross Road at Hanmakonda, that from there the respondent went to District Police Office (DPO), Warangal, to handover the battery

to the Inspector (Communications) Warangal and that meanwhile PC.502 took the prisoner to local bus stop at Petrol Bunk. That by the time he returned after handing over the battery, PC.502 boarded the local bus with the prisoner from front door, that as he reached the bus stop at the last moment and the bus was moving, he had to board the same from the rear side, and that as the bus was overcrowded, he was unable to go to the front side where PC 502 along with the woman prisoner were staying. When the bus stopped at the Thousand Pillar Temple, PC 502 informed him about the escape of the prisoner. It is his further plea that the Police concerned have acted contrary to the established practice of entrusting the woman prisoner to male constables for escort duty without even providing handcuffs and that added to this violation, the respondent was burdened with an extra duty of carrying a battery, but for which there would not have been a possibility of the respondent being away from the prisoner while travelling in the bus.

5. Though P.W.1 – H.C. 468 denied the stand of the respondent that the latter has made a request to send a woman escort or provide with handcuffs and also the handing over of battery, on appreciation of oral and documentary evidence, the enquiry officer has rendered a clear finding to the effect that the

respondent deserves a benefit of doubt on the above aspect. The enquiry officer also while commenting on the conduct of PC.502 in not reporting the matter to the Police Station or trying to trace the prisoner, rendered a finding that the respondent made efforts to trace the woman prisoner. On a holistic appreciation of the evidence, the enquiry officer observed that despite the evidence adduced by the Department tending to prove the charge levelled against the respondent, he is left with no option other than giving benefit of doubt to the respondent. The only observation made against the respondent by the enquiry officer is that though the bus was overcrowded, it is the primary duty of the respondent to meet PC 502 and the lady prisoner in the bus and escort her in proper way. Based on this observation, the enquiry officer held that the charge against the respondent was partly proved beyond reasonable doubt.

6. On consideration of the report, petitioner No.4 passed order on 18.8.1992. In his order he has stated that after agreeing with the findings of the enquiry officer, he has sent a copy of the enquiry report (termed as “Minutes”) drawn by the enquiry officer and that he has considered the representation received from the respondent. As regards the plea of the respondent that no woman Police Constable was deputed, the same was rejected by observing that

woman constable will be deputed wherever they are available. With respect to handcuffs, respondent No.4 observed that they are not necessary to escort an ordinary woman criminal. Considering the plea that the respondent ought not to have been given any other job, petitioner No.4 held that the prisoner had not escaped during the period when the respondent went to the DPO at Warangal to handover the battery, but she has escaped when the respondent was present in the bus. While holding that the respondent along with PC 502 (who was no more) are responsible for the escape of the prisoner, petitioner No.4 has observed that Police Constables who cannot escort even an ordinary woman prisoner is of no use in Police Department and accordingly he removed the respondent from service by treating the suspension period from 27.12.1989 to 31.7.1991 as not on duty.

7. While considering the appeal filed by the respondent against the order of his removal, petitioner No.3 repelled the defence of the respondent by observing that the plea taken by the respondent that the woman prisoner had made her escape in City Bus, is not tenable as it is only an afterthought, since the respondent while on escort duty of an under trial prisoner had no business to break the journey from Jangaon Police Station to Central Prison, Warangal, even if he had any other work and that nothing prevented him

from handing over the battery after handing over the prisoner at the Prison and he accordingly rejected the appeal.

8. In his order dt.30.7.1993, in the revision filed by the respondent, petitioner No.2 held that the evidence recorded in the oral enquiry clearly established that the respondent did not either ask to be assisted with the services of a woman Police Constable or with handcuffs and that no other duty, like carrying a battery, was allotted to him. He has also observed that the possibility of ulterior motive on the part of the respondent in raising the plea of carrying a battery, without being assigned with any such duty while being engaged on escort duty, is clearly perceived. As regards the plea of the respondent that he could not board the bus along with PC 502 and the woman prisoner, as he had to entrust the battery in the DPO, Warangal, petitioner No.2 has adopted the same reasoning as that of petitioner No.3. Accordingly, petitioner No.2 has dismissed the revision petition. Assailing these orders, the respondent has filed O.A. No.6900 of 1993 before the Andhra Pradesh Administrative Tribunal, Hyderabad.

9. On a detailed consideration of the case, the Tribunal held that in the light of the finding of the enquiry officer that benefit of doubt has to be given to the respondent, he cannot be held guilty of negligence of duty and consequently he was not liable to be

awarded with the penalty of removal from service. While holding that the respondent is entitled to all the consequential benefits, including salary and also other attendant benefits like application of revision of pay scales etc., for the period of his absence from service, the Tribunal has directed payment of 50% of his basic pay with other allowances from the date of his removal from service, and to reinstate him into duty within seven days from the date of receipt of the order. This order has been challenged by the petitioners in the present writ petition.

10. As far back as 23.06.2004, a Division Bench of this Court while admitting the writ petition, granted interim suspension which has been continuing all these years, and as a result of the interim order the respondent is not reinstated.

11. We have heard the learned Government Pleader for Services (TS) and Mr. J. Sudheer, learned counsel for the respondent.

12. We would like to consider the orders passed by petitioner Nos.4, 3 and 2 separately in sequence with reference to the enquiry report. A perusal of the order of removal passed by petitioner No.4 would show that he has agreed with the findings of the inquiry officer. While not specifically rejecting the stand of the respondent on three vital aspects, namely, (i) that in spite of his request, a woman constable was not provided as escort; (ii)

handcuffs were not provided and (iii) entrustment of additional work of carrying battery, petitioner No.4 tried to justify each of these aspects. According to him, two Police Constables are enough to escort a very normal woman accused and to escort an ordinary woman criminal handcuffs are also not necessary. As regards the entrustment of the duty of carrying a battery, as noted earlier, he has opined that the escape has not taken place during his absence in the course of entrustment of battery.

13. In our opinion, the approach of petitioner No.4 is wholly unrealistic. Being an officer holding the position of Superintendent of Police, he failed to understand that howsoever strong the male police escorts may be, it is wholly unsafe to entrust a lady prisoner to the custody of male constables as they were not expected to handle the former physically. Obviously faced with this delicacy, the respondent appeared to have requested for either providing with a woman escort constable or at least with handcuffs, so that the possibility of the prisoner escaping could be avoided. When male constables stand as escort, even if they find a woman prisoner escaping they are not expected to prevent her physically from escaping. Similarly, if handcuffs had been provided, the prisoner would not have escaped. The observation that only when woman constable is available she will be sent as an escort, defies any logic

or reasoning. The administration cannot be absolved of its obligation, merely because a Woman Constable was not available. Petitioner No.4 has not examined the problem with the sensitivity which the situation demanded. This lack of insensitivity is reflected from the observation that the Police Constables who cannot escort even an ordinary woman prisoner are of no use in the Police Department.

14. A perusal of the record shows that the woman prisoner is not an ordinary prisoner. She was caught red-handed while stealing cash of Rs.604/- from the bag of an RTC Conductor while he was on duty on 04.12.1989 for which Crime No.189/89 for the offence under Section 379 IPC, at Police Station, Jangaon, was registered and she was remanded by the Judicial Magistrate of First Class, Jangaon, in connection with which she was being escorted from Jangaon Police Station to Warangal Central Prison. It is thus obvious from these facts that the under trial prisoner appeared to be an expert in committing thefts while travelling in buses. Such a person is expected to have perfected the art of easily escaping while travelling in buses. Despite this fact, the remand prisoner was treated as an ordinary prisoner and neither a woman escort was provided, nor at least hand cuffs were made available to the two male Police Constables sent on escort duty.

15. In our opinion, it is the Police at Jangaon Police Station, who are primarily negligent in handling the woman prisoner. It is a matter of surprise that petitioner No.4 instead of taking action against the persons at the Police Station for their negligence was uncharitable in condemning the respondent. The approach of petitioner No.4 in dealing with the plea of the respondent regarding the entrustment of another duty is also wholly unfair. When a constable is entrusted with the duty of escorting a prisoner, it is inconceivable that he was asked to handle another job simultaneously. Here again, negligence on the part of the persons at the helm of affairs in Jangaon Police Station is writ large. Instead of realising the fundamental flaw in the approach of the Police at Jangaon Police Station in entrusting an additional duty (indeed it is a heavy burden), to the respondent, petitioner No.4 has chosen an easy route in pointing out that the escape has not taken place during the absence of the respondent. This finding betrays lack of comprehension on the part of petitioner No.4. It is the stand of the respondent, which is virtually accepted by the enquiry officer, that because of the entrustment of the additional duty, he had to board a moving local bus and as the bus was overcrowded, he could not get into the bus through front door, through which PC 502 along with the remand prisoner entered the

bus and that because of the said reason he could not reach the front portion where the other Constable along with the prisoner were staying during the travelling. But for the entrustment of the additional duty, such a situation would not have developed at all. Therefore, petitioner No.4 has failed to examine the case from a proper and correct perspective and made a wholly light hearted approach in rendering the findings oblivious of the ground realities and the facts and circumstances.

16. Coming to the order passed by respondent No.3, his finding that the plea of the respondent that the woman prisoner had escaped was an afterthought is contrary to the findings and conclusions of the enquiry officer. He has ignored the fact that the disciplinary authority has agreed with the findings of the enquiry officer. His reasoning that the respondent has no business to break the journey from Jangaon Police Station to Central Prison, Warangal, also overlooks the conduct of the Police at Jangaon Police Station in entrusting the additional duty to the respondent while he was on escort duty. Instead of addressing this aspect, petitioner No.3 has added his own perceptive to the issue which, in our opinion, is wholly unsustainable.

17. As regards the order of petitioner No.2, he far too exceeded his jurisdiction in arriving at his own conclusion based on evidence

contrary to the findings of the enquiry officer both on the aspects of the request of the respondent to send a woman escort, providing handcuffs and entrustment of additional duty of carrying the battery. Being the revisional authority, it does not fall within its jurisdiction to reappreciate the evidence and differ with the findings of the enquiry officer, though the disciplinary authority has accepted the findings of the enquiry officer.

18. As rightly held by the Tribunal when the respondent's request for providing a woman escort or at least handcuffs was rejected, and added to that he was entrusted with the additional responsibility of carrying a battery which was wholly unwarranted, he cannot be held guilty of negligence of duty.

19. It is trite that 'negligence' connotes, carelessness, laxity, irresponsibility, breach of duty etc. One's failure to make proper anticipation of an event cannot be termed as negligence. Every act of lack of anticipation cannot be perceived as negligence, for, in a given circumstance, if a person is disabled from acting with diligence required to handle a situation, he cannot be called negligent.

20. Similarly every act of negligence does not constitute misconduct. The Stroud's Judicial Dictionary described 'misconduct' as "misconduct arising from ill motive", **acts of**

**negligence, errors of judgment, or innocent mistake, do not constitute such misconduct** (emphasis added). After referring to and relying upon the judgments in *Disciplinary Authority-cum-Regl. Manager v. Nikunja Bihari Patnaik*<sup>1</sup>, *Government of Tamil Nadu v. K.N. Ramamurthy*<sup>2</sup>, *Inspector Prem Chand v. Govt. of NCT of Delhi*<sup>3</sup> and *SBI v. S.N. Goyal*<sup>4</sup>, the Supreme Court in *Ravi Yashwant Bhoir v. Collector*<sup>5</sup> held that mere error of judgment resulting in doing of negligent act does not amount to misconduct. The Court further held:

*“Further, the expression “misconduct” has to be construed and understood in reference to the subject-matter and context wherein the term occurs taking into consideration the scope and object of the statute which is being construed. Misconduct is to be measured in the terms of the nature of misconduct and it should be viewed with the consequences of misconduct as to whether it has been detrimental to the public interest.”*

21. On the admitted facts of the present case, the respondent was disabled from guarding the remand prisoner properly as the entrustment of additional duty of handling the battery evidently made him board the crowded bus from the rear side. The respondent does not appear to have anticipated the possibility of the woman prisoner escaping when another male constable on escort duty was accompanying her. Therefore, in our opinion, at best, the respondent can be said to have failed to display proper anticipation and by no means he can be said to be negligent or

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<sup>1</sup> (1996) 9 SCC 69

<sup>2</sup> (1997) 7 SCC 101

<sup>3</sup> (2007) 4 SCC 566

<sup>4</sup> (2008) 8 SCC 92

<sup>5</sup> (2012) 4 SCC 407

irresponsible or displayed lack of devotion to duty amounting to misconduct warranting levy of any punishment. It is also worthy to note that the Department has not attributed any complicity with the remand prisoner to facilitate her escape or any *mala fide* intention on the part of the respondent in this regard.

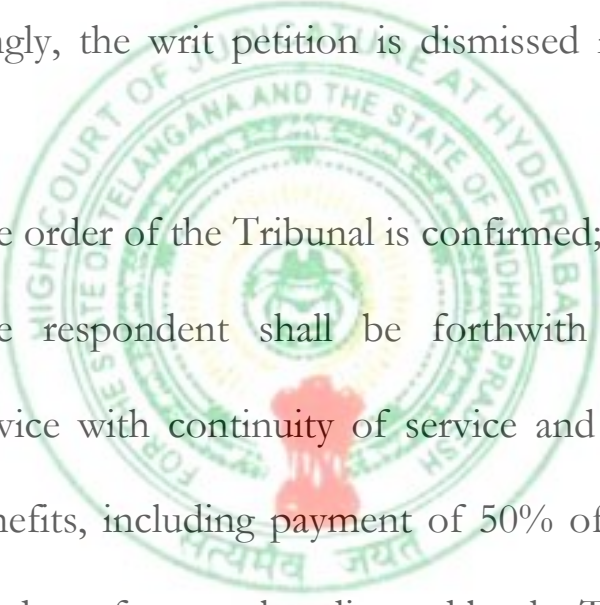
22. This leaves us with one final question, i.e., whether mere dismissal of the writ petition filed by the State would serve the ends of justice? Our answer to this question is an emphatic “No”.

From the record it is seen that when the order of removal was passed, the respondent was about 32 years of age, at the prime of his career and life. It took a decade for him to succeed before the Tribunal. The State has taken almost two years to file the present writ petition and a non-speaking interim suspension order of this Court passed on 23.06.2004 continued to remain in force till today. The cumulative effect of all this proved disastrous for the respondent and his family. For the last 25 years the respondent is out of service. Even if he is reinstated now, he will be reaching the age of superannuation in a couple of years. The sufferings the respondent and his family members might have undergone are unfathomable. At the prime of his life, the respondent was deprived of his employment and his family members, of an otherwise comfortable living with proper educational, health and

other basic needs of life. When we put a question to ourselves as to whether anyone can bring back the precious time which the respondent and his family members have lost and undo the sufferings they have undergone, our answer is an obvious “No”. The State is responsible to a large extent for the grave injustice perpetrated on the respondent and his family. Even if the disciplinary authority was indifferent in handing out the removal order, and if not the appellate authority, at least the revisional authority should have displayed sobriety by interfering with the extreme punishment and exonerating him, or at least by imposing some minor penalty. At least after the respondent succeeded before the Tribunal, wisdom should have dawned on the State and its functionaries. Without realizing the vexatious nature of the litigation and the futility of pursuing such litigation, they went ahead by filing the writ petition and securing an order of interim suspension, denying reinstatement to the respondent. Had the functionaries of the State at the helm of affairs not viewed the respondent as an adversary - in the sense that two private parties to a litigation treat each other, the woes of the respondent and his family would have ended at least in the year 2002 after dismissal of the case by the Tribunal. But, that was not to be. In view of the interim order of this Court suspending the operation of the order

of the Tribunal all through the pendency of the writ petition, the respondent could not reap the fruits of his success before the Tribunal. In our opinion, the maxim *actus curiae neminem gravabit* – an act of the Court shall prejudice no man, is squarely attracted to the facts of this case. Therefore, the respondent is entitled to be compensated for the sufferings he and his family members have undergone at least from the time the respondent succeeded before the Tribunal.

23. Accordingly, the writ petition is dismissed in the following terms:

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- (i) The order of the Tribunal is confirmed;
  - (ii) The respondent shall be forthwith reinstated into service with continuity of service and other attendant benefits, including payment of 50% of basic pay from the date of removal as directed by the Tribunal;
  - (iii) The petitioners shall promote the respondent according to his entitlement had he been continued in service, and pay the salary along with the attendant benefits and back wages attached to the promotional post with effect from the date of his promotion;
  - (iv) The petitioners shall pay interest at the rate of 9% per annum to the respondent on the arrears of salary and

other monetary benefits which fell due on the date of disposal of the O.A. by the Tribunal till the date of payment.

- (v) The respondent is awarded costs of Rs.25,000/- (Rupees Twenty Five Thousand only).

The petitioners shall complete the entire exercise referred to in the aforementioned paragraph within two months from the date of receipt of this order.

As a sequel to dismissal of the writ petition, interim order dt.23.06.2004 passed in W.P.M.P. No.13113 of 2004 shall stand vacated and the said application shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

KONGARA VIJAYA LAKSHMI, J

15-12-2017

*bnr*

Note: LR copies to be marked.

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