

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

WRIT PETITION No.27179 of 2017

Between:

B.Rami Naidu

..Petitioner

and

The State of Andhra Pradesh,
represented by its Secretary,
Home Department, Hyderabad and others

..Respondents

JUDGMENT PRONOUNCED ON: 28th August, 2017

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

AND

THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

1.Whether Reporters of local
Newspapers may be allowed : No
to see the Judgments?

2. Whether the copies of
judgment may be marked to : Yes
Law Reporters/Journals?

3. Whether their Ladyship/Lordship
wish to see fair copy of the : Yes
Judgment?

C.V.NAGARJUNA REDDY, J

GUDI SEVA SHYAM PRASAD, J

*THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD
+ WRIT PETITION No.27179 of 2017

% 28.08.2017

B.Rami Naidu

..Petitioner

Vs.

\$ The State of Andhra Pradesh,
represented by its Secretary,
Home Department, Hyderabad and others

..Respondents

! Counsel for the petitioner: Mr.J.Sudheer

Counsel for the respondents: Government Pleader for Services (AP)

< Gist :

> Head Note:

? Cases referred:

1. AIR 1948 Privy Council 156

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Counsel for the respondents: Government Pleader for Services (AP)

The Court made the following:



ORDER: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This writ petition is filed by the unsuccessful applicant in O.A.No.873 of 2014 on the file of the Andhra Pradesh Appellate Tribunal, Hyderabad (for short 'the Tribunal'), whereby it has dismissed the said O.A. filed by him by order, dated 31.05.2017.

2. We have heard Mr.J.Sudheer, learned counsel for the petitioner, and perused the record.

3. The facts in detail have been mentioned by the Tribunal. Therefore, they need not be re-stated except to the extent that they are necessary for disposal of this writ petition. The petitioner, an ex Indian Armyman, applied for the post of Stipendiary Cadet Trainee (SCT) Police Constable in response to the notification, dated 31.10.2011, issued by the State Level Police Recruitment Board of the Andhra Pradesh. The petitioner was provisionally selected for the said post. During the verification of the antecedents, it came to light that the petitioner suffered three months rigorous imprisonment following the summary trial by the Court Martial for the offence under Section 39(b) of the Army Act, 1950 (for short 'the Act'). Consequently, respondent No.2 issued proceedings, dated 25.12.2013, disqualifying the petitioner for appointment under Rule 3(G)(v) of the Andhra Pradesh Police (Stipendiary Cadet Trainee) Rules, 1999 (for short 'the Rules'). Respondent No.2 also cancelled the provisional selection of the petitioner. The said proceedings are questioned by the petitioner before the Tribunal by filing the aforementioned O.A. The main ground on which the cancellation of his provisional selection was questioned was that under Rule 3(G)(v) of the Rules, a person incurs disqualification only if he has been convicted for any offence by any Court of law and that the Court Martial not

being the Court of law, the petitioner does not fall under the aforementioned provision. This plea was conclusively rejected by the Tribunal.

4. At the hearing, Mr.J.Sudheer, learned counsel for the petitioner, has reiterated the aforesaid plea by placing heavy reliance on the judgment in *Albert West Meads vs. The King*¹.

5. We have carefully considered the submissions of the learned counsel for the petitioner. Section 3(xvii) of the Act defines the word 'offence' as any act or omission punishable under the Act and includes a civil offence as defined by the Act. Section 39 of the Act treats absence without leave or overstaying the leave granted to him without sufficient cause etc., as 'offence' and the persons, who are found guilty of such offences, shall, on conviction by the Court Martial, be liable to suffer imprisonment for a term, which may extend to three years or such less punishment as stated in the Act. Section 152 of the Act, which appears to be a pivotal provision in the present context, reads as under:

“Section 152. Powers of court-martial in relation to proceedings under this Act. - Any trial by a court-martial under the provisions of this Act shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860), and the court-martial shall be deemed to be a Court within the meaning of sections 345 and 346 of the Code of Criminal Procedure, 1973.”

Section 193 I.P.C. deals with the punishment for false evidence at any stage of a judicial proceeding. Section 228 I.P.C. pertains to intentional insult or interruption to public servant sitting in judicial proceeding. Section 345 Cr.P.C. refers to the provisions of Sections 175, 178, 179, 180 and 228 I.P.C. and in the event of commission of the offence under the said provisions, civil, criminal or revenue Court is vested with the powers to cause detention of the offender at any time before the rising of the Court on the same day,

¹ AIR 1948 Privy Council 156

take cognizance of the offence and sentence the offender. Section 346 Cr.P.C. pertains to the power of the Court to forward the case to a Magistrate to try the offences referred to in Section 345 Cr.P.C. A combined reading of these provisions would show that a trial by a Court Martial under the Act is treated as a judicial proceeding and the Court Martial is also deemed to be a Court within the meaning of Sections 345 and 346 Cr.P.C. Therefore, it is not possible to accept the plea of the petitioner that a Court Martial cannot be treated as a Court of law within the meaning of Section 3(G) (v) of the Rules. In *Albert West* (supra), the Privy Council, while interpreting Section 270(1) of the Government of India Act, 1935 (for short 'the Government of India Act'), repelled the plea of the appellant therein that he could not have been prosecuted before the Court Martial for want of sanction for prosecution under Section 270(1) of the Government of India Act and held that sanction for prosecution as contemplated under Section 270(1) of the Government of India Act applies to "proceedings, civil or criminal", which indicates only the civil or criminal proceedings capable of being instituted under the ordinary law of the land and does not include the proceedings under the military law.

6. In our opinion, the judgment in *Albert West* (supra) turned on the provisions of the Government of India Act with reference to the nature of the proceedings before the Court Martial. Therefore, the said judgment cannot have any direct application to the case on hand in the absence of any provision to treat the Court Martial outside the expression 'Court of law'. On the contrary, in view of Section 152 of the Act, the proceeding before the Court Martial is also deemed to be a judicial proceeding and the Court Martial is also deemed to be the Court. In the light of the above discussion, we have no reason to interfere with the order of the Tribunal, which has

rightly upheld the decision of respondent No.2 in holding that the petitioner has incurred disqualification for being appointed as SCT Police Constable as he has suffered conviction by the Court Martial under the Act.

7. The learned counsel for the petitioner has submitted that overstaying the leave does not involve moral turpitude and therefore, the petitioner should not have been disqualified. We are afraid, we cannot accept this submission because Rule 3(G)(v) of the Rules does not refer to moral turpitude. Rule 3(G)(vi) of the Rules mentions the said phrase. The distinction between Clauses (v) and (vi) of Rule 3(G) of the Rules is that under the former clause, a person is convicted for any offence in any Court of law and in the latter clause, he will be facing only accusation. Therefore, the law has distinguished between conviction and mere accusation and only in the latter case, the element of moral turpitude is treated as relevant ground for disqualification. In the instant case, the petitioner was convicted and therefore, he squarely falls within the scope of Section 3(G)(v) of the Rules for which offence involving moral turpitude is not a *sine qua non* for disqualification.

8. For the aforementioned reasons, the Writ Petition is dismissed.

9. As a sequel to dismissal of the writ petition, W.P.M.P.Nos.33762 and 33763 of 2017 filed by the petitioner for interim reliefs shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J

GUDI SEVA SHYAM PRASAD, J

28th August, 2017

Note: L.R. copies to be marked.

(B/o)
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