

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

[Special Original Jurisdiction]

FRIDAY THE SEVENTH DAY OF JULY
TWO THOUSAND AND SEVENTEEN

PRESENT
HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
AND
HONOURABLE SRI JUSTICE U. DURGA PRASAD RAO

WRIT PETITION No. 22458 OF 2017

Between:

G. Venkateswarlu ... Petitioner

V/s.

The State of Andhra Pradesh
Represented by its Principal Secretary,
PR & RD Department,
Velagapudi, Amaravathi,
Guntur district. ... Respondent

Counsel for the Petitioner : Sri K.R. Srinivas

Counsel for the Respondent : GP for Services-I [AP]

The court made the following: : [order follows]

HON'BLE SRI JUSTICE SURESH KUMAR KAIT
A N D
HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

WRIT PETITION No. 22458 OF 2017

ORDER : (*Oral, Per the Hon'ble Sri Justice Suresh Kumar Kait*)

This writ petition is filed by the petitioners invoking the inherent jurisdiction of this Court under Article 226 of the Constitution of India seeking writ of mandamus to declare final orders dated 31/5/2017 passed by the A.P. Administrative Tribunal, Hyderabad in O.A.No. 5186 of 2014, as well as G.O.Rt.No. 1065 PR & RD [VIG-I.A] Department, dated 11/7/2011 of the respondent, whereunder 10% cut in pension permanently is imposed as illegal, arbitrary and consequently to direct the respondent to pay full pension to the petitioner and to pass such other suitable orders as this Court may deems fit and proper in the circumstances of the case.

2. Heard the learned counsel appearing on behalf of the petitioner and the learned Government Pleader for Services [AP] appearing on behalf of the respondent.

3. Vide the present writ petition, the petitioner challenged the order dated 31/5/2017 passed by the A.P. Administrative Tribunal, Hyderabad, in

O.A.No. 5186 of 2014, whereby the punishment imposed vide G.O.Rt.No. 1065 PR and RD [VIG-I-A] Department, dated 11/7/2011 has been upheld by the learned Tribunal.

4. The case of the petitioner is that initially the petitioner has filed O.A.No. 6986 of 2011 and the same was dismissed by the learned Tribunal, vide order dated 17/4/2012. Being aggrieved, the petitioner challenged the aforesaid order in WP.No.28378 of 2012 and the same was disposed of vide order dated 13/8/2014, as under :

"2. Petitioner herein/applicant filed the aforementioned Original Application against the respondents herein before the Tribunal to set aside GO.Rt.No. 1065, Panchayat Raj and Rural Development [VIG.IA] Department, dated 11/7/2011 of respondent No.2 whereunder penalty of 10% cut in pension permanently was imposed, and consequently, to direct the respondents to pay the full pension.

3. The Tribunal, upon considering the material on record, dismissed the aforementioned Original Application. Challenging the same, the applicant filed the present writ petition.

4. The afore-mentioned Original Application was dismissed on the ground that the applicant has not pleaded the facts, which resulted in issuance of G.O.Rt.No. 1065, dated 11/7/2011, which was impugned in the Original Application. So, there is no illegality in passing that order, as the facts pleaded therein do not disclose as to how GO.Rt.No. 1065, dated 11/7/2011, can be set aside as illegal. Therefore, the Tribunal rightly passed the impugned order and that order needs no interference by this Court, and the Writ Petition is liable to be dismissed

5. Accordingly, the Writ Petition is dismissed. However, this order will not preclude the petitioner from filing a fresh Original Application challenging GO.Rt.No. 1065, dated

11/7/2011, if he is so advised, subject to limitation. There shall be no order as to costs .”

5. Thereafter, the petitioner filed another O.A.No. 5186 of 2014 challenging the penalty of 10% cut in pension permanently on him vide G.O.Rt.No. 1065 PR and RD [VIG.I-A] Department, dated 11/7/2011.

6. The learned Tribunal has recorded in Para No.11 that vide judgment dated 13/8/2014 in WP.No. 28378 of 2012, the petitioner was given liberty to file fresh O.A., questioning the impugned penalty vide GO.Rt.No. 1065 Panchayat Raj and Rural Development [Vig-1 A] Department, dated 11/7/2011 subject to limitation.

7. It is not in dispute that O.A.No.6968 of 2011 was dismissed by the Tribunal, vide orders dated 17/4/2012, both on merits and also for want of relevant pleadings. In the aforesaid order, the learned Tribunal recorded that the petitioner had not challenged the punishment of 10% cut in pension for five years besides stoppage of gratuity was imposed in G.O.Rt.No. 232, dated 19/2/2011. However, the petitioner has not referred to the first charge memo and enquiry. GO.Rt.No. 1065, PR and RD [Vig.I-A] Department, dated 11/7/2011 makes it clear tht the disciplinary authority has considered the explanation of the petitioner to

the show cause notice and also directions of the Tribunal in O.A.No. 10759 of 2009 and then imposed punishment of 10% cut in pension permanently. The learned Tribunal further recorded in its order that there is nothing on record to show that the disciplinary authority has not taken into consideration the explanation of the petitioner. The explanation was sought only in the matter of imposition of punishment. The disciplinary authority, having taken the gravity of the charge into consideration, imposed 10% cut in pension. Thereafter, the disciplinary authority has passed the impugned order having considered the explanation of the petitioner. Finding no grounds to set aside the punishment, O.A. filed by the petitioner was dismissed.

8. We note that the learned Tribunal afforded opportunity to the petitioner to challenge before this Court in the writ petition noted above by recording that even other wise, the petitioner has not pleaded the facts, which resulted in issuance of GO.Rt.No. 1065, PR and RD [Vig.IA] Department dated 11/7/2011, which is impugned in the said O.A. However, he pleaded the facts of other enquiry, though this Court in the writ petition filed by the petitioner given opportunity to the

petitioner to file fresh O.A., challenging the punishment of 10% cut in pension permanently vide GO.Ms.No. 1065, dated 11/7/2011.

9. The grievance of the petitioner is that the learned Tribunal failed to consider the submissions of the petitioner while challenging G.O.Rt.No. 1065, PR and RD [Vig.I-A] Department dated 11/7/2011. Despite liberty granted by this Court, however, mechanically dismissed the O.A.

10. In the order dated 17/4/2012, it is specifically stated by the Tribunal that even other wise, the petitioner has not pleaded the facts, which resulted in issuance of GO.Rt.No. 1065, PR and RD [Vig.I-A] Department, dated 11/7/2011. However, pleaded the facts of other enquiry.

11. In view of the above, we have no hesitation to hold that the petitioner filed O.A. before the Tribunal in a careless manner by mixing two enquiries as one of the enquiries has already attained finality. We are of the considered opinion that the punishment imposed in GO.Rt.No. 1065, PR and RD [Vig.I-A] Department, dated 11/7/2011 has not been adjudicated by the Tribunal on merits.

12. Accordingly, we hereby remand the matter to the learned Tribunal to pass appropriate order afresh on merits and in accordance with law within a period of six months from the date of receipt of a copy of this order after affording reasonable opportunity to both sides.

13. We hereby make it clear that the learned Tribunal shall not get influenced by the proceedings recorded earlier qua in G.O.Rt.No. 1065, PR and RD [Vig.I-A] Department, dated 11/7/2011, while passing fresh order.

14. With the above direction, the writ petition is disposed of at the stage of admission. There shall be no order as to costs.

15. As a sequel, miscellaneous petitions if any, pending in this writ petition shall stands closed.

JUSTICE SURESH KUMAR KAIT

JUSTICE U. DURGA PRASAD RAO

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE JUSTICE U. DURGA PRASAD RAO**

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WRIT PETITION No. 22458 OF 2017
[REMANDED TO THE TRIBUNAL AND DISPOSED OF]
*(Order of the Division Bench delivered by
Hon'ble Sri Justice Suresh Kumar Kait)*



Date. 07-07-2017
Court Master: I s L
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