

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION No.9743 OF 2011

ORDER: (Per Hon'ble Sri Justice G. Shyam Prasad)

1. This is a Writ of *certiorari* filed under Article 226 of the Constitution of India to quash the G.O.Ms.No.14, Law (LA & J) Home Courts C) Department, dated 27-1-2011, issued by the Government of Andhra Pradesh, imposing the punishment of compulsory retirement against the writ petitioner (hereinafter referred to as the petitioner, for brevity).

2. The brief facts of the affidavit filed by the petitioner are as follows: The petitioner was appointed as a Junior Civil Judge in the year 1989. He was promoted as Senior Civil Judge in the year 2002. He worked as Senior Civil Judge, Mahubababad from 04.05.2004 to 26.04.2007. On 26.04.2007, he was transferred to Jagtial, Karimnagar District as Senior Civil Judge. The petitioner was served with Memorandum of Charges dated 17.12.2007 containing four charges therein.

3. Charge No.1 relates to the allegation that he pronounced orders/judgments in open Court in 194 cases by dictating docket orders/judgments without dictating full text of the judgments to one B. Vijaya Mohan Rao, Typist-cum-Clerk of the Taluka Legal Services Authority, Mahabubabad. He left Mahabubabad on his transfer to Jagtial as Senior Civil Judge. He did not discharge the duties diligently and failed to display devotion to duty which act is against of the provisions under Order XX Rules 1 and 3 of C.P.C. and Section 353 of Cr.P.C.

4. For convenience sake, Order XX Rules 1 and 3 of C.P.C. is extracted below:

“1. Judgment when pronounced: (1) The Court, after the case has been heard, shall pronounce judgment in an open Court, either at once, or as soon thereafter as may be practicable and when the judgment is to be pronounced on some future day, the Court shall fix a day for that purpose, of which due notice shall be given to the parties or their pleaders:

Provided that where the judgment is not pronounced at once, every endeavour shall be made by the Court to pronounce the judgment within thirty days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of the exceptional and extraordinary circumstances of the case, the Court shall fix a future day for the pronouncement of the judgment, and such day shall not ordinarily be a day beyond sixty days from the date on which the hearing of the case was concluded, and due notice of the day so fixed shall be given to the parties or their pleaders.]

(2)

(3) The judgment may be pronounced by dictation in open Court to a shorthand writer if the judge is specially empowered by the High Court in this behalf:

Provided that, where the judgment is pronounced by dictation in open Court, the transcript of the judgment so pronounced shall, after making such correction therein as may be necessary, be signed by the Judge, bear the date on which it was pronounced, and form a part of the record.”

5. For convenience sake, Section 353 of Criminal Procedure Code is extracted below:

“353. Judgment -- (1) The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in open Court by the presiding officer immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders,-

(a) by delivering the whole of the judgment; or

(b) by reading out the whole of the judgment: or

(c) by reading out the operative part of the judgment and explaining the substance of the judgment in a language which is understood by the accused or his pleader.

(2) Where the judgment is delivered under clause (a) of sub-section (1), the presiding officer shall cause it to be taken down in short-hand, sign the transcript and every page thereof as soon as it is made ready, and write on it the date of the delivery of the judgment in open Court.

(3) Where the judgment or the operative part thereof is read out under clause (b) or clause (c) of sub-section (1), as the case may be, it shall be dated and signed by the presiding officer in open Court and if it is not written with his own hand, every page of the judgment shall be signed by him.

(4) Where the judgment is pronounced in the manner specified in clause (c) of sub-section (1), the whole judgment or a copy thereof shall be immediately made available for the perusal of the parties or their pleaders free of cost.

(5) If the accused is in custody, he shall be brought up to hear the judgment pronounced.

(6) If the accused is not in custody, he shall be required by the Court to attend to hear the judgment pronounced, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted:

Provided that, where there are more accused than one, and one or more of them do not attend the Court on the date on which the judgment is to be pronounced, the presiding officer may, in order to avoid undue delay in the disposal of the case, pronounce the judgment notwithstanding their absence.

(7) No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders, or any of them, the notice of such day and place.

(8) Nothing in this section shall be construed to limit in any way the extent of the provisions of section 465.”

6. Charge No.2 relates to the allegation that while he was working as Senior Civil Judge, Mahabubabad, he did not sign the fair copies of judgments in ten cases, though they were typed and placed before him for his signatures, and he left the headquarters on transfer, which is against the provision of Section 353 of Criminal Procedure Code, referred above.

7. Charge No.3 relates to the forwarding of periodical statement to High Court showing the cases as if disposed of without dictating full text of judgments in those judgments and claiming units falsely to those cases by misleading the High Court.

8. Charge No.4 relates to the allegation that the petitioner did not deliver full text of judgments in several cases, due to which, several copy applications filed by advocates and litigants were pending before the Senior Civil Judge, Mahabubabad since 10.08.2006. The Superintendent, Senior Civil Judge's Court, Mahabubabad has given reason for such pendency which was due to the non-availability of judgments and decrees in the case bundles. It is further mentioned that the copy applications in four incidents were not available and therefore the petitioner did not act diligently and failed to display the devotion to duty.

9. The High Court of Andhra Pradesh, Hyderabad *vide* order in ROC No.969/2007-Vigilance Cell, dated 26.09.2008, directed the petitioner to go over to Mahabubabad, Warangal District and complete the dictation of judgments/orders in 194 cases which were heard and disposed of by him through docket orders while he was working as Senior Civil Judge at Mahabubabad and send compliance report to the District Judge.

10. The petitioner has submitted a representation to close the departmental enquiry. But, the same was rejected *vide* proceedings in ROC No.969 of 2007-Vigilance Cell, dated 04.03.2009.

11. During the Departmental Enquiry, P.Ws.1 to 8 were examined and Exs.P.1 to P.210 were marked on behalf of the Disciplinary Authority.

12. On behalf of the petitioner, D.Ws.1 to 4 were examined and no documents were marked. The petitioner was examined under Rule 20 (14) of the A.P. Civil Services (Classification, Control and Appeal) Rules, 1991 (for short, 'the Rules'). The petitioner had submitted his written submissions in defence of the charges framed against him. On conducting enquiry, the Enquiry Officer, *vide* report dated 30.03.2010 held that all the four charges framed against the petitioner were proved and the petitioner was found guilty. The Enquiry Report has been communicated to the petitioner *vide* order dated 23.08.2010. The petitioner has submitted his objections to the findings of the Enquiry Officer's report *vide* the representation dated 13.09.2010 and thereafter, the Government of Andhra Pradesh *vide* G.O.Ms.No.14 imposed the penalty of compulsory retirement from service. Aggrieved by the penalty of compulsory retirement from service, he invoked the extraordinary jurisdiction of this Court for appropriate relief.

13. The sum and substance of the above charges is that the petitioner, while working as Senior Civil Judge at Mahabubabad, pronounced 194 orders/judgments by docket orders, without preparing the full text of the judgments, came to light on the letter addressed by the Additional District Judge to the High Court, one year after his transfer to Warangal, about the petitioner pronouncing the judgments only on docket orders, without preparing the full text of the judgments.

14. On the letter of the District Judge, the Registrar (Vigilance) has called for the explanation of the petitioner. The High Court framed charges against him and called for his explanation. He filed his written submissions. Having not satisfied with his explanation in the written submissions, the High Court ordered Regular Departmental Enquiry. The enquiry was conducted by the District Judge (Enquiries). In the enquiry, the petitioner was found guilty of all the four Articles of Charges. The same was communicated to him, and he submitted his written submissions. The High Court, on a consideration of submissions, has recommended for imposing the major penalty of compulsory retirement against the petitioner. The Government, on consideration of the report and material against the petitioner, has imposed the punishment of compulsory retirement.

15. The petitioner, being aggrieved by the impugned G.O.Ms. No.14, preferred this Writ Petition challenging the quantum of punishment as shockingly disproportionate and also for setting aside the impugned G.O. as it is illegal and arbitrary. The petitioner raised various other grounds in his affidavit and written submissions.

16. The petitioner has advanced his arguments in person. Learned Government Pleader has advanced arguments on behalf of the Government of Andhra Pradesh.

17. The point that arises for consideration in this matter is:

Whether the G.O. issued by the Government is illegal and arbitrary? and whether the punishment imposed by the Government is shockingly disproportionate?

18. **POINT:** The petitioner, during the course of arguments, submitted that all the charges are motivated at the instance of the officer in-charge PW.1, the Superintendent and other staff of Mahabubabad. He has further submitted that, he had taken charge of Senior Civil Judge Court of Mahabubabad, on 4th May 2004 and he had complained to the District Judge, about the dearth of staff in his Court, and also about not having a regular stenographer, that he had taken the services of the Typist of Legal Services Authority, for preparing judgments, by way of type to his dictation, on a computer. Subsequently, the Steno post was filled up, and again that steno was also deputed to work in the District and Session Judge's Court, Warangal.

19. He further submits that the Court at Mahabubabad was a heavy court. The staff used to shuttle between Mahabubabad and Warangal. As there were missing of records and cheques, and tampering of records, a discrete inquiry was conducted against the Superintendent and other staff. The staff, aggrieved by the inquiry conducted against them, made false allegations against the petitioner. He further submits that the allegations were made one year after his transfer from Mahabubabad. Therefore, it is contended that the enquiry was motivated by the Staff and the in-charge officer.

20. The Petitioner further submits that on receipt of the Memorandum of Charges, he had sought time for causing search of his judgments in the Senior Civil Judge's Court, at Mahabubabad. But, he was not permitted. Thereafter, the petitioner submitted his detailed explanation and written statement to High Court, dated 22nd March 2008. The High Court, having not satisfied with the explanation submitted by the petitioner, had initiated Regular Enquiry nominating the District Judge (Enquires) to enquire into the charges framed against him.

21. It is the submission of the petitioner that the Inquiry Officer has not conducted the inquiry properly. The Inquiry Officer had not given him the opportunity of searching the records of the judgments.

22. The petitioner had been examined under Rule 20(14) of the Rules. The petitioner had submitted his written submissions. On conducting the inquiry, the Enquiry Officer had submitted his report, dated 30th March 2010, finding him guilty of all the four Articles of Charges. The Enquiry Report was communicated to the petitioner. The petitioner had submitted his written submissions, on the findings of the Enquiry Officer. On consideration of the written submissions of the petitioner, dated 13th September 2010, and on re-consideration of representation, dated 20th November 2010, the Enquiry Report was communicated to the Government. The Government issued the impugned G.O.Ms. No.14 imposing the penalty of compulsory retirement from service. The same was communicated to the petitioner, on 29th January, 2011. The petitioner handed over charge of his post in February, 2011.

23. All these facts are born by record, which clearly indicate that the inquiry was conducted in accordance with the procedure established. There is no irregularity or illegality in conducting the inquiry by the Inquiry Officer.

24. The petitioner examined four witnesses on his behalf. D.Ws.1 and 2 are the Former Presidents of Bar Association, Mahabubabad and DW.2 is also a Member of Lok-Adalat, D.W.3 is a social worker and Advocate, D.W.4 is the then Junior Civil Judge, who worked at the relevant point of time, at that place. It is contended by the petitioner that the evidence adduced on his behalf has not been considered by the Enquiry Officer.

25. It is further contended that as per the directions of the in-charge District Judge, the in-charge Senior Civil Judge has directed the staff to search the record room to trace out the missing judgments. On search, they found judgments in fourteen cases, out of twenty four judgments. Whereas, the version of the Principal District Judge was that, there are no judgments in 194 cases. The judgments were pronounced by docket orders, without preparing the full text of judgments, in the above 194 cases. It is contended that there is inconsistency in the version of D.W.1. It is further contended that the District Judge, with regard to the missing of copies of the judgments from the records, as per the version of P.W.1, he searched 24 records and found 14 judgments and the other ten judgments are missing. It is further submitted that out of 194 cases, 5 are civil cases and 180 are criminal cases. The majority of the cases are hostile in nature.

26. It is further contended that if the petitioner had not dictated the judgments, it is not known how 14 judgments were available in 24 cases and 10 judgments were available without the signatures of the petitioner. Therefore, it is contended by the petitioner that he has pronounced the judgments after dictating full text of the judgments in almost all the cases. But, the concerned clerk did not obtain his signature in 10 judgments though they were already dictated and prepared. Since the petitioner has dictated judgments in all the cases, there are only four copy applications pending, otherwise there would have been many more copy applications. It is further contended that the Enquiry Officer has not appreciated this fact and came to the conclusion that the judgments were not dictated by the petitioner.

27. It is also the contention of the petitioner that the charge sheet has been issued against him only to cover up the laches on the part of the subordinate staff and to protect them.

28. The petitioner contends in respect of Charge No.2 that the concerned clerk has not obtained his signatures in ten judgments though they were prepared. The concerned clerk is only responsible for not obtaining signatures from the petitioner and as such he was not guilty of the charge.

29. The petitioner submits in respect of Charge No.3 that out of 194 cases, 180 cases are of criminal nature and majority of the cases were referred to Mandal Legal Services Authority, for settlement and those cases were compromised by the parties. Perhaps it is contended at the time of arguments that the awards were passed by the Lok-Adalat. Therefore, there is no possibility of having judgments in those cases.

30. It is further submitted that the findings of the Inquiry Officer are perverse and erroneous. It is further submitted that the Inquiry Officer has failed to appreciate the fact that out of 194 cases about 154 cases are hostile cases and 35 cases are extremists' cases.

31. The petitioner submits that he used to do the regular Court work by directly dictating to the Typist of Legal Services Authority and he used to type to his dictation. He further submits that he has dictated the judgments to the Typist and he used to type the same.

32. The Typist, who has typed the judgments, might have misplaced them and throwing the blame on him. Since the petitioner is transferred from that station, they are throwing blame on him.

33. Lastly, it is contended that all the charges are connected with each other, mainly about not preparing the full text of judgment in every case. All the charges are interrelated and the staff have misplaced the records and they, being aggrieved by the discrete inquiries conducted against them, made false allegations against the petitioner that the judgments were not dictated.

34. It is also contended that there are no complaints from the Bar Association, or any advocate, or any party, or police department, and or from any other person. The inquiry is motivated. The mistake of the clerk is clear as he did not prepare the fair copies of the judgments. The petitioner was also not given opportunity to search the record room.

35. It is further contended that the punishment awarded is shockingly disproportionate. Giving compulsory retirement is a harsh punishment for the mistakes committed by the staff members and for no fault of the petitioner. To save the staff members, the Inquiry Officer has found the petitioner guilty even without material.

36. The petitioner placing reliance on catena of decisions of several High Courts and also the Supreme Court submitted that the Higher Judiciary should protect the Subordinate Judiciary. A reasonable opportunity be given to the petitioner to prove his case. It is contended that the petitioner was not given sufficient opportunity of searching the records in the record room and the inquiry was initiated one year after his transfer from his previous station, without giving opportunity for search of the records, is motivated.

37. We have carefully gone through the report of the Inquiry Officer. The report clearly reveals that the petitioner has not prepared full text of judgments, in most of the cases, out of 194 cases. The petitioner was

directed to prepare the full text of the judgments. The Registrar (Vigilance) *vide* his proceedings dated 26.09.2008 directed the petitioner to prepare the judgments. The petitioner has accordingly complied with the directions of the High Court and submitted the compliance report. This clearly shows that the petitioner has not prepared the judgments earlier and the judgments were prepared subsequently, after pronouncing the same by passing the docket orders. There is no plausible explanation from the petitioner about his compliance of directions by High Court by preparing the judgments. In fact, there are 10 judgments prepared. The explanation of the petitioner is that those judgments were not placed before him for signatures by the concerned staff. It is the petitioner who is responsible for not signing the judgments. It is the duty of the petitioner as Judicial Officer to sign all the judgments after they are duly prepared by the concerned. He cannot throw the blame on the staff for his negligent attitude. Therefore, the explanation offered by the petitioner in this regard is not acceptable.

38. The contention of the petitioner is that as he was not having sufficient staff and the stenographer, he could not prepare the full text of judgments. Those reasons are not acceptable for the reason that the petitioner was already provided with the Typist, whom he used to dictate the orders. Even then the judgments were not found place in the records.

39. The contention of the petitioner that he was not given any opportunity to get the records searched in the record room and therefore he could not find out whether he had prepared the full text of the judgments or not cannot be accepted. The explanation of the petitioner appears that as he was directed by the High Court he has prepared the full text of the judgments. The petitioner has neither completely denied the

fact that he dictated the judgments with full text, nor he accepted that he prepared the full text of the judgments.

40. The petitioner attributes *mala fides* to the in-charge Senior Civil Judge, Superintendent, and other staff of the Court, that they have falsely implicated him, by misplacing the full text of judgments from the files, as they were asked to give explanation for misplacing some cheques, and records earlier during his tenure in that station.

41. This reason assigned by the petitioner has no legs to stand. On verification it was found that copies of the judgments were missing from the records in 194 cases. The explanation offered by the officer was that 180 cases are hostile cases, some pertain to extremists and some were settled before the Lok-Adalat and in 10 cases judgments were prepared, but his signatures were not obtained by the concerned clerks on those judgments.

42. It is pertinent to note that the staff members P.Ws.4 and 5 have deposed to the fact that the judgments are missing from the case bundles, and P.W.4 had clearly stated that the petitioner had not dictated the judgments in some cases. These facts would clearly show that the petitioner had not taken proper care in preparation of judgments, before pronouncing them. Therefore, the fact that the petitioner had pronounced the judgments only basing on docket orders without preparing full text of the judgment is clearly proved.

43. The enquiry officer has considered the evidence of the witnesses, D.Ws. 1 to 4 and arrived at the conclusion that the petitioner has pronounced the judgments in 194 cases without preparing the full text of the judgments. The contention of the petitioner is that there was no complaint from the Presidents of the concerned Bar Association, any

member of Lok-Adalat, any social worker and the in-charge Senior Civil Judge, Mahabubabad. It is contended that when there was no complaint from any of them, the enquiry was initiated due to the mistakes of the staff, who were responsible for misplacing of the judgments from the records. This contention does not stand to scrutiny for the reason that in the evidence adduced on behalf of the disciplinary authority, it is revealed that full text in many of the judgments out of 194 judgments did not find place. Therefore, the evidence of D.Ws.1 to 4 is not of much help to the case of the petitioner.

44. Though the petitioner has taken a plea that the majority of cases are hostile in nature, there is no material brought on record to prove that fact. On the other hand, the report of the enquiry officer clearly reveals that majority of cases are contested cases, where the full text of judgments is not found. Therefore, there is no force in the contention raised by the petitioner.

45. The contention of the petitioner is that since there are only four copy applications pending it has to be considered that in all other cases the judgments are available. As per the report of the enquiry officer, when the records were searched in the record room, full text of judgments in many cases was not available. Therefore, the pendency of four copy applications cannot be considered that in all other cases there is compliance of providing of copy applications. There is no material on record to show that whether copy applications in all the 194 cases are filed or not and whether they are complied with or not. Therefore, it cannot be presumed that in all other cases copy applications have been complied with.

46. The contention of the petitioner is that out of 194 cases about 154 cases are hostile cases; but the petitioner has not brought on record any particulars of those cases. Even in hostile cases, the full text of judgments is required to be prepared; even in 35 extremist cases also the full text of judgments is required to be prepared. If the full text of judgments is available in all the 194 cases, there would not have been any enquiry against the petitioner. Therefore, there is no force in this contention of the petitioner.

47. As per the enquiry report, the evidence of P.W.4 - Typist clearly reveals that the petitioner has not dictated the full text of the judgments. Further, as per the enquiry report, there is no material on record to show that P.W.4 has misplaced the judgments and there is no blame on the petitioner.

48. Merely because there are no complaints from the Bar Association, Mahabubabad, or any advocate, party or from any other person, the petitioner cannot be exonerated from the charges. The full text of judgments in 194 cases was not found and therefore the above contention loses its significance.

49. The contention of the petitioner is that without there being any material to save the staff members, the enquiry officer has found him guilty. This contention has not been supported by any material.

50. It is the contention of the petitioner that he was not given an opportunity to prove his case. But, from the evidence available on record, it is clear that the enquiry officer has given him a reasonable opportunity to prove his case. The petitioner has examined four witnesses on his behalf *i.e.*, D.Ws.1 to 4 but did not mark any documents. Therefore, there is no force in this contention.

51. The petitioner contends that he was not given an opportunity to search the record room to find out whether the full text of the judgments is available in the records or not. But, the enquiry officer clearly stated that the search was conducted in the record room and the in-charge officer has found the records without full text of judgments. Therefore, there was no need to give any opportunity to the petitioner to search the record room and the records again.

52. The last submission of the petitioner was that the punishment imposed by the Government is shockingly disproportionate to the charges framed against him and finding him guilty.

53. The very conduct of the petitioner as Judicial Officer by not preparing the full text of the judgments and pronouncing them by docket orders, even in contested cases, and subsequently preparing the full text of the judgments, in compliance of the directions given by the High Court, would clearly indicate that he has no devotion to the duty, and he is unbecoming of a Judicial Officer, and therefore he is liable for the penalty imposed by the Government. Therefore, the penalty imposed by the Government does not require any interference by this Court.

54. Accordingly, the writ petition is dismissed. As a sequel to dismissal of the writ petition, miscellaneous petitions, if any, pending in this writ petition, shall stand dismissed as infructuous.

V. RAMASUBRAMANIAN, J

G. SHYAM PRASAD, J

Date: 05-01-2017.
Dsh

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

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WRIT PETITION No.9743 OF 2011

(Order of the Division Bench delivered by
Hon'ble Sri Justice G. Shyam Prasad)

Date. 05-01-2017

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