

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

WRIT PETITION No.35009 of 2017

26.10.2017

Between:

A.Ganapathi Rao

..Petitioner

and

The State of Andhra Pradesh,
represented by its Principal Secretary,
Agriculture & Cooperation Department,
Secretariat, Velagapudi, Guntur District and another

..Respondents

Counsel for the petitioner: Mr.Pratap Narayan Sanghi

Counsel for the respondents: Government Pleader for Services (A.P.)

The Court made the following:



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

This writ petition is filed for issue of a *Certiorari* to quash order, dated 15.09.2017, in O.A.No.5482 of 2015 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'the Tribunal').

2. The petitioner retired as Joint Director of Marketing. More than four years after his retirement, he was subjected to disciplinary proceedings. In culmination of the said proceedings, respondent No.1 issued G.O.Rt.No.1065, Agriculture and Cooperation (Vig.II) Department, dated 04.08.2010, imposing penalty of withholding 10% pension on the petitioner. O.A.No.5565 of 2010 filed by the petitioner was allowed by the Tribunal, by order, dated 19.03.2013, on the ground that initiation of disciplinary proceedings was barred by limitation prescribed under Rule 9(2)(b) of the Andhra Pradesh Revised Pension Rules, 1980 (for short 'the Rules'). Thereafter, respondent No.2 issued memo No.DS(1)/2627/2006, dated 10.08.2015, ordering recovery of Rs.1,86,609/- and Rs.2,93,100/- from the petitioner for the alleged loss caused by him. Questioning this memo, the petitioner filed O.A.No.5482 of 2015. By the impugned order, the Tribunal has dismissed this O.A.

3. Though several contentions have been raised by the petitioner, in the manner we are proposing to dispose of this writ petition, it is not necessary to refer to and deal with all of them. It will suffice to note that under Sub-Rule (7) of Rule 9 of the Rules, the employer is entitled to recover from the retirement gratuity of the Government servant, the pecuniary loss caused by him to the Government or to a local

authority due to his negligence while he was in service. The two main submissions advanced by the learned counsel for the petitioner are that (1) admittedly, no show cause notice was issued calling upon the petitioner to explain why the alleged pecuniary loss shall not be recouped from his retirement gratuity and (2) that the retirement gratuity was paid as far back as 03.08.2006 to the petitioner and more than nine years thereafter, the aforementioned memo for recovery was issued and that therefore, the said memo is without jurisdiction.

4. The learned Government Pleader for Services (A.P.) appearing for the respondents, on instructions, has fairly conceded that no show cause notice was issued as envisaged under Sub-Rule (7) of Rule 9 of the Rules and that based on the vigilance report, which constituted the basis for initiation of disciplinary proceedings, which were quashed by the Tribunal in O.A.No.5565 of 2010, the aforementioned memo for recovery was issued.

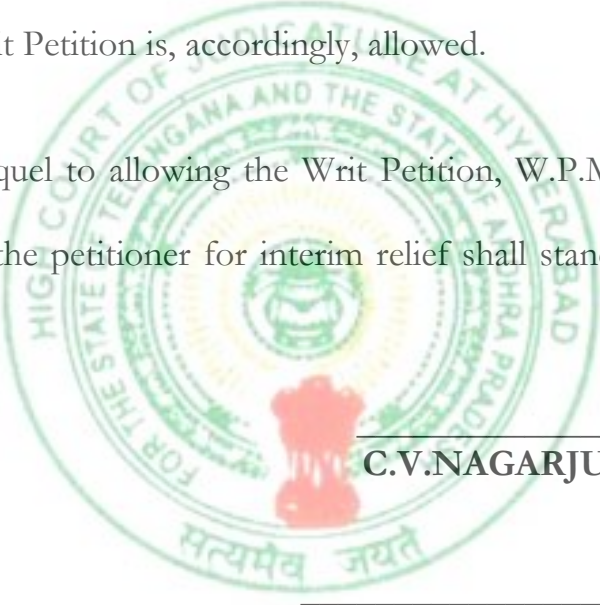
5. In our opinion, once the disciplinary proceedings were quashed, it is incumbent upon the respondents to strictly adhere to the procedure prescribed under Sub-Rule (7) of Rule 9 of the Rules, which envisages a show cause notice. Such a show cause notice not having been issued, the aforementioned memo cannot be sustained. More formidable ground available to the petitioner is that once the retirement gratuity is paid, any order for recovery would become redundant. Sub-Rule (7) of Rule 9 of the Rules empowers the respondents to recover the pecuniary loss only from the retirement gratuity. The learned Government Pleader

has not disputed the fact that the retirement gratuity was paid as far back as 03.08.2006 to the petitioner and therefore, the issue has become fait accompli as the respondents cannot recover the alleged pecuniary loss from any other assets of the petitioner.

6. For both the above discussed reasons, memo, dated 10.08.2015, issued by respondent No.2 cannot be sustained and the same is, accordingly, quashed along with order, dated 15.09.2017, in O.A.No.5482 of 2015 passed by the Tribunal.

7. The Writ Petition is, accordingly, allowed.

8. As a sequel to allowing the Writ Petition, W.P.M.P.No.43504 of 2017 filed by the petitioner for interim relief shall stand disposed of as infructuous.



C.V.NAGARJUNA REDDY, J

KONGARA VIJAYA LAKSHMI, J

26th October, 2017
GHN