

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No. 40618 OF 2017

ORDER: (*Per VRS,J*)

Aggrieved by the dismissal of his Original Application by the Andhra Pradesh Administrative Tribunal (for short 'the Tribunal') challenging the initiation of proceedings under Rule 9(2)(b) of the Andhra Pradesh (Revised) Pension Rules, 1980, the petitioner who retired as an Assistant Superintendent from the Prohibition and Excise department, has come up with the above writ petition.

2. Heard Mr. P.V.S.S.S.Rama Rao, learned counsel for the petitioner. Learned Government Pleader for Services (Andhra Pradesh) takes notice.

3. The petitioner retired from service on reaching the age of superannuation on 30.06.2011.

4. After two years of his retirement, the Government passed an order in G.O.Ms.No.250, Revenue (Vigilance-V) Department, dated 25.05.2013, granting sanction to initiate departmental proceedings in terms of Rule 9(2)(b) of the Revised Pension Rules, 1980. Simultaneously, another order in G.O.Rt.No.699, Revenue (Vigilance-V) Department, dated 25.05.2013 was passed, framing

charges against the petitioner. The article of charge framed against the petitioner under G.O.Rt.No.699, dated 25.05.2013 was as follows:

“That the Govt. Servant in connivance with the liquor syndicate leaders of various liquor groups, received mamools and abused his official position by omission of his lawful duties, not taken prompt action to control violations of Excise Act/Rules such as sale of liquor in belt shops, sale of liquor over and above MRP rates, beyond prescribed business hours and sale of loose sales at wine shops, besides allowing the operation of A-4 wine shops in benami names of various liquor groups and thereby caused pecuniary advantage to themselves and the leaders of informal groups in violation of APCB Conduct Rule 1964.”

5. It appears that both the Government orders were served on the petitioner, only on 23.07.2015. Therefore, contending that the proceedings were initiated beyond the period of four years from the date of occurrence and therefore barred by limitation in terms of the Rule, the petitioner filed an application before the Tribunal. The Tribunal rejected the application forcing the petitioner to come up with the above writ petition.

6. The contention of Mr. Rama Rao, learned counsel for the petitioner is two fold, namely:

- a) that the rule does not give any scope for counting the period of limitation from the date of knowledge; and
- b) that in any case, even if the date of knowledge is taken to be the date the commencement of the period of limitation, the

period of four years fixed expired by the time the charge memo was served on him.

7. We have carefully considered both the above submissions.

8. Insofar as the first contention is concerned, we have pointed out in another case that unless the misconduct committed by a government servant comes to the light of the appropriate authority, it may not be possible to expect the Government to initiate proceedings within the period of limitation. Till its detection, a misconduct remains a mere conduct in the normal discharge of official duties. A conduct assumes the character of misconduct only when it is detected. Therefore, we cannot put the date of occurrence of the event, as the date of commencement of the period of limitation. Hence, the first contention that the proceedings were initiated beyond of period of limitation, cannot be accepted.

9. In support of the second contention, reliance is placed upon Rule 9(6). Rule 9(6) reads as follows:

“For the purpose of this rule –

- (a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner or if the Government servant has been placed under suspension from an earlier date, on such date; and
- (b) Judicial proceedings shall be deemed to be instituted –

- (i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made; and
- (ii) in the case of civil proceedings, on the date the plaint is presented in the Court.”

10. The first part of Rule 9(6) deals with the date on which departmental proceedings shall be deemed to be instituted. The second part of Rule 9(6) deals with the date on which judicial proceedings shall be deemed to be instituted, for the purpose of Rule 9.

11. Therefore, both the limbs of Rule 9(6) have to be read in conjunction with rule 9(2). Rule 9(2) has two limbs. The first deals with departmental proceedings already instituted, when the Government servant was in service and the second limb deals with departmental proceedings to be instituted, after retirement if not instituted when he was in service.

12. Once we understand the distinction between Clause (a) and Clause (b) of Rule 9(2), it will be easy to correlate them with Clauses (a) and (b) of sub-rule (6) of Rule 9. The purpose of Rule 9(6) is to make a reference to Rule 9(2)(a). Therefore, the second contention also does not deserve our acceptance.

13. Hence, the Writ Petition is dismissed. However, the respondent shall advert to complete the proceedings and pass final orders within a period of two (2) months. No order as to costs.

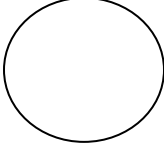
Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed.

V. RAMASUBRAMANIAN, J

M.GANGA RAO, J

30th November, 2017
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