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

***THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**

and

***THE HON'BLE SRI JUSTICE N. BALAYOGI**

+Writ Petition No.4119 of 2015

% 13-06-2018

Between:

#Meegada Sai Kumar, S/o late Ramarao, aged about
43 years, previously worked as Personal Assistant,
III AJCJ Court, presently working as Stenographer
Grade-II, Court of III Addl. Chief Metropolitan Magistrate,
Visakhapatnam.

… Petitioner

Vs.

#The Registrar (Administration), High Court of A.P.,
Hyderabad and 4 others

.. Respondents

! Counsel for the Petitioner : Mr. G.U.R.C. Prasad,

^ Counsel for the respondents : Mr. Posani Venkateswarlu,
Standing counsel for the High Court

< Gist:

> Head Note:

? Cases referred:

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE N. BALAYOGI

<u>Writ Petition No.4119 of 2015</u>

<u>ORDER:</u> *<u>(V. Ramasubramanian, J)</u>*

The petitioner, who was working as Personal Assistant in the Court of the III Additional Junior Civil Judge's Court, Visakhapatnam, has come up with the above writ petition challenging a penalty of stoppage of two increments with cumulative effect.

2. Heard Mr. G.U.R.C. Prasad, learned counsel for the petitioner and Mr. Posani Venkateswarlu, learned standing counsel for the respondents.

3. When the petitioner was working as Personal Assistant, he was placed under suspension by the proceedings dated 27-01-2006 and five Articles of Charges were framed against one Mr. S.S. Hari Prasad, who was working as Superintendent in the same Court and the petitioner herein. The Articles of Charges framed against the petitioner and the said Hari Prasad, were as follows:

> **<u>Article of Charge No.1:</u>**
>
> "That you Sri S.S. Hari Prasad, Superintendent, (under suspension), III Addl. Chief Metropolitan Magistrate's Court, Visakhapatnam at Gajuwaka, while functioning as Senior Assistant, IV Metropolitan Magistrate's Court, for APSRTC (Now I Metropolitan Magistrate's Court for APSRTC), Visakhapatnam, during the period from 22.3.2004 to 31.7.05 and that you Sri M. Sai Kumar, while working as Personal Assistant, III Addl. Junior Civil Judge's Court, Visakahaptnam, during the period from 17.9.97 to 18.9.2005, that both of you have colluded together with a dishonest intention, hatched up a plan to obtain huge amounts from the banks in the names of employees working in courts, without their knowledge, forged their signatures on the applications and other documents, forged the

signatures of the Judicial officers on undertakings and other documents required for sanction of loan, particulars of which are tabulated below and thereby both of you have exhibited gross misconduct by way of forgery, fabrication of documents and obtained loans from various banks aggregating to Rs.5,63,000/- approximately and appropriated the amounts for your personal, which act or acts, if proved or established, would amount to misconduct, mischief, forgery and fabrication of documents and contravention of Rule 3 of APCS (Conduct) Rules, 1964 and both of you are liable for punishment as per AP CCA Rules, 1991."

Article of Charge No.2:

"That you Sri S.S. Hari Prasad, Superintendent (under suspension), III Addl. Chief Metropolitan Magistrate's Court, Visakhapatnam at Gajuwaka and that your Sri M. Sai Kumar, Personal Assistant (under suspension), III Addl. Junior Civil Judge's Court, Visakhapatnam, during the month of September, 2004, colluded together with a dishonest intention, hatched up a plan to obtain huge amounts from the banks in the names of some other persons who are not employees, and not working in any courts situated in Visakhapatnam District, forged their signatures on the applications and other relevant documents required for sanction of loan, and forged the signatures of Sri S. Venkateswara Prasad, formerly IV Metropolitan Magistrate for Railways, Visakhapatnam, presently Senior Civil Judge, Gajuwaka, on the undertakings and salary statements and obtained loan in their names from Punjab & Sind Bank, Suryabagh, Visakhapatnam, aggregating to the amount of Rs.4,50,000/- and appropriated the amounts for your personal, particulars of which are tabulated below and thereby both of you have exhibited misconduct, mischief, forgery and fabrication of documents, which act or acts, if proved or established, would amount to contravention of Rule 3 of APCS (Conduct) Rules, 1964, and liable for punishment as per APCCA Rules, 1991.

Article of Charge No.3:

"That you Sri S.S. Hari Prasad, while working as Superintendent, III Addl. Chief Metropolitan Magistrate's Court, Visakhapatnam at Gajuwaka during the period from 1.8.2005 to 18.9.2005 and that you Sri M. Sai Kumar, while working as Personal Assistant, III Addl. Junior Civil Judge's Court, Visakhapatnam, during the period from 17.9.1997 to 18.9.2005 abruptly absconded from official duties without prior submission of leave applications and sanction of any kind of leave from 19.9.05, when the matter of obtaining loans fraudulently, by both of you from various banks in the names of employees working in courts and in the names of other persons who are not employees and not working in any courts situated in Visakhapatnam District, by forging their signatures on the loan applications and other documents, forged the signatures of the Drawing and Disbursing Officers on undertakings and other documents required for sanction of loan, was published in local editions of Eenadu, Vartha etc., highlighting the forgery signatures of Judicial Officers tarnishing the image of judiciary in the minds of public and thereby both of you have exhibited misconduct or misbehaviour, which act or acts, if proved or established, would amount to contravention of Rule 3 of A.P.C.S. (Conduct) Rules, 1964 and liable for punishment as per APCCS Rules, 1991.

Article of Charge No.4:

"That you Sri S.S. Hari Prasad, while working as Superintendent in the aforesaid court during the aforesaid period, collected security deposits aggregating to Rs.41,000/- (Rupees forty one thousand only) in various cases, which are noted hereunder, from 5.9.05 to 13.9.05, obtained signatures of the Presiding Magistrate in the concerned register and also on the application forms and obtained F.D.Rs, but failed to deposit the amounts till 25.9.05, and on 26.9.05 you telephoned to Sri Md. Fasiuddin, Junior Asst., of III Addl. Chief Metropolitan Magistrate's Court, Gajuwaka at 10.30 a.m. to come to canteen in District Court premises, and handover the cash of Rs.41,000/- to him when the matter came out in news papers and that you have misappropriated the Government money temporarily without depositing on the next working day of the date of collection, and thereby you have exhibited gross misconduct and misappropriation of Government funds temporarily, which act or acts, if proved or established, would amount to misconduct and contravention of Rule 3 of APCS (Condcut) Rules, 1964, and liable for punishment as per APCCA Rules, 1991.

S.No.	Date	Cr.No. & Police tation	Amount
1.	5.9.05	318/05 of Gajuwaka P.S.`	Rs. 10,000/-
2.	8.9.05	105/05 of Malkapuram P.S.	Rs. 10,000/-
3.	11.9.05	141/05 of Malkapuram P.S.	Rs. 10,000/-
4.	13.9.05	155/05 of Malkapuram P.S.	Rs. 3,000/-
5.	13.9.05	75/05 of Steel Plant P.S.	Rs. 5,000/-
6.	13.9.05	114/05 of Steel Plant P.S.	Rs. 3,000/-
		Total	**Rs. 41,000/-**

Article of Charge No.5:

"That you Sri M. Sai Kumar, while working as Personal Assistant, III Addl. Junior Civil Judge's Court, Visakhapatnam, during the aforesaid period, abruptly absconded from official duties from 19.9.05 without prior submission of leave application, and sanction of any kind of leave, and

> without handing over the office almyrah keys to the Presiding Officer, and further you failed to comply with number of copy applications filed in the court of III Addl. Junior Civil Judge, Visakhapatnam, and thereby caused inconvenience to the advocates and parties concerned, which act or acts, if proved or established, would amount of misconduct and gross dereliction of official duties and contravention of Rule 3 of A.P.C.S. (Conduct) Rules, 1964 and liable for punishment as per APCCA Rules, 1991.

4. The petitioner submitted an explanation. When the petitioner as well as the other delinquent namely S.S. Hari Prasad were summoned to appear before the Enquiry Officer, the petitioner alone appeared. The other delinquent failed to appear despite a Gazette Publication, as he was evading service of notices.

5. Therefore, the Enquiry Officer proceeded only as against the petitioner herein.

6. 21 witnesses were examined and 142 documents were marked on the side of the Department. The petitioner examined himself as DW.1 and examined a co-employee as DW.2. 5 documents were marked on the side of the petitioner.

7. On the basis of the defence taken by the petitioner and the evidence on record, the Enquiry Officer submitted a report on 08-06-2012. In his report, the Enquiry Officer held that the charges 1 to 4 were proved only as against Hari Prasad and not as against the petitioner herein. However, Charge No.5 was held proved against the petitioner herein for his unauthorized absence from 01-10-2005 till he was placed under suspension.

8. After furnishing a copy of the enquiry report to the petitioner and giving him an opportunity to object to the findings, the

Disciplinary Authority passed a final order dated 28-08-2012 imposing upon the petitioner, the major penalty of deferment of two annual grade increments with cumulative effect. The disciplinary authority also held that the period of suspension will be treated as "NOT ON DUTY".

9. Aggrieved by the said order, the petitioner filed a statutory appeal. But the appeal was only partly allowed, confirming the penalty of stoppage of two annual increments with cumulative effect, but treating the period of suspension as period spent on duty for the purpose of continuation of service without monetary benefits.

10. Aggrieved by the said order, the petitioner has come up with the above writ petition.

11. The contention of Mr. G.U.R.C. Prasad, learned counsel for the petitioner is that once the petitioner is exonerated of charges 1 to 4, which are very serious in nature, the imposition of a major penalty of stoppage of two increments with cumulative effect was highly disproportionate for the 5th charge held proved. It is also his contention that the very finding of the Enquiry Officer that the petitioner was unauthorisedly absent from 01-10-2005 was contrary to the material on record. According to the learned counsel for the petitioner, calamities struck the petitioner's family in succession and that therefore, he went on leave after duly submitting leave applications. These leave applications, according to the learned counsel, were not forwarded promptly to the District Court. It is claimed by the learned counsel for the petitioner that the petitioner

was able to obtain copies of the leave applications available in the Court where he was working. But the copies of these leave applications were secured only after the enquiry was over. Therefore, his contention is that the petitioner was not even guilty of unauthorized absence and that therefore, the imposition of a major penalty was illegal and unjustified.

12. The learned counsel for the petitioner also advanced an alternative argument that in any case, the refusal of the Appellate Authority to grant monetary benefits in respect of the period of suspension from 27-01-2006 up to 28-08-2012 was unjustified, since the petitioner was not responsible for the prolongation of the suspension or the enquiry. The learned counsel contends that the deprivation of the monetary benefits with regard to an unusually long period of suspension was not correct.

13. We have carefully considered the above submissions.

14. The entire material on record including the enquiry report shows that the petitioner has escaped from charges 1 to 4 by the skin of his teeth. Paragraph 28 of the enquiry report shows that the Enquiry Officer exonerated the petitioner of charges 1 and 2 despite the finding that the two loans, one for a sum of Rs.75,000/- and another for a sum of Rs.53,000/- were taken in the name of the petitioner herein. The Managers of the Banks gave evidence as PWs.12, 17 and 18 stating very clearly that the petitioner was also sanctioned a loan on the basis of the salary certificate. Persons, who figured as guarantors, deposed that their signatures were forged.

Persons in whose names loans were taken, deposed that they never applied for any loan. It is a matter of record that the petitioner was a co-obligant for the loan taken by the other delinquent S.S. Hari Prasad. Despite all this, the Enquiry Officer held in paragraph 28 of the report that the petitioner herein was not hand in glove with the other delinquent. The relevant portion of the paragraph 28 of the enquiry report reads as follows:

> "It is clearly mentioned in the charge sheet that D1 projected himself as an influential court employee, promised court deposits and managed to take loans by forging the necessary papers and also the names of fictitious persons. Even though loans were said to have been given to different persons, some part payments were made by D1 which shows that he is the person who actually utilized the loans, some of the exhibits in this case also contain initials of D1 as if he got the salary certificates prepared and signed by the concerned officers. Except the loan taken from Canara Bank by D1 all other loans related to D1 are the persons projected by him either in the name of real court employees or fictitious persons. The charge sheet against D1 marked as Ex.D5 conclusively shows that the entire episode was managed by D1 who got himself introduced to the bank manager of Punjab & Sind Bank Sri N.M. Ravi with the help of one Chinni Venkatarao. It is also made out that prior to the taking of loans, D2 suffered an injury and during his Earned Leave his niece suffered an accident and lost her legs. D2 as DW1 deposed that D1 gained his confidence by helping him and therefore he signed on the bank loan application. Under the circumstances, it cannot be stated that D2 was in hand and glove with D1 and obtained loans from bank on the basis of forged documents….."

15. Even in his written statement of the defence, the petitioner herein did not plead for a clean chit. All that the petitioner pleaded was that the other delinquent S.S. Hari Prasad won over him and used his services. Paragraph 7 of the written statement submitted by the petitioner to the enquiry report, reads as follows:

> "I further submit that I have also informed by Sri S.S. Hari Prasad that he took another loan for Rs.53,000/- from Canara Bank, M.V.P. Colony, Visakhapatnam, with the documents wherein I put my signatures earlier. In fact, I did not receive any amount from Sri S.S. Hari Prasad for the loans covered under Rs.75,000/- from Punjab & Sind Bank and Rs.53,000/- from Canara Bank, thus, he played pivotal role in obtaining loans by deceitful means and made me a scape goat in the scam of loans. During the injury sustained by me, I used to get severe head-ache and I was not in a position to exercise my discretion in signing the papers brought by him coupled with the fact that I reposed highest faith on him for the services and help he rendered when I was undergoing medical treatment. I did not expect of visualize his mischievous plans and I innocently signed the documents brought by him. I never colluded with the charged employee No.1 Sri S.S. Hari Prasad and obtained huge amounts from the Banks in the names of employees working in the Courts without their knowledge forged their signatures on the applications and other documents. In fact, I am one of the victims along with other employees in whose names the bank loans were taken by the charged employee No.1 Sri S.S. Hari Prasad….."

16. While the persons in whose names loans were obtained by Hari Prasad never even signed any application, but their signatures were forged by Hari Prasad, the case of the petitioner was slightly different. Even admittedly he obliged Hari Prasad by signing the loan applications etc.

17. But the Enquiry Officer chose to look at the case of the petitioner sympathetically and absolve him of charges 1 to 4. The Disciplinary Authority, though there was a possibility, did not choose to disagree with the findings of the Enquiry Officer in respect of charges 1 and 2. Thus, the petitioner escaped from charges 1 and 2, which are very serious in nature, by a hair's breadth. Keeping this in mind, let us examine Charge No.5 of which he was found guilty and the penalty imposed.

18. The Charge No.5 related to unauthorized absence from 19-09-2005. Since there was a leave application, the Enquiry Officer held that the petitioner was not guilty of unauthorized absence at least for the period from 19-09-2005 to 30-09-2005. The Enquiry Officer held the petitioner guilty of unauthorized absence only for the period subsequent to 01-10-2005. The petitioner continued to be absent till he was placed under suspension on 27-01-2006.

19. The defence taken by the petitioner was that he sent leave applications through his co-tenant one Mr. Murthy. But the Enquiry Officer rejected this explanation on the ground that the said Murthy was not examined. If the leave applications allegedly sent by the petitioner were not available on record, the burden of proving that they were actually sent, rests with the petitioner. In order to show that he actually sent the leave applications through his co-tenant Mr. Murthy, the petitioner ought to have examined Mr. Murthy. Since the petitioner failed to discharge the burden cast upon him in this regard, the Enquiry Officer had no alternative but to hold him guilty of the charge.

20. Today, the petitioner has obtained copies of the leave applications allegedly sent by him through the court where he was employed. But these copies were not produced or summoned by the petitioner during the course of enquiry. It must be pointed out at this stage that the petitioner examined himself as DW.1 and examined another person on his behalf as DW.2. The petitioner also marked 5 documents on his side. Nothing prevented the petitioner from

summoning the files from the court, which allegedly, contained his leave applications. In a writ petition under Article 226 of the Constitution, we will not look into new evidence that was not before the Enquiry Officer. This is especially so in disciplinary proceedings. Therefore, the finding of the Enquiry Officer that a part of Charge No.5 stood proved, cannot be assailed.

21. Coming to the proportionality of penalty, it is seen that the petitioner has been imposed only with a penalty of stoppage of increments for two years with cumulative effect. We do not think that the said penalty is highly disproportionate to the gravity of the misconduct, warranting our interference. The petitioner was employed as Personal Assistant. The unauthorized absence of such a person would paralyze the functioning of the officer with whom he was attached. Therefore, the penalty cannot be said to be disproportionate.

22. The last argument revolves around the denial of monetary benefits for the period of suspension. In this case, the suspension has prolonged for six years from 27-01-2006 to 28-08-2012. The prolongation of the suspension does not appear to be due to the prolongation of the enquiry at the instance of the petitioner.

23. The enquiry was a joint enquiry in respect of Mr. Hari Prasad and the petitioner. The petitioner as well as the said Hari Prasad did not appear before the Enquiry Officer at the initial stages. Therefore, both of them were set *ex parte* on 02-04-2007, as seen

from paragraph 4 of the enquiry report. But later, the petitioner participated and the co-delinquent failed to participate.

24. When the enquiry against the petitioner concluded on 21-09-2007, after setting the co-delinquent *ex parte*, he approached this Court by way of a writ petition in W.P.No.19845 of 2007. By an order dated 23-07-2008 passed in the said writ petition, this Court granted one more opportunity to be given to the co-delinquent Mr. Hari Prasad.

25. Therefore, the enquiry was reopened, but the co-delinquent again failed to appear, forcing the Enquiry Officer to set him *ex parte* once again on 03-01-2009. Thereafter, the enquiry concluded in the year 2012.

26. Though the entire period of delay in the conclusion of the enquiry cannot be attributed solely to the petitioner, it is not possible to hold that the petitioner did not have any contribution to make. The petitioner could have approached this Court and sought the splitting up of the enquiry in his case. Alternatively, he could have asked for reinstatement.

27. The Fundamental Rules stipulate that the question treating the period of suspension would depend upon the outcome of the enquiry. Since the charge was held proved, the disciplinary authority passed an order treating the period as leave to which he was entitled. The Appellate Authority modified the same treating the period of suspension as a period spent on duty for all purposes

except monetary benefits. We do not think that the said order is in any way perverse.

In view of the above, we find no reason to interfere with the impugned order. Hence, the writ petition is dismissed. No costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

N. BALAYOGI, J

Date: 13-06-2018

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