

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

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND

* THE HON'BLE MS. JUSTICE J. UMA DEVI

+ W.P.NO.2495 of 2018

% Date: 29-08-2018

Between:

V.V. Subrahmanyam, S/o. late Subba Rao,
Junior Assistant, Junior Civil Judge's Court,
Bheemunipatnam in the Unit of District Judge,
Visakhapatnam.

.... Petitioner

And

1. The Registrar (Administration), High Court of Judicature,
Hyderabad.
2. The District Judge, Visakhapatnam.
3. Enquiry Officer-Judge, Family Court, Visakhapatnam.

... Respondents

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

^ Counsel for Respondents : Mr. Swaroop Oorilla S.C

< GI ST:

> HEAD NOTE:

? Cases referred

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE MS. JUSTICE J. UMA DEVI

WRIT PETITION No.2495 of 2018

ORDER: (Per VRS,J.)

Challenging a penalty of stoppage of one increment with cumulative effect, a Junior Assistant, who worked in the Junior Civil Judge's Court, has come up with the above writ petition.

2. Heard Mr. G.U.R.C. Prasad, learned counsel for the petitioner and Mr. Swaroop Oorilla, learned Standing Counsel for the Registry of the Court.

3. The petitioner was appointed as a Process Amin in the Court of the District Judge, Visakhapatnam in October 1982 and was promoted as Junior Assistant in January, 1984. While he was working in the Junior Civil Judge's Court Gajuwaka, major penalty proceedings were initiated with the issue of a charge memo dated 12.06.2008. The charge memo contained four articles of charges, which in brief, read as follows:

- (i) That while the petitioner was working as O.S. Bench Clerk in the Principal Senior Civil Judge's Court, Visakhapatnam during the period from 23.08.1996 to 31.10.2006, the original records in O.S.No.337 of 2005 were misplaced/lost and were not traced by the petitioner despite several opportunities;
- (ii) That while the petitioner was working as O.S. Bench Clerk in the same Court, he misplaced/lost the written statement, fair issues, depositions of PWs.1 to 3, DW.1 as well as Ex.A.3 & A.4 and Exs.B.2 to B.7 in O.S.No.652 of 1994 ;
- (iii) That while working as O.S. Bench Clerk in the same Court, he failed to handover the detailed charge of records and registers to his successor, despite specific directions of the District Court; and
- (iv) That while working as O.S. Bench Clerk in the same Court, he failed to index the records and maintain the records properly.

4. The petitioner submitted a written statement denying the imputations of misconduct. Not satisfied with the statement of defense submitted by the petitioner, the disciplinary authority appointed the 3rd respondent as an enquiry officer. Before the enquiry officer, four witnesses were examined on the side of the prosecution and four witnesses were examined on the side of the writ petitioner. One document was marked on the side of the prosecution and two documents were marked on the side of the defense.

5. The enquiry officer submitted a report dated 22.08.2009 holding the writ petitioner guilty of charges 1, 3 and 4 and not guilty of charge No.2.

6. A copy of the enquiry report was furnished to the petitioner and the petitioner submitted his representation to the findings. Thereafter, the District Judge, Visakhapatnam passed a final order dated 14.06.2012, accepting the findings of the enquiry officer and imposing a penalty of withholding of one increment with cumulative effect.

7. As against the said order, the petitioner filed a statutory appeal to the 1st respondent herein. By an order dated 23.04.2014, the 1st respondent rejected the appeal. Therefore, the petitioner is before this Court.

8. Before proceeding further, it should be recorded that the petitioner is due to retire from service on attaining the age of superannuation, very shortly, viz., within a month.

9. The main contention of Mr. G.U.R.C. Prasad, learned counsel for the petitioner is that O.S.No.337 of 2005, which relates to charge No.1, was filed for recovery of money against one G.V. Ramana Murthy, on the basis of five promissory notes and that the defendant, who was a

contractor, managed to remove the Court bundle along with the promissory notes and that therefore on a complaint given by one M. Kumar, Junior Assistant, a case was registered in Crime No.117 of 2008 for offences under Sections 379 and 406 I.P.C. According to the learned counsel for the petitioner, the petitioner also sought permission to lodge a police complaint, but the same was rejected. In any case, the bundle was reconstructed and the parties to the suit settled the matter out of Court. Therefore, the learned counsel contended that there was no loss to any of the parties to the litigation and that therefore, the 1st charge ought not to have been held proved.

10. Insofar as the 2nd charge is concerned, the contention of the learned counsel for the petitioner is that it was already held not proved by the enquiry officer. The same has been accepted by the disciplinary authority. Therefore, what remained were only charges 3 and 4, which were mere procedural irregularities. According to the learned counsel, these charges also could not stand, in view of the fact that the charge memo was issued after more than two years of his transfer out of the Principal Senior Civil Judge's Court, Visakhapatnam. In other words, the contention of the learned counsel for the petitioner is that the findings in relation to charge No.1 were perverse and that charges 3 and 4, which were merely procedural in nature, could not have been framed after more than two years of the transfer of the petitioner. In addition to these contentions, the learned counsel for the petitioner also submitted that under Fundamental Rule 24, the disciplinary authority before imposing a penalty of stoppage of increment with cumulative effect, is obliged to consider whether the cumulative effect will have an impact upon the officer's pension. Since no such consideration was made either by the

disciplinary authority or by the appellate authority, the impugned penalty deserved to be set aside.

11. We have carefully considered the above submissions.

12. The first submission revolves around the alleged perversity of findings, insofar as the first charge is concerned. But the averments made in paragraphs 6 and 7 of the affidavit in support of the writ petition are sufficient to show that the enquiry officer was justified in coming to the conclusion that he did. Therefore, paragraphs 6 and 7 of the affidavit in support of the writ petition are extracted as follows:

“I submit that with regard to charge No.1, I submitted in my written statement inter alia that O.S.No.337/05 was filed by one Koganti Hanumantha Rao, plaintiff against Gatti Venkata Ramana Murthy, defendant on the strength of five promissory notes for recovery of sum of Rs.3,26,957/- and it was dismissed for default. The suit was restored to file on 05.09.2006. I have made entries in the diary and recorded the results in the concerned registers and sent the suit bundle to my assistant along with other bundles posted to that day so as to secure them safely in the Almirahs. It is submitted that some other suits for recovery of money due on promissory notes were filed against G.V. Ramana Murthy, the particulars of the suits and suit claims are furnished below:

Sl.No.	Case No.	Suit Claim	Name of the Court.
1.	O.S.No.337/2005	Rs.3,26,057/-	Prl. Senior Civil Judge's Court, Visakhapatnam.
2.	O.S.No.692/2007	Rs.8,56,993/-	I Addl. Senior Civil Judge's Court, Visakhapatnam.
3.	O.S.No.755/2006	Rs.1,69,640/-	I Addl. Senior Civil Judge's Court, Visakhapatnam.
4.	O.S.No.329/2009	Rs.3,01,150/-	Senior Civil Judge's Court, Gajuwaka.

It is further submitted that though the plaintiffs are different, the defendant is one and the same. He is a contractor. He made machination along with his advocate to stealthily remove the bundles along with promotes with a fallacy that he would escape from the liabilities. In that exercise O.S.No.329/2007 on the file of the Senior Civil Judge's Court, Gajuwaka was stolen and on a complaint given by Sri M. Kumar, Junior Assistant, a case in Crime No.117/2008 under Section 379, 406 IPC was registered by the Gajuwaka Police. Similarly the remaining three suits were also managed to take away by the defendant. I have sought permission from the District Judge, Visakhapatnam to lodge a complaint with police against the defendant Gatti Venkata Ramana Murthy but permission was not accorded to me.”

13. Keeping in mind the petitioner's own version as reflected in his affidavit in support of the writ petition, let us see the nature of the evidence let in before the enquiry officer. PW.1 was the plaintiff in O.S.No.337 of 2005. He deposed that the suit promissory note went missing from the Court file. PW.2 was the Principal Senior Civil Judge at the relevant point of time. He deposed that the delinquent was relieved from the Court on 03.11.2006 and he did not handover the charge to his successor. His successor joined duty on 07.11.2006. Thereafter, the factum of the records missing was brought to his notice and responsibility was fixed on the writ petitioner. PW.3 was the Junior Assistant, who succeeded to the place of the writ petitioner. He also deposed that the bundle was misplaced when the petitioner was the Bench Clerk.

14. No motives are attributed by the petitioner to any of these three witnesses. On an appreciation of their oral evidence, the enquiry officer came to the conclusion that the writ petitioner was responsible for the missing of the original records in the suits. We do not find any perversity in the findings of the enquiry officer. It is well settled that even if two views are possible, on the basis of the evidence on record, this Court, under Article 226, will not upset one of the views taken by the enquiry officer. Therefore, we are unable to accept the contention that the findings in respect of Charge No.1 were perverse.

15. The mere fact that the plaintiff and the defendant compromised the matter later, is no ground to exonerate the petitioner. The missing of the original promissory notes from the case bundle of the original suits is a serious matter. Lot of such instances come to our notice on the administrative side. Fixing the responsibility upon the individuals is becoming an increasingly tough job. Once the enquiry officer has

examined concerned persons as witnesses and has appreciated their evidence in a particular manner, we do not think that we will subject the enquiry officer's report to a forensic examination.

16. Insofar as Charges-3 and 4 are concerned, it is seen that the petitioner was relieved from the working station on 03.11.2006. He was obliged to handover the charge and get acknowledgement from his successor. Though the petitioner took a defense in his written statement that he handed over all the suit records and registers to his successor, he admitted that his successor did not handover the copy of the charge list. According to the petitioner, a fresh charge list was prepared and acknowledged only on 05.07.2008.

17. If what the petitioner says is true, he was guilty at least of negligence. A person, who hands over charge, should be careful enough to prepare a charge list and get the acknowledgement on the same from his successor. After having failed to do so for a full period of two years from 03.11.2006 to 05.07.2008, there is no point in the petitioner now lamenting.

18. Insofar as the 4th charge is concerned, the petitioner himself has admitted in his written statement of defense dated 14.07.2008 that though he indexed some records, he might have left some records without indexing due to pressure of work. He actually tendered his apology for the same. Therefore, there is nothing wrong in holding the charges 3 and 4 proved.

19. In view of the above, we find no procedural irregularities in the conduct of the disciplinary proceedings, no violation of the principles of natural justice and no perversity in the findings of the enquiry officer.

Therefore, what remains to be considered is only the contention revolving around A.P. Fundamental Rule 24.

20. A.P. Fundamental Rule 24 stipulates that an increment shall ordinarily be drawn as a matter of course unless it is withheld, on the ground that the conduct of the officer has not been good or his work has not been satisfactory. F.R-24 proceeds further to state that in ordering the withholding of increment, the withholding authority shall state the period for which it is withheld and whether the postponement shall have the effect of postponing future increments. F.R.24 reads as follows:

“F.R. 24. An increment shall ordinarily be drawn as a matter of course unless it is withheld. An increment may be withheld from a Government servant by [the State Government], or by any authority to whom the State Government may delegate this power if his conduct has not been good, or his work has not been satisfactory. In ordering the withholding of an increment the withholding authority shall state the period for which it is withheld, and whether the postponement shall have the effect of postponing future increments.”

21. Ruling (4) (a) under F.R.24, on which heavy reliance is placed, reads as follows:

(4) (a) – Where it is proposed to withhold an increment in an officer's pay as a punishment, the authority inflicting the punishment should before the order is actually passed, consider whether it will affect the officer's pension, and if so, to what extent if it is decided finally to withhold the increment, it should be made clear in the order that the effect of the punishment on the pension has been considered and that the order is intended to have this effect.

22. Technically Mr. G.U.R.C. Prasad, learned counsel for the petitioner is right in contending that whenever a penalty of withholding of increment is ordered, the withholding authority should state whether the withholding of increment shall have the effect of postponing future increments. But once it is stated in the order of penalty that the penalty is with cumulative effect, it tantamount to the acknowledgment in writing

that the postponement of increment will have the effect of postponing future increments.

23. Insofar as Ruling (4) (a) is concerned, the same cannot be considered to be mandatory but only directory. In any case, while imposing the penalty, the disciplinary authority has issued a direction in the last paragraph of his order, which reads as follows:

“The Junior Civil Judge, Gajuwaka is directed to make necessary entries in the service register of the delinquent as follows:

“The major penalty of withholding of one increment with cumulative effect as per Part-IV Rule 9 (VI) of CCA and Conduct Rules is imposed on the delinquent for missing of records, not handing over the detailed charge to successor and not indexing records and not mixing up filing papers in relevant records.”

The delinquent is warned to be more cautious in future.”

24. Thus, the fact that the order was intended to have effect on the pension is indicated in the last portion of the order of the District Judge.

25. Therefore, considering the fact that at least the 1st charge held proved against the petitioner is serious, we are of the view that no interference is called for with the order of penalty. Hence the writ petition is dismissed. There shall be no order as to costs.

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

JUSTICE V. RAMASUBRAMANIAN

JUSTICE J. UMA DEVI

29th August, 2018
Js.

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

WRIT PETITION No.2495 of 2018



29th August, 2018

Js.