

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION NO.1704 OF 2013

ORDER

(Per Hon'ble Sri Justice Sanjay Kumar)

O.A.No.7218 of 2007 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (*hereinafter*, 'the Tribunal'), was filed by the respondent herein assailing G.O.Rt.No.2140, Revenue (Vigilance.IV) Department, dated 28.09.2006, whereby he was subjected to disciplinary proceedings on two charges. By order dated 22.08.2008, the Tribunal allowed the O.A. holding that the charges were framed against the respondent-applicant without application of mind and without examination of the records. Both the charges were held to be baseless and without any material whatsoever, so as to proceed further. Aggrieved thereby, the State of Andhra Pradesh and its Commissioner, Endowments Department, filed this writ petition.

Heard the learned Government Pleader for Services, Andhra Pradesh, and Sri P.Gangaiah Naidu, learned senior counsel representing Smt. G.Bhanu Priya, learned counsel for the respondent-applicant.

The respondent-applicant was the Deputy Commissioner of Endowments at Guntur from 26.05.1997 to 31.12.1998. It appears that O.A.No.46 of 1986 was filed by one Mantri Gangaiah before the Deputy Commissioner of Endowments, Guntur, under Section 77(1)(d) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966, claiming that Udasi Matam, a mutt situated in old Guntur, was a religious institution and seeking a declaration that the said mutt was a public religious institution and that an extent of land situated at Guntur, admeasuring Ac.87.00 cents, was attached to it. While so, W.P.No.7818 of 1988 was filed by Panchaiti adhara Bara Udasin Nirman, represented by its

Manager, seeking to pre-empt the said enquiry on the ground that the institution was registered in the State of Uttar Pradesh and only that State had competence and jurisdiction to deal with the matter as to whether it was a public or a private endowment. By order dated 12.11.1996, a Division Bench of this Court dismissed the writ petition observing that as the mutt functioned at Guntur and was a separate entity not connected with the alleged institution at Uttar Pradesh, as claimed by the writ petitioner, all disputes would have to be resolved by a regular enquiry under Section 87 of the Act and the writ petitioner had an effective alternative remedy of filing a statutory appeal, if he was aggrieved by the order passed by the Deputy Commissioner of Endowments, Guntur. The Division Bench accordingly directed the Deputy Commissioner of Endowments, Guntur, to proceed with the enquiry as expeditiously as possible, while dismissing the writ petition.

It is an admitted fact that pursuant to this order, the records relating to the case were made over to the office of the Deputy Commissioner of Endowments at Guntur only on 21.01.1999.

While so, the charges framed against the respondent-applicant under G.O.Rt.No.2140 dated 28.09.2006, in relation to this issue, read as under:

'CHARGE No.1

That the High Court while disposing the W.P.No.7818/88 on 12.11.96 directed the Deputy Commissioner of Endowments Department, Guntur to continue the pending enquiry in O.A.46/86 and to dispose it as expeditiously as possible. But the Deputy Commissioner, Endowments Department, Guntur has not taken up enquiry and not finalized. His inaction resulted in failure in resuming the lands purchased by the parties till today and allowed the purchasers to enjoy the benefits of the lands despite High Court Orders.

Charge No.2

That the Commissioner, Endowments Department, Hyderabad published the Udasi Mutt at Guntur under Section 6 © (ii), 6 (d) of

Endowments Act 30/87 on 12.6.2001, the Deputy Commissioners and Assistant Commissioners failed to take follow-up action in finalizing the pending O.A. or resuming the lands of the Udasi Mutt, Guntur in favour of the Endowments Department as per Law. Further, they are not even aware of the fact till 5.1.2006 regarding publication of the Mutt under provisions of the Endowments Act 30/87 on 12.6.2001. By the above said act Sri M.Raghunadh, former Deputy Commissioner, Endowments Department, Guntur has exhibited lack of integrity, devotion to duty and misconduct and thereby contravened the Rule 3 (1) (2) & (5) of Andhra Pradesh Civil Services (Conduct) Rules, 1964.'

Aggrieved by the framing of these charges, the respondent-applicant approached the Tribunal. His specific contention was that as he had demitted office as the Deputy Commissioner of Endowments at Guntur on 31.12.1998, he could not be found fault with for failing to proceed with the enquiry as directed by the Division Bench in the order passed in W.P.No.7818 of 1988, when it was an admitted fact that the records relating to the said enquiry were only made over by the Government Pleader, High Court of Andhra Pradesh, under proceedings dated 21.01.1999. He therefore contended that the first charge had been framed without application of mind and without examining the records.

As regards the second charge, he pointed out that the charge itself indicated that follow-up action was to be taken pursuant to the Notification dated 12.06.2001 and as he was not holding office as the Deputy Commissioner, Endowments at Guntur after 31.12.1998, he could not be held responsible for the lack of follow-up action.

The stand of the authorities before the Tribunal was that the charges had been framed basing on the enquiry report dated 26.07.2006 of the Vigilance and Enforcement Department and that it was incorrect to state that they were framed without proper verification and application of mind. They

further pointed out that as the respondent-applicant had submitted his written statement of defence on 09.11.2006 and an enquiry officer was appointed thereafter, he should await the result of the enquiry.

The Tribunal, however, took note of the circumstances in relation to the charges along with the fact that the respondent-applicant demitted office on 31.12.1998 and held in his favour. In consequence, the Charge Memo issued *vide* G.O.Rt.No.2140 dated 28.09.2006 and the proceedings consequential thereto were quashed.

Learned Government Pleader would assert that once the Charge Memo was issued and the respondent-applicant had also acted upon it by submitting his written statement of defence, the Tribunal ought not to have interfered in the matter at that stage. She would rely upon SECRETARY, MINISTRY OF DEFENCE V/ s. PRABHASH CHANDRA MIRDHA¹, wherein the Supreme Court observed that a charge-sheet cannot generally be the subject matter of challenge as it does not adversely affect the rights of the delinquent, unless it is established that the same was signed by an authority not competent to initiate the disciplinary proceedings. It was further observed that neither the disciplinary proceedings nor the charge-sheet should be quashed at the initial stage as it would be premature to deal with such issues. Learned Government Pleader would therefore contend that the Tribunal erred in going into the merits of the charges levelled against the respondent-applicant.

Per contra, Sri P.Gangaiah Naidu, learned senior counsel, would assert that when the admitted facts clearly demonstrate the total non-application of mind by the authorities concerned while initiating disciplinary proceedings against the respondent-applicant, it would be a travesty of justice to expect

¹ (2012) 11 SCC 565

him to go through the process of a disciplinary enquiry and the consequences thereof. Learned senior counsel would point out that the Supreme Court, in PRABASH CHANDRA MIRDA¹, affirmed that law does not permit quashing of a charge-sheet in a routine manner and in case a charge-sheet is challenged, the Court may quash such a charge-sheet after considering the gravity of the charge and all relevant factors involved in the case, weighing all the facts both for and against the delinquent employee, and must reach a conclusion which is just and proper in the circumstances. He would state that the Supreme Court further observed that though ordinarily a writ petition would not lie against a charge-sheet or a show-cause notice for the reason that it does not give rise to any cause of action, if it was issued by a person having no jurisdiction or competence to do so or when some other right of the party is infringed, a writ petition would lie.

Applying the aforesaid principle to the case on hand, this Court finds merit in the submission of Sri P.Gangaiah Naidu, learned senior counsel, that to put the respondent-applicant through the process of departmental proceedings merely because a charge-sheet has been issued would be palpably unjust when the very charges framed against him are demonstrably untenable on the face of it. It is not in dispute that the respondent-applicant held office as the Deputy Commissioner of Endowments at Guntur from 26.05.1997 to 31.12.1998. Though the order in W.P.No.7818 of 1988 was passed on 12.11.1996, there is no indication of the respondent-applicant having received the said order and having failed to take steps thereafter. On the other hand, the respondent-applicant stated in his O.A. that the result of the writ petition was informed by the Government Pleader of the High Court on 13.11.1996 to the then Deputy Commissioner of Endowments, Guntur, but the connected records were sent by the

Government Pleader only under his letter dated 21.01.1999. He further stated that the letter dated 13.11.1996 received from the Government Pleader was closed by his predecessor-in-office, *vide* DDis.No.A2/6171/88 dated 28.04.1997, before he took charge as the Deputy Commissioner of Endowments at Guntur.

In the light of these facts, it is clear that there is no basis for the imputation that the respondent-applicant, despite being aware of the direction of the Division Bench, remained inactive. Though the learned Government Pleader would contend otherwise, we find no material to infer any such negligence or carelessness on his part. As it is an admitted fact that the records were actually received from the Government Pleader's Office only on 21.01.1999, after the demitting of office by the respondent-applicant at Guntur, he could not be held responsible for the delay thereafter in completing the enquiry as directed by this Court in W.P.No.7818 of 1988. The first charge framed against him therefore falls to the ground at the very threshold and requires no further enquiry.

As regards the second charge, the lack of application of mind is even more demonstrable. The charge reads to the effect that the respondent-applicant failed to take follow-up action after issuance of the Notification dated 12.06.2001 by the Commissioner of Endowments, Andhra Pradesh. Admittedly, he demitted office at Guntur on 31.12.1998. The learned Government Pleader has no explanation as to how he would be responsible for the failure, if any, to take follow-up action after he demitted office.

On the above analysis, this Court finds no error in the order passed by the Tribunal holding that the charges framed against the respondent-applicant were completely bereft of application of mind and were unsustainable on the admitted facts, requiring no further enquiry.

The writ petition is therefore devoid of merit and is accordingly dismissed. Pending miscellaneous petitions shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

M. GANGA RAO, J

23rd APRIL, 2018

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