

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WPMP.No.2183 of 2010 in WP.No.968 of 2008;

WPMP.No.51568 of 2017 in WP.No.968 of 2008;

and

WP.No.968 of 2008

COMMON ORDER :

Heard Sri Ch. Jagannatha Rao, counsel for petitioner, and Sri A. Yadava Reddy, learned Standing Counsel for Telangana State Education and Welfare Infrastructure Development Corporation, Hyderabad (T.S.E.W.I.D.C.), for respondent.

2. In this Writ Petition, the petitioner has assailed charge-memo dt.01.05.2007 issued to him by the respondent twelve years after the petitioner had executed a school complex work in 1994, and to set aside the same.

3. The petitioner contends that he joined the respondent-Organization as Assistant Executive Engineer with effect from 07.04.1986 after appropriate process of selection in a sanctioned vacancy, and he was promoted as Dy. Executive Engineer on In-Charge basis on 19.12.2005.

4. The petitioner contends that he was involved in his capacity as Assistant Executive Engineer in the construction of a residential school complex for girls at Chitkul Village, pursuant to a sanction granted vide G.O.Ms.No.88 S.W. dt.01.07.1994, for construction of such hostel complexes in 22 new residential schools. The petitioner

contends that he prepared estimates component-wise with S.S.R. 1993-94 as per necessity, that plans were enclosed with estimates and L.S., provisions were provided in estimates to the minimum extent possible for water supply and sanitary arrangements, etc., and he had adjusted the advance amount of Rs.2 lakhs sanctioned for execution of works departmentally. He contended that works were started as per instructions of the Executive Engineer in view of the proposed inauguration of the School by the then Hon'ble Chief Minister on 18.08.1994, and he performed his duties under the instructions of higher authorities to complete the works in three weeks.

5. The petitioner contends that charges framed against one Sri P.G.U. Bhaskar Rao, who was Executive Engineer (Panchayat Raj) and working on deputation at Sangareddy, and who was also issued a charge-memo on 13.09.2002 in connection with the irregularities and misuse of funds in the execution of construction of same R.S. Complex for girls in Chitkul Village, Patancheru Mandal, and for causing loss to Government to a tune of Rs.14.38 lakhs, were dropped on 25.02.2005. But, thereafter, a charge-memo was issued on 01.05.2007 to petitioner asking him to submit written statement of defence on the ground that he committed irregularities in execution of the said works and caused loss to the Government to a tune of Rs.14.38 lakhs.

6. The counsel for petitioner placed reliance on the decisions of the Supreme Court in **P.V. Mahadevan v. M.D, T.N. Housing**

Board¹ and M.V. Bijlani v. Union of India and others², in support of his contention that if there is no convincing explanation for the inordinate delay in initiating departmental proceedings, it could be prejudicial to the employee and departmental proceedings, therefore have to be quashed.

7. On 28.01.2008, while admitting this Writ Petition, this Court granted interim suspension of the charge-memo in WPMP.No.1153 of 2008 in WP.No.968 of 2008.

WPMP.No.2183 of 2010 :

8. WPMP.No.2183 of 2010 was filed to substitute the description of the respondent, viz., 'Andhra Pradesh Education and Welfare Infrastructure Development Corporation Limited (A.P.E.W.I.D.C.L.), Andhra Pradesh, Hyderabad' in the place of 'Andhra Pradesh Scheduled Caste Co-op Finance Corporation Limited, Andhra Pradesh, Hyderabad'.

9. This application was ordered because the Andhra Pradesh Education and Welfare Infrastructure Development Corporation Limited (A.P.E.W.I.D.C. Limited), Andhra Pradesh, Hyderabad was created, and the services of petitioner were transferred to that organization in the year 2008 vide G.O.Ms.No.107 Education (SE.Trig) Department, dt.30.08.2008, and G.O.Ms.198, Social Welfare (SCP.II.2) Department dt.03.11.2008. Accordingly, this Petition is ordered.

¹ (2005) 6 SCC 636

² (2006) 5 SCC 88

WPMP.No.51568 of 2017 :

10. Subsequently, WPMP.No.51568 of 2017 has been filed to implead the Telangana State Education and Welfare Infrastructure Development Corporation, Hyderabad (T.S.E.W.I.D.C.), which had come into existence after the bifurcation of the composite State of Andhra Pradesh into the States of Telangana and the residuary State of Andhra Pradesh. This application is not opposed, and it is accordingly allowed.

Contentions of counsel for respondent :

11. Sri A. Yadava Reddy, learned Standing Counsel for Telangana State Education and Welfare Infrastructure Development Corporation, Hyderabad (T.S.E.W.I.D.C.), for respondent, adopted the counter-affidavit filed by the Andhra Pradesh Scheduled Caste Co-op Finance Corporation Limited, Andhra Pradesh, Hyderabad.

12. He contended that in the construction of the residential school complex at Chitkul for girls Government funds to the tune of Rs.14.38 lakhs were mis-appropriated by the Officials of different departments who worked therein including the petitioner. He relied on a letter dt.28.11.1996 of the State Government including Vigilance and Enforcement report dt.01.10.2006, and requested that conduct of a detailed enquiry is necessary. It is stated that the Government in letter dt.20.04.2002 requested to furnish draft articles of charge in respect of the Executive Engineer (Panchayati Raj), Sri P.G.U. Bhaskar Rao, and also directed to initiate departmental action against the petitioner; that

draft articles of charges were prepared and furnished to the Andhra Pradesh Scheduled Caste Co-operative Finance Corporation Limited on 31.05.2005; that thereafter, an officer of the Vigilance and Enforcement Department was appointed as the Presenting Officer and charge-memo was issued to the petitioner and other persons. It is contended that the petitioner and other persons took advantage of the instructions of the District Collector, prepared estimates and obtained sanctions for Rs.55 lakhs without any detailed plans of the existing sheds and working estimates of the new items; that the estimates were boosted up and shown very high; and measurements recorded in the M.Books were found to be fictitious and unreal. It is alleged that the petitioner drew a sum of Rs.2 lakhs in his name against the Financial Code without obtaining any permission from the competent authority and relied upon the decisions in **State of Uttar Pradesh v. Brahm Datt Sharma and another**³ and **Brajendra Singh Yambem v. Union of India and another**⁴, in support of his contentions.

13. From the facts narrated above, it is clear that in respect of construction works taken up by the petitioner for the residential complex for girls in Chitkul Village, Patancheru Mandal, Medak District in 1994, charge-memo has been issued to the petitioner in the year 2007, 13 years later.

14. The counsel for petitioner contended that if enquiry is conducted into events which took place 13 years back it would be

³ (1987) 2 SCC 179

⁴ (2016) 9 SCC 20

practically very difficult to an employee to establish his innocence since he would not remember the events in detail, making it virtually impossible for him to escape punishment.

15. I completely agree with the said contention since there is no valid explanation for the inordinate delay in initiating the enquiry proceedings by issuance of the charge-memo, thirteen years later.

16. While it is true that it is not possible to lay down any pre-determined principles applicable to all cases in all situations where there is delay in concluding the disciplinary proceedings, it cannot be denied that a delinquent employee has a right that disciplinary proceedings against him be concluded expeditiously.

17. Allegations of the nature contained in the charge-memo, in the present case, are complex and require considerable material to disprove, which 13 years after the event, an employee may not be able to disprove because of difficulty in remembering the events, and it would thus cause grave prejudice to the employee.

18. It is not the case of the respondents that the petitioner is to blame for the delay in initiating disciplinary proceedings.

19. In **P.V. Mahadevan** (1 supra), in respect of irregularities which occurred in the year 1990, the disciplinary action was initiated in the year 2000 against an employee of the Tamil Nadu State Housing Board on the basis of an audit report received in the second-half of 1994-95. The Court held that there is no acceptable explanation on

the side of the respondent explaining the inordinate delay in initiating departmental proceedings and allowing the respondent to proceed further with the departmental proceedings at that distance of time which prejudiced the appellant.

20. Similar view has been taken in **State of M.P. v. Bani Singh**⁵ and **State of Andhra Pradesh v. N. Radhakishan**⁶.

21. In **M.V. Bijlani** (2 supra) also, the Supreme Court followed the same principle and held that initiating disciplinary proceedings six years after the event would cause prejudice to the delinquent petitioner, and quashed it.

22. Though the counsel for respondent cited the decisions in **Brahm Datt Sharma and another** (3 supra) and **Brajendra Singh Yambem** (4 supra), both these cases relate to initiation of disciplinary proceedings after retirement of an employee under the applicable pension rules. The question of inordinate delay in initiating disciplinary proceedings was not considered in the said judgments. They only decide that where a Government servant is found guilty of misconduct which causes pecuniary loss to the Government, it can direct reduction in pension after affording opportunity of hearing to a Government servant, and his retirement from service does not give him any immunity if the applicable rules permitted continuance of departmental proceedings even after he retires. Therefore, the said decisions have no application to the facts of the present case.

⁵ 1990 Supp SCC 738

⁶ (1998) 4 SCC 154

23. Accordingly, the Writ Petition is allowed. The charge-memo dt.01.05.2007, issued by the Andhra Pradesh Scheduled Caste Co-op Finance Corporation Limited, Andhra Pradesh, Hyderabad, is set aside; and its successor, viz., Telangana State Education and Welfare Infrastructure Development Corporation, Hyderabad (T.S.E.W.I.D.C.), is directed to grant the petitioner all subsequential benefits which had been withheld on account of issuance of the said charge-memo, including his promotion, etc., within a period of three (03) months from the date of receipt of copy of the order.

24. The Telangana State Education and Welfare Infrastructure Development Corporation, Hyderabad (T.S.E.W.I.D.C.) is also directed to pay costs of Rs.3,000/- to the petitioner.

25. Accordingly, the Writ Petition is allowed with costs.

26. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 12.02.2018

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