

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

WRIT PETITION No.9732 of 2018

ORDER: (Oral)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present petition, the petitioners have challenged the order dated 13th March 2017 passed in O.A.No.5438 of 2017, whereby, the application under Section 19 of the Administrative Tribunals Act, 1985, filed by the respondent herein, has been allowed.

2. The present writ petition is filed on the ground that the learned Tribunal failed to see that the respondent has misappropriated an amount of Rs.5,65,000/- by forging the signatures of Headmistress and withdrawn from Government funds without any authority. The learned Tribunal ought to have remitted back the matter for *de nova* inquiry so as to follow Rule 20 of Andhra Pradesh Civil Services Rules, 1991. Thus, there is an illegality and perversity in the order passed by the Tribunal.

3. Respondent, while working as Vocational Instructor in Government High School, Sullurpet, was placed under suspension on 15.11.2013 by the 1st petitioner on the ground that he committed misappropriation of Government funds relating to school grant by withdrawing an amount of Rs.5,65,000/- from Bank Account No.11069726678 with forged signatures of Headmistress of the school from 07.01.2013 to 20.07.2013 and later remitted the said amount in three instalments.

4. As per Rule 20 of APCS (CC&A) Rules, 1991, Articles of charge have to be issued by the disciplinary authority and thereafter explanation has to be obtained from the delinquent. After obtaining explanation only, inquiry officer has to be appointed as per the circumstances therein. However, the 1st petitioner appointed the inquiry officer on 28.11.2013 for conducting inquiry under Rule 20 of APCS (CC&A) Rules, 1991 against the respondent and thereafter issued article of charge to the respondent on 30th April 2014 i.e. nearly after Five months of appointing inquiry officer, which is contrary to Rule 20 of APCS (CC&A) Rules.

5. We note, the inquiry officer, after conducting inquiry, submitted report, wherein, it is mentioned that on telephonic instructions from the Bank, he was informed that the signatures on the challans were not forged. He recommended for transfer of respondent to some other place by imposing minor penalty. Admittedly, the inquiry officer has not conducted the inquiry by examining the witnesses mentioned in the Article of charge. It was his duty to examine the witnesses and also give opportunity to the respondent to cross-examine them. On receiving inquiry report, the 1st petitioner issued show cause notice in Rc.No.7478/B4/2013, dated 17th June 2014 along with the inquiry report, calling for explanation from the respondent as to why major penalty of stoppage of two annual grade increments with cumulative effect shall not be imposed on him. The respondent submitted detailed explanation to the said show cause notice. Thereafter, again, the 1st petitioner issued another show cause notice in Rc.No.7478/B4/2013, dated 12th August 2014 to the respondent, asking him to submit explanation to the proposed

major penalty. The respondent submitted his explanation to the said notice also. Thereafter, 1st petitioner issued proceedings in Rc.No.7478/B4/2013, dated 25th September 2014, imposing the major penalty of compulsory retirement under Rule 9(viii) of APCS (CC&A) Rules, 1991 against the respondent. Being aggrieved, he filed an appeal before the Regional Joint Director of School Education, Guntur i.e. 2nd petitioner, which was rejected through proceedings in Rc.No.4850/A3/2014, dated 10th August 2015.

6. We further note that the District Educational Officer, SPSR Nellore District i.e. the 1st petitioner had not taken independent decision while imposing the major penalty of compulsory retirement against the respondent. It was only based on the orders of Collector and District Magistrate, SPSR Nellore District, dated 30th July 2014 in Note File C.No.7478/B4/2013, the 1st petitioner imposed the said penalty, which he clearly admitted in the counter affidavit. As such, it is illegal, arbitrary and is liable to be set aside.

7. In view of the facts recorded above, we find no ground to interfere with the order passed by the learned Tribunal.

8. Finding no merit in the present writ petition, the same is accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

SURESH KUMAR KAIT, J

ABHINAND KUMAR SHAVILI, J

June 11, 2018
ajr