

THE HON'BLE SRI JUSTICE M. GANGA RAO

WRIT PETITION No.20698 of 2000

O R D E R:

The petitioner working as Hamali in the 1st respondent Visakhapatnam Port Trust filed this writ petition being aggrieved by the proceedings No.TRE/PC/CMJP/DDR dated 27.5.2000 of the 3rd respondent, whereby he was terminated from service, and to quash the same as illegal and arbitrary.

The case of the petitioner is that he was appointed as casual dock Khalasi on compassionate grounds on 29.1.1975. Subsequently, on 3.4.1976, he was appointed as Hamali in Commercial Section as Class IV employee with Employee No.145348. On 17.1.1996, the 3rd respondent issued a memo to the petitioner to produce his original school certificate, Transfer Certificate and Conduct Certificate etc., Again a second memo was issued on 8.2.1996 to the petitioner directing him to produce the original testimonials. The petitioner submitted explanation on 16.2.1996 stating that in spite of his best efforts, he could not trace the testimonials as they were lost while shifting his residence. The 3rd respondent, on 29.8.1996 issued a charge memo to the petitioner, without considering his explanation, under Regulation 10 of Visakhapatnam Post Employees' (Classification, Control and Appeal) Regulations, 1968. The Senior Deputy F.A. & CAO was appointed as Enquiry Officer. Based on the Enquiry Officer's report, the disciplinary authority imposed a punishment of reduction of pay by two stages for a period of three years with

cumulative effect vide proceedings No.TRE/PC/CMJP/DDR dated 17.7.1999. Thereafter, the petitioner preferred appeal to the 1st respondent on 16.8.1999 and appeal is pending. For the self same allegation, another Charge Memo No.TRE/PC/CMJP/DDR dated 15.7.1999 was given to the petitioner and he submitted his explanation on 31.7.1999. The Enquiry Officer was appointed and a formal enquiry was conducted and the Enquiry Officer submitted the Enquiry Report dated 21.9.1999. The petitioner was issued notice dated 3.5.2000 seeking his explanation and the petitioner submitted his explanation on 15.5.2000. The disciplinary authority through the impugned proceedings No.TRE/PC/CMJF/DDR dated 27.5.2000 passed order of removal from service. Aggrieved by the same, the petitioner also preferred an appeal to the 2nd respondent on 27.6.2000 but so far the appeal is not considered and no orders are communicated to the petitioner. Being aggrieved by the same, the present writ petition is filed.

The respondents filed counter affidavit stating with all the service jurisprudence without mentioning the date or proceedings in the counter. No documents are filed in support of the counter. It is stated in the counter that the Enquiry Officer was appointed and he submitted the report. The disciplinary authority considered the explanation submitted by the petitioner and having considered the evidence available on record, the order of removal from service was issued against the petitioner for the proved misconduct

Ms.K.Priyanka Lakshmi appearing for Ms.M.Vidyavathi, counsel for the petitioner would contend that the petitioner was appointed on compassionate grounds as Khalasi in the 1st respondent Port in the year 1975 and thereafter on 3.4.1976 he

was appointed as Hamal in the Commercial Section as Class IV employee on permanent basis. Since then he has been discharging his duties as Hamal without any complaint whatsoever. The petitioner had put in nearly 20 years of unblemished service. Learned counsel would further contend that on the allegation that the petitioner had submitted false information with regard to educational qualifications and testimonials, the 3rd respondent issued a memo in the year 1996 and the petitioner submitted his explanation to the memo. Again, another memo was issued on 8.2.1996 to the petitioner for which he submitted his explanation. The 3rd respondent without considering petitioner's explanation, got conducted enquiry and based on the Enquiry Report, a punishment of reduction of pay by two stages for a period of three years with cumulative effect was imposed on the petitioner vide order dated 17.7.1999. Surprisingly, again the 3rd respondent issued another Charge Memo dated 15.7.1999 for the self same allegations. Pursuant to the charge memo, Enquiry Officer was appointed and enquiry was conducted. In the enquiry, the petitioner was not allowed to cross examine the District Educational officer, based on whose report, the charges are proved and he was illegally removed from service. The petitioner, after removal from service, find it difficult to meet his both ends and he could not be employed gainfully anywhere and his family is put to severe financial hardship. Learned counsel further contend that the petitioner preferred appeal but the 1st respondent has so far not taken any decision on the appeal. Counter is also silent in respect of the appeal.

Per contra, Sri N.Srinivas appearing for Ms. V.Uma Devi, counsel for the respondents would contend that a memo was issued to the petitioner stating that he failed to produce original testimonials for verification of the 1st respondent, the petitioner submitted his explanation. Again another memo was issued to him on 8.2.1996, to which the petitioner submitted his explanation. Thereafter, a charge memo was issued to him vide proceedings dated 28.9.1996, Enquiry officer was appointed and enquiry was conducted. Based on the report of the Enquiry Officer, the petitioner was imposed a punishment of reduction of pay by two stages for a period of three years with cumulative effect. Learned counsel for the respondents while reiterating the contentions in the counter affidavit emphatically submitted that the earlier memos issued to the petitioner are altogether different but, however, as per the procedure, after conducting detailed enquiry and based on the report of the Enquiry officer, the petitioner was imposed punishment of reduction of pay by two stages for a period of three years with cumulative effect. Thereafter, another charge memo was issued on 15.7.1999 directing the petitioner to produce original testimonials. Counsel for the respondents would submit that this charge is altogether a different charge to that of the earlier memos and they are entitled to conduct enquiry as per the regulations of Port and after conducting enquiry, after giving due opportunity to the petitioner, he was removed from service and there is no illegality or irregularity in removing the petitioner from service.

In the facts and circumstances of the case and in considered view of this Court, it is found that the petitioner was already

imposed punishment of reduction of pay by two stages for a period of three years with cumulative effect on 17.7.1999, by conducting enquiry in respect of 1st charge memo dated 17.01.1996. This Court having perused both the charge memos, found that the 2nd charge memo dated 15.7.1999 was issued to the petitioner for the self same charge in respect of which 1st charge memo was issued to the petitioner, imposed punishment. The petitioner submitted his explanation on 31.07.1999 to the 2nd charge memo. The 3rd respondent without considering the explanation and got conducted enquiry in which the petitioner was not given opportunity to cross-examine the District Educational Officer, basing on whose report, the charges were came to be proved. The Enquiry report dated 21.08.1999 was submitted by the enquiry officer. Thereafter, notice was issued to the petitioner on 03.05.2000 and he submitted his explanation and finally the disciplinary authority passed removal order dated 27.05.2000. The removal of the petitioner from service for the self same charge amounts to 'double jeopardy' which is violative of Article 20(2) of the Constitution of India. This Court finds that the removal of the petitioner from service is illegal and is liable to be set aside.

Accordingly, the order of the 3rd respondent in proceedings No.TRE/PC/CMJP/DDR dated 27.05.2000 is set aside. At the time of filing of the writ petition in the year 2000, the petitioner was aged about 44 years. Now this Court has heard the writ petition in the year 2018 and by this time, the petitioner might have attained the age of superannuation. Learned counsel for the petitioner is unable to contact him. However, it is found that the removal of the petitioner is illegal and same is set aside directing the respondents

to pay lump sum amount equivalent to full back wages in lieu of reinstatement, continuity of service and back wages. The entire exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

Accordingly, the Writ Petition is allowed. No order as to costs.

2 Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M. GANGA RAO

Date: 13/07/2018

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