

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITIONS Nos.21166 & 21514 OF 2006

COMMON ORDER:

1. Since the issues involved in both the writ petitions is one and the same, they are heard together and are being disposed of by this common order.

2. W.P.No.21166 of 2006 is filed by the petitioner-D. Pandu, seeking to issue a writ of Mandamus declaring the order dated 5.4.2006 passed by the 1st respondent herein confirming the order of the appellate authority/2nd respondent herein dated 10.8.1990, and the penalty order dated 27.5.1988 issued by the 3rd respondent, as illegal and arbitrary, and consequently, to direct the respondents to reinstate the petitioner with all consequential benefits including continuity of service, back wages and all attendant benefits.

3. W.P.No.21514 of 2006 is filed by the petitioner-K. Mallaiah, seeking to issue a writ of Mandamus declaring the order dated 5.4.2006 passed by the 1st respondent herein confirming the order of the appellate authority/2nd respondent herein dated 28.2.1990, and the penalty order dated 27.5.1988 issued by the 3rd respondent, as illegal and arbitrary, and consequently, to direct the respondents to reinstate the

petitioner with all consequential benefits including continuity of service, back wages and all attendant benefits.

4. For the sake of convenience, the facts in W.P.No.21166 of 2006 are discussed hereunder.

5. The petitioners were appointed in the Central Ware Housing Corporation on permanent and regular basis as Chowkidars on 12.7.1985 and 20.1.1984 respectively. Since then, they had been discharging their duties. While so, in connection with theft of six bags of rice from warehouse godowns on the intervening night of 1.12.1986/2.12.1986, the petitioners were placed under suspension in the month of December, 1986 along with five other chowidars. Subsequently, on 8.1.1987, separate memos were issued to the petitioners directing them to show cause as to why action should not be taken for removal from service, for which they submitted their explanation. On 27.2.1987, charge sheets were issued to the petitioners, for which also, they submitted their explanation. Being not satisfied with the same, enquiry was conducted. Basing on the enquiry report, the disciplinary authority-3rd respondent passed orders dated 27.5.1988 imposing punishment of removal on the petitioners. Against the said orders, the petitioners filed appeals before the 2nd respondent and the 2nd respondent rejected the appeals vide orders dated 10.8.1990 and 28.2.1990 respectively. The

petitioners filed W.P.No.9769 of 1988 before this Court and this Court dismissed the said writ petition while giving liberty to file review under Regulation No.69 before the 1st respondent and in pursuance of the said order, the petitioners filed review before the 1st respondent. But the said review was rejected by the 1st respondent. Questioning the said orders, the petitioners filed W.P.Nos.3892 and 3897 of 2000. This Court vide order dated 7.2.2006 disposed of the said writ petitions setting aside the orders of reviewing authority and directing the 1st respondent to pass a reasoned order. The 1st respondent-reviewing authority reconsidered the matter and rejected the same by order dated 5.4.2006. Questioning the same, the petitioners filed the above writ petitions.

6. Learned Counsel for the petitioners contended that in connection with the theft of rice bags, along with the petitioners, four other chowkidars were suspended and they filed W.P.No.9087 of 2001 before this Court to drop further action and this Court dismissed the said writ petition while keeping it open to the respondents to pass final orders in the disciplinary proceedings and thereafter, the disciplinary authority passed final orders imposing penalty of reduction in the time scale of pay by four stages for a period of two years with cumulative effect, whereas the disciplinary authority imposed punishment of removal on the petitioners and that the action of the

respondents is very discriminatory and therefore, the impugned action of the 1st respondent in confirming the orders of removal is liable to be set aside.

7. The learned Counsel for the respondents contended that the writ petitions are barred by res judicata inasmuch as the petitioners earlier filed W.P.Nos.3892 and 3897 of 2000 questioning the validity of the order of removal, which was confirmed in appeal and the said writ petitions were disposed of on 7.2.2006 upholding the validity of the order of removal and the order of the appellate authority and setting aside the order of the reviewing authority only on the ground that it was not a reasoned order. He further contended that the petitioners cannot compare the punishment imposed on them with the punishment imposed on other chowkidars involved in the theft of rice bags, as the enquiry officer held that those persons were not found guilty of the charges, but the disciplinary authority deferred with those findings and imposed punishment, whereas in respect of the petitioners, the enquiry officer found them guilty, basing on which, the disciplinary authority imposed punishment of removal and therefore, it is not open to the petitioners to raise the plea of discrimination. He further contended that there are no merits in these writ petitions.

8. On perusal of the material available on record, it is obvious that the writ petitions viz., W.P.Nos.3892 and 3897 of 2000 filed by the petitioners questioning the validity of the orders of their removal were disposed of vide common order dated 7.2.2006 remanding the matters to the reviewing authority to pass speaking orders. However, this Court made it clear that it had not interfered either with the orders of the disciplinary authority or the appellate authority but interfered with the order of the reviewing authority and set aside the same for failure to assign reasons in the orders. It does not mean that the orders passed by the disciplinary authority and the appellate authority are upheld and the reviewing authority should only pass speaking order without granting any relief. It is not the purport for which the said writ petitions were disposed of. The reviewing authority was expected to take into consideration the judgment rendered by the Judicial First Class Magistrate, Suryapet in C.C.No.74 of 1987, dated 14.9.1987 and also to consider the case of the petitioners sympathetically, and entire case has to be adjudicated by the reviewing authority. But the reviewing authority except giving few reasons has passed speaking orders, again rejecting the case of the petitioners, which were not expected from the reviewing authority.

9. In the instant case, it has been alleged by the respondents that the petitioners indulged in theft of six bags of rice in the intervening night of 1st /2nd December, 1986, and in that regard, the petitioners were placed under suspension and thereafter, the petitioners were prosecuted before the Competent Criminal Court. The competent Criminal Court acquitted the petitioners vide judgment dated 14.9.1987. Thereafter, the petitioners submitted representation to the 2nd respondent to reinstate them into service. However, the respondents proceeded with the departmental enquiry and appointed the enquiry officer. Initially, the enquiry officer conducted enquiry and relied upon the statements made by the witnesses in the preliminary enquiry and came to conclusion that opportunity was given in the enquiry to the petitioners to cross-examine the said witnesses. Since the petitioners could not make out a case in the cross-examination, the enquiry officer held that the charges were proved. It is the finding of the enquiry officer that the petitioners have confessed to the charges before the witnesses in the preliminary enquiry, and that the petitioners could not elicit any contrary evidence during their cross-examination, and on that account also it was held that the charges were proved.

10. Further, the witnesses who were cross-examined in the regular enquiry have specifically stated that there were

defective shutters in the godown. The witnesses admitted that theft took place because of the defective shutters. But the enquiry officer held that the charges were proved, by taking into account the substantial evidence. The Assisting Counsel of the petitioners in the enquiry cross-examined P.W.5 to the effect that six bags of rice was shifted from B. Godown to B2 Godown on 29.11.1986 before the theft took place. But the same was not recorded in the registers. The Assisting Counsel has also pointed out that identical charges were framed against G. Narsi Reddy, Shaik Mansoor, T. Sankaraiah and B. Boloji, as it was done in the case of the petitioners, and that Shankaraiah was let out with minor penalty of reduction in the time scale of pay for a period of two years with cumulative effect. But the enquiry officer by taking into account the substantial evidence into consideration held that the charges levelled against the petitioners were proved.

11. Further, it is the case of the respondents and enquiry officer that the petitioners touched the feet of the disciplinary authority before initiation of disciplinary proceedings. Touching the feet of the disciplinary authority, has no bearing at all to the entire enquiry proceedings. In the enquiry, the petitioners submitted their explanations denying the charges. The enquiry officer cannot rely upon the circumstances said to have been made the petitioners to plead before the disciplinary authority to

pardon their mistake. The Assisting Counsel has made it clear that the petitioners have stated in the enquiry that they were requesting the disciplinary authority to save them from the police, for that reason, they bowed before the disciplinary authority and requested to intervene in the case to do justice and that itself would not bring home the charges in the enquiry. Very strangely, the enquiry officer tried to interpret the judgment rendered by the Competent Criminal Court in C.C.No.74 of 1987 dated 14.9.1987, and held that the petitioners were acquitted on technical grounds viz., as the police did not conduct proper panchanama at the scene of offence, and improper/inadequate deposition by the police investigating officer in the court regarding demonstration of the opening of defective shutter. The enquiry officer tried to fill up the gaps in the judgment rendered by the competent Criminal Court, for which he is not competent authority. The enquiry Officer has travelled beyond the scope of his powers as enquiry officer and tried to interpret the judgment rendered by the competent Criminal Court in C.C.No.74/1987 and for that reason also, the findings of the enquiry officer can be said to be perverse.

12. The respondents contended that the enquiry was conducted during the years 1987-88 i.e, prior to the judgment rendered by the Hon'ble Supreme Court in **Union of India Vs.**

Md. Ramzan Khan¹ and Managing Director, ECIL V. B. Karunakar². But the fact remains that the regulation No.64 of the Central Warehousing Corporation (Staff) Regulations, 1986 would clearly state that orders made by the disciplinary authority under regulation 61, 62 or 63 shall be communicated to the employee concerned, who shall also be supplied with a copy of the report of inquiry, if any. The regulations clearly state that the enquiry report has to be furnished to the employee. But the respondents have not furnished the enquiry report to the petitioners. It is not the question of furnishing enquiry officer's report, but the disciplinary authority had the advantage of enquiry report and the disciplinary authority had not taken the contents of the enquiry report and mechanically imposed punishment of removal from service, without giving any reasons. The appellate authority has also not assigned reasons and mechanically rejected the case of the petitioners.

13. The role of reviewing authority has paramount importance in delivering fairness and justice to the petitioners more so, this Hon'ble Court had reposed faith in the reviewing authority while disposing of W.P.Nos.3892 and 3897 of 2000, dated 7.2.2006. Initially, though the reviewing authority rejected the review preferred by the petitioners vide order dated 3.12.1999, this Court vide order in W.P.Nos.3892 and 3897 of 2000, dated

¹ AIR 1991 SC 471

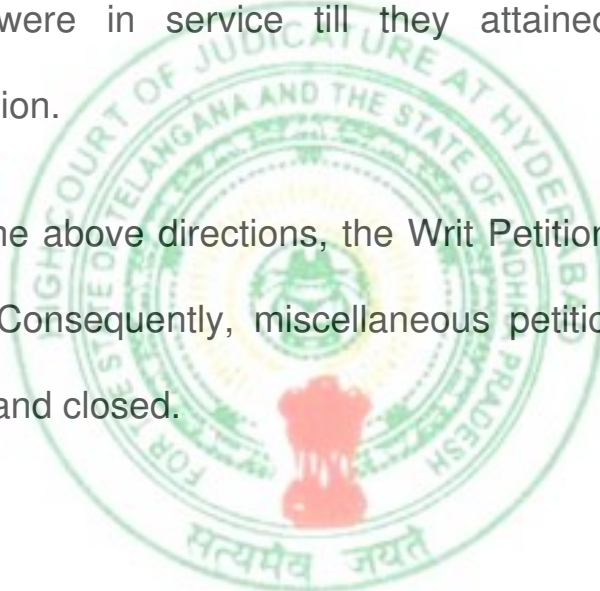
² AIR 1994 SC 1074

7.2.2006 directed the reviewing authority to pass a detailed speaking order reposing confidence that the reviewing authority will do justice. But the reviewing authority has reiterated the facts, given certain reasons and again dismissed the review preferred by the petitioners vide orders dated 5.4.2006. It is the duty of the reviewing authority to look into the findings of the enquiry officer's reports, which are strange and in which the enquiry officer tried to fill up the gaps in the judgment rendered by the criminal Court in C.C.No.74 of 1987 and relied upon certain confessions said to have been made by the petitioners during the course of preliminary enquiry and the statements collected behind the back of the petitioners. The enquiry officer mechanically relied upon some substantial evidence and he has not appreciated the fact that identical charges were levelled against G. Narsi Reddy, Shaik Mansoor, B. Boloji and T. Shankaraiah. It is the duty of the disciplinary authority, appellate authority and the reviewing authority to do justice to the petitioners. When one of the employees against whom identical set of allegations were levelled was let off with penalty of reduction in the time scale of pay for a period of two years, the same yardstick should have been applied even in the case of the petitioners. In the circumstances, this Court is of the view that the reviewing authority has utterly failed to discharge its duty to do justice to the petitioners. In view of the same, the orders of the reviewing authority, appellate authority and

disciplinary authority are liable to be set aside and accordingly, the same are set aside.

14. It is brought to the notice of this Court that the petitioners have attained the age of superannuation, and in fact, one of the petitioners viz., K. Mallaiah expired during the pendency of his writ petition. Therefore, the respondents are directed to pay all the consequential benefits to the petitioner-D. Pandu and to the legal representatives of K. Mallaiah, as though both the petitioners were in service till they attained the age of superannuation.

15. With the above directions, the Writ Petitions are allowed. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.



JUSTICE ABHINAND KUMAR SHAVILI

Dated: 31st December, 2018.
Nn.

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITIONS Nos.21166 & 21514 OF 2006



31/12/2018

Nn.