

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

* * * *

WRIT PETITION NO.14518 OF 2018

Between:

Patri Surya Kumar

... Petitioner

and

The State of Andhra Pradesh rep. by its
Principal Secretary to Government,
Revenue (Endowments) Department,
A.P.Secretariat, Velagapudi, Guntur
District and another

... Respondents

Date of Judgment Pronouncement: 5th SEPTEMBER, 2018

SUBMITTED FOR APPROVAL:

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

- 
1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
 2. Whether copies of the judgment may be marked to Law Reporters/Journals Yes/No
 3. Whether His Lordship wishes to see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

M. GANGA RAO, J

* THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
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> Head Note:

! Counsel for petitioner

: Sri Namburi Guru Gopal

^ Counsel for respondent No.1

: Government Pleader for Services,
Andhra Pradesh

^ Counsel for respondent No.2

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? CASES REFERRED:

1. (1993) 2 SCC 56
2. (1992) 4 SCC 54
3. (1999) 7 SCC 409
4. (2006) 5 SCC 680
5. (2007) 4 SCC 247

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

WRIT PETITION NO.14518 OF 2018

ORDER

(*Per Sri Justice Sanjay Kumar*)

O.A.No.5897 of 2015 was dismissed by the Andhra Pradesh Administrative Tribunal, Hyderabad, (*for brevity*, 'the Tribunal') *vide* order dated 06.12.2017. Aggrieved thereby, the applicant therein filed this writ petition. His prayer in the said O.A. was to set aside G.O.Rt.No.1140, Revenue (Vig.IV-1) Department, dated 17.12.2014, whereby the State of Andhra Pradesh imposed upon him the punishment of 25% cut in pension permanently.

The petitioner is a retired Assistant Commissioner of the Endowments Department of the State. While in service in Chittoor District, he was subjected to disciplinary proceedings under Memo dated 30.06.2007, whereby the following charges were framed against him:

- "1. that he has committed grave irregularities in declaring Sri Subramanya Achari as landless poor in respect of lands measuring Ac.1.70 cents wet land covered by Sy.No.244/3 and Extent Ac.1.74 Cents dry land covered by Sy.No.242/A which is urban property of Sri Swamy Hathiramji Mutt, Tirupathi.
2. that he has failed to conclude the enquiry giving proper findings when the lands are located in prime area and lost its agricultural character being very near to Municipality of Tirupathi.
3. that he has failed to take the statement on record given by Sri N.Venkatadri tenant of land Ac.12.36 cents covered by Sy.No.244 of M.R.Palli, Tirupathi town, where in he has stated that he is under possession of Ac.12.38 cents.
4. that he has not conducted enquiry with the Administrative officer of Sri Swamy Hathiramji Mutt, Tirupathi. But, he entertained one Sri Kandi Sreenivasulu, Junior Assistant of Sri Swamy Hathiramji Mutt, Tirupathi and recorded statement, since no body is entitled to give deposition or any statement on behalf of the Administrative Officer of Sri Swamy Hathiramji Mutt, Tirupathi.
5. that he has failed to examine at least the statement given by Sri Kandi Sreenivasulu, Junior Assistant of Sri Swamy

Hathiramji Mutt, Tirupathi who has stated in his statement that, the tenant is under possession of Mutt land measuring Ac.8.06 cents only.

6. that he has hastily concluded and decided the matter in anticipation of the following information though, the information was called for from the Administration Officer, Sri Swamy Hathiramji Mutt, Tirupathi in his notice in Rc.No.B1/3711/03, dt. 16.02.2004 to finalise the matter.
 1. Extent of land given on lease to the applicant.
 2. Extent of land under possession and enjoyment of the applicant on the date of filing application U/s 82.
 3. whether the so called cultivating tenant has paid the land makthas to the institution promptly without falling into arrears.
 4. whether the lease hold rights of the land was subsisting at the time of filing application by Sri N.Venkatadri.
 5. whether the applicant has been under possession and enjoyment of the land in question for more than six years continuously as on the date of filing application.
 6. If so, the copies of lease approval orders from the concerned authority may be filed.
 7. Copies of lease deeds.
 8. Date of receipt of the Notice issued under Form-I under rule 5(1) by the applicant.
7. that he has utterly failed to consider the statement given by Sri P.Muni Reddy on 05.03.2004 wherein he deposed that he has been getting an amount of Rs.15,000/- (Rupees fifteen thousand only) towards annual income through the land, which is beyond the limit prescribed for landless poor."

After due enquiry, the Commissioner of Enquiries appointed by the Government to enquire into the charges against the petitioner submitted his report in December, 2012, holding against the petitioner on charges 1, 2, 3, 5 and 7 and holding that charges 4 and 6 were not proved. In consequence, G.O.Ms.No.1140 dated 17.12.2014 was issued by the Government imposing the penalty of 25% cut in pension permanently upon the petitioner.

As is clear from the charges extracted *supra*, the same were levelled against the petitioner in the context of discharge of quasi-judicial functions in the capacity of an Assistant Commissioner, under the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (*for short*, 'the Act of 1987'). The orders passed by the petitioner in this regard in the year 2004 were the cause for the initiation of disciplinary

proceedings. By these orders, the petitioner held that various persons qualified as landless poor persons and were cultivating tenants of Sri Swami Hathiramji Mutt, Tirupati, in relation to various extents of Mutt land. Significantly, the Regional Joint Commissioner, Endowments, Multi Zone-II, Tirupati, by name, G.Keshavulu, exercised *suo motu* appellate powers in relation to some of the orders passed by the petitioner and upheld the same. These orders were passed in February, 2005 and February, 2006. It is more important to note that the Government also exercised *suo motu* revisionary powers in relation to the orders passed by the petitioner and the Regional Joint Commissioner, Tirupati. By Memo dated 01.12.2007, the Principal Secretary to Government, Revenue (Endts.II) Department, Government of Andhra Pradesh, held that one of the orders passed by the petitioner on 07.05.2004 was perfectly valid. Similar was the import of the Memos dated 03.12.2007 and 20.12.2007 issued by the Principal Secretary to Government, Revenue (Endts.II) Department, Government of Andhra Pradesh, wherein it was observed that no reason was made out to differ with the findings of the petitioner in two other orders.

It may also be noted that G.Keshavulu, the Regional Joint Commissioner at Tirupati, who confirmed the orders of the petitioner in appeal, was also subjected to disciplinary proceedings. G.O.Rt.No.1208, Revenue (Vigilance-IV) Department, dated 25.05.2006, was issued by the Government of Andhra Pradesh, whereunder a charge was framed against him in relation to the very same issue. However, G.Keshavulu thereafter retired from service upon attaining the age of superannuation. He filed O.A.No.3302 of 2012 before the Tribunal assailing G.O.Rt.No.1208 dated 25.05.2006 and seeking a consequential direction to the authorities to release his retirement benefits. By order dated 17.02.2016, the Tribunal

allowed the O.A. on merits, holding that the charge framed against him was unsustainable, and set aside the impugned G.O. The authorities were directed to release his retiral benefits.

In these circumstances, the question that arises is whether the petitioner could have been subjected to disciplinary proceedings at all in relation to the orders passed by him as a quasi-judicial authority exercising power under Section 82 of the Act of 1987.

In UNION OF INDIA V/ s. K.K.DHAWAN¹, six instances were listed by the Supreme Court when disciplinary action could be initiated against an officer exercising judicial or quasi-judicial powers. The observations of the Supreme Court in this regard are extracted hereunder:

‘28. Certainly, therefore, the officer who exercises judicial or quasi-judicial powers acts negligently or recklessly or in order to confer undue favour on a person is *not acting as a Judge*. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent *but the conduct of the respondent in discharge of his duties as an officer*. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases:

- (i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;
- (ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;
- (iii) if he has acted in a manner which is unbecoming of a Government servant;
- (iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;
- (v) if he had acted in order to unduly favour a party;

¹ (1993) 2 SCC 56

- (v) if he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago “though the bribe may be small, yet the fault is great”.

Though the Supreme Court added the caveat that the instances catalogued by it were not exhaustive, it was categorically held that for a mere technical violation or merely because the order was wrong, disciplinary action would not be warranted. The Supreme Court concluded by observing that each case would depend upon its own facts and no absolute rule could be postulated.

In *STATE OF PUNJAB V/s. EX-CONSTABLE RAM SINGH*², ‘misconduct’ was interpreted by the Supreme Court to mean not mere error of judgment, carelessness or negligence in performance of duty, and it was observed that if every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi-judicial officers. It was held that to maintain a charge-sheet against a quasi-judicial authority, something more has to be alleged than a mere mistake of law, for instance, some extraneous consideration influencing the quasi-judicial authority. It was further observed that the entire system of administrative adjudication, whereunder quasi-judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in doing so without fear or favour because of the constant threat of disciplinary proceedings.

In *ZUNJARRAO BHIKAJI NAGARKAR V/s. UNION OF INDIA*³, the Supreme Court observed that when one talks of negligence in a quasi-judicial adjudication, it is not negligence perceived as carelessness, inadvertence or omission, but culpable negligence.

² (1992) 4 SCC 54

³ (1999) 7 SCC 409

However, in UNION OF INDIA V/ s. DULICHAND⁴, the Supreme Court observed that NAGARKAR² took a view which was contrary to that expressed in K.K.DHAWAN¹ and as K.K.DHAWAN¹ was a decision of a larger Bench, it would prevail. The observation in NAGARKAR², which was found fault with was that disciplinary action should not be taken against an officer discharging quasi-judicial functions unless there was an element of culpability involved.

Again, in RAMESH CHANDER SINGH V/ s. HIGH COURT OF ALLAHABAD⁵, the Supreme Court observed that it had on several occasions disapproved the practice of High Courts initiating disciplinary proceedings against officers of the subordinate judiciary merely because judgments or orders passed by them were wrong.

Applying the aforestated legal principle to the case on hand, it may be noted that it is not the case of the authorities that the petitioner passed the orders in question upon any extraneous considerations. It may also be noted that there is no imputation of *malafides* against him. That apart, as already noted *supra*, his orders stood confirmed in appeal and the Government also affirmed his findings, exercising *suo motu* revisionary power. In such circumstances, the correctness of his orders is no longer open to question.

Further, the learned Government Pleader for Services, Andhra Pradesh, fairly concedes that the order of the Tribunal in favour of G.Keshavulu, the Regional Joint Commissioner at Tirupati, was accepted and implemented without taking the matter further.

Surprisingly, the Tribunal, having noted most of the above facts, opined that as the enquiry against the petitioner had been conducted in a fair and proper manner and the findings rendered therein, based on

⁴ (2006) 5 SCC 680

⁵ (2007) 4 SCC 247

evidence, were to the effect that he committed grave irregularities, it was not open to it to interfere therewith or consider the adequacy of evidence or the reliability thereof. Holding so, the Tribunal dismissed the O.A.

Having considered the facts in their entirety, we note that the most crucial aspect is that the orders passed by the petitioner were not even wrong, as the Government itself found no reason to interfere with his findings therein. G.Keshavulu, the appellate authority, who confirmed his findings, has also been let off by virtue of the Tribunal's order in his favour, which was duly accepted and acted upon. In such circumstances, it would be patently unjust to pick upon the petitioner alone and penalize him for an alleged irregularity which is not even demonstrated. Be it viewed from any angle, the action of the Government in imposing 25% cut in the petitioner's pension with permanent effect is unsustainable.

The writ petition is accordingly allowed setting aside the order dated 06.12.2017 passed by the Tribunal in O.A.No.5897 of 2015 and G.O.Rt.No.1140, Revenue (Vig.IV-1) Department, dated 17.12.2014. The respondents shall release the full pension, including arrears, due to the petitioner expeditiously and in any event, not later than four weeks from the date of receipt of a copy of this order.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

M.GANGA RAO,J

5th SEPTEMBER, 2018

**Note: L.R. copy to be marked
B/o PGS**