

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.1586 OF 2007

ORDER:

1. This writ petition is filed seeking to issue a writ of mandamus declaring that the office order passed by the 2nd respondent in proceedings No.AM(P)/ CONF (1)/2005-ED:V&V, dated 18.07.2006, which was confirmed by the 1st respondent vide proceedings No.EC/19(8)/2006-PD, dated 28.12.2006, imposing the punishment of deferment of annual increment for a period of one year, and ordering recovery of House Rent Allowance of Rs.26,266.40 ps., in twelve equal monthly instalments as illegal, arbitrary and in violation of principle of natural justice, and to grant all consequential benefits.

2. Heard Sri A.K. Jayaprakash Rao, learned Counsel for the petitioner and Sri P. Durga Prasad, learned Standing Counsel for the respondent corporation.

3. It is the case of the petitioner that he was appointed as a trainee officer in the respondent-corporation during 1988, and subsequently, he was posted as depot-manager and thereafter, he was promoted in Senior Scale Officer and posted as Principal, Zonal Staff Training College, Warangal in October, 2002. Later, he was transferred from Warangal to Vizianagaram as Deputy Chief

Personnel Manager on 25.8.2004. While he was discharging his duties as Principal, Zonal Staff Training College, Gannavaram, the 2nd respondent issued a charge sheet dated 31.10.2005 alleging that the petitioner stayed in APSRTC Guest house at Vizianagaram during the period from 26.8.2004 to 11.5.2005, while he was working as Deputy Chief Personnel Manager, Vizianagaram zone and also received payment of house rent allowance during the said period and he had not vacated the Guest house for providing accommodation to other officers and caused inconvenience to the officers who visited Vizianagaram. The petitioner submitted explanation explaining the circumstances and denying the allegations made in the charge sheet. Being not satisfied with the explanation submitted by the petitioner, the respondents conducted enquiry, recorded the statement of the petitioner and examined the witnesses on behalf of the respondent-corporation. After completion of the enquiry, the enquiry officer submitted his report on 17.6.2006 but the copy of the said report was not furnished to the petitioner. The respondents issued show cause notice and imposed punishment of deferment of one annual increment for a period of one year without effect of postponing future increments and also ordered for recovery of Rs.26,266 40 Ps., paid to the petitioner for the period from 26.8.2004 to 6.8.2005 from the salary of the petitioner in 12 equal monthly instalments. Challenging the

said punishment, the petitioner preferred appeal and the appellate authority had not stayed the recovery of amount. In those circumstances, the petitioner was constrained to file W.P.16087 of 2006 before this Court. This Court vide order dated 7.9.2006 disposed of the said writ petition staying recovery of the amount till disposal of the appeal pending before the 1st respondent. Thereafter, the 1st respondent-appellate authority dismissed the appeal on 28.12.2006. Challenging the same the present writ petition is filed.

4. Learned Counsel for the petitioner contended that the respondents having conducted the enquiry have not furnished the enquiry report to the petitioner and that the punishment imposed by the respondents is contrary to law laid down by this Court in the judgments rendered in *G.S.R. Prasad, Machilipatnam, Krishna District Vs. The Depot Manager, APSRTC, Avanigadda, Krishna District*¹ and *Iftekar Ahmed Vs. Union Bank of India, Bombay and others*².

5. The learned Standing Counsel for the respondent-corporation contended that the respondents imposed minor penalty and for imposing such minor penalty, the respondents are not obligated to conduct enquiry, and in spite of the same, the respondents conducted enquiry and gave sufficient opportunity to

¹ 1997(2) An.W.R.377(D.B.)

² 1997(4) ALD 332

the petitioner to prove his innocence before the enquiry officer. He further contended that since the petitioner claimed HRA even though he occupied the guest house from 26.8.2004 to 6.8.2005 the said amount of HRA was ordered to be recovered and that there are no illegalities in the orders passed by the respondent-Corporation.

6. This Court has considered the submissions made by both the parties and perused the material available on record. The petitioner has not filed the charge sheet to demonstrate whether minor penalty proceedings were initiated or major penalty proceedings were initiated. Even the petitioner has not filed the copy of the explanation submitted by him to the charge memo and the copy of the appeal preferred by him before the 1st respondent-appellate authority so as to ascertain whether the minor penalty or major proceedings were initiated against the petitioner. However, it is the contention of the petitioner that the 1st respondent has extracted the contentions of the petitioner to the effect that the enquiry officer's report was not furnished. But no material was placed before this Court to demonstrate that the petitioner complained before the authorities that enquiry report was not furnished to him. The petitioner's claim that he has been attacking the action of the respondents in not furnishing the enquiry report is not reflected in any of the documents furnished before the authorities in the form

of appeal or explanation given to the show cause notice. In the absence of the same, this Court cannot come to a conclusion as to the nature of proceedings initiated against the petitioner viz., minor penalty proceedings or major penalty proceedings. In the case of minor penalty, the respondents are not obligated to furnish enquiry report to the petitioner as rightly contended by the learned Standing Counsel. From the orders impugned, it is obvious that minor penalty was imposed on the petitioner and therefore, this Court can safely come to a conclusion that the disciplinary proceedings initiated against the petitioner are minor penalty proceedings and the respondents have rightly imposed the punishment on the petitioner, and in minor penalty proceedings, no enquiry is to be conducted and in spite of the same, the respondents had conducted enquiry to give additional benefit of principles of natural justice, and non-furnishing of enquiry report would not arise when the respondents were not obligated to conduct enquiry at first instance. There are no grounds in this writ petition.

7. Accordingly, this Writ Petition is dismissed. No costs. Miscellaneous petitions, if any, pending shall stand dismissed.

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 11th October, 2018.

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HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

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11.10.2018

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