HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.24755 OF 2007

ORDER:

1. This writ petition is filed seeking to issue a writ of mandamus declaring the action of the 1st respondent in rejecting the appeal filed by the petitioner against the surcharge order dated 4.6.2003, without hearing the petitioner, vide Memo No.11343/113/A1/ADMN.II/SCA/2007-06, dated 17.7.2007, as illegal and arbitrary, and consequently, to set aside the same, and to direct the 1st respondent to adjudicate the appeal on merits after hearing the petitioner.

2. Heard Sri Vedula Siva Kumar, Counsel representing M/s. Bharadwaj Associates appearing for the petitioner and the learned Government Pleader for Finance and Planning (Andhra Pradesh).

3. The case of the petitioner in brief is as follows:

The petitioner is a Sarpanch of Pathikonda Grampanchayat. The 2nd respondent issued surcharge order dated 4.6.2003 in S.C.No.57 to the petitioner for causing loss to the funds of the Grampanchayat by purchasing Belladona 200 tablets without prior permission of the Divisional Panchayat Officer, Adoni, and challenging the same, the petitioner preferred an appeal before the 1st respondent under Rule 9 (5) of A.P. State Audit Rules 2000 contained in G.O.Ms.No.130, dated 8.9.2000. The 1st respondent passed orders during pendency of the appeal to the effect that the audit party shall conduct a fresh audit and re-examine the matter as to the surcharge amount that was earlier determined. Pursuant to the said order, the audit party completed re-verification of the accounts. But the details of the same were not communicated to the petitioner. While so, the 1st respondent rejected the appeal without hearing the petitioner on the ground that it is barred by limitation. Aggrieved by the same, the petitioner filed this writ petition.

4. While issuing notice before admission, this Court suspended the order of the 1st respondent in Memo, dated 17.7.2007.

5. In the counter-affidavit filed on behalf of respondents Nos.1 and 2, it is stated that the petitioner worked as Sarpanch of Pathikonda Grampanchayat, Kurnool District and during the course of audit for the year 1999-2000, it was noticed that Belladona 200 pills were purchased by the petitioner without getting the administrative sanction of the competent authority and hence, a Surcharge Certificate No.57 dated 4.6.2003 was issued to the petitioner for the said irregularity. Further, it is stated that the petitioner acknowledged the receipt of the surcharge order on 26.10.2003 and she filed the appeal on 18.9.2006 i.e., after lapse of three years and the appeal filed by the petitioner is barred by limitation, and therefore, the 1st respondent has rightly rejected the appeal filed by the petitioner.

6. Learned Counsel for the petitioner submits that the appeal filed by the petitioner was rejected on technicalities without giving any opportunity of hearing to the petitioner and without considering the merits of the case and further, the audit report of re-verification of records was not furnished to the petitioner, and therefore, the order of the 1st respondent is liable to be set aside.

7. The learned Government Pleader submits that the appeal preferred by the petitioner is barred by limitation and that the order passed by the 1st respondent is in accordance with law and it does not warrant any interference by this Court.

8. I have considered the rival submissions made by both the Counsel and perused the material available on record. From the material on record, it is obvious that the 1st respondent passed orders pending the appeal directing the audit party to conduct fresh audit and re-examine the matter as to the surcharge amounts. Pursuant to the said order, fresh audit was conducted. But admittedly, the report of such audit was not communicated to the petitioner and thereby, it amounts to violation of principles of natural justice.

9. Further, it is the grievance of the petitioner that the 1st respondent has mechanically rejected the appeal on the ground of limitation without hearing the petitioner on merits. In these circumstances, without expressing any opinion on merits, this Court feels it just and proper to direct the 2nd respondent to furnish copies of audit reports to the petitioner and also to direct the 1st respondent to consider the case of the petitioner afresh on merits, after furnishing copy of the audit reports by the 2nd respondent, and pass appropriate orders.

10. Accordingly, the order of the 1st respondent in impugned Memo dated 17.7.2007 is set aside and the 2nd respondent is directed to furnish copies of audit reports to the petitioner and on such copies being furnished to the petitioner, the 1st respondent is directed to consider the case of the petitioner afresh on merits and pass appropriate orders, within a period of four weeks from the date of receipt of a copy of this order.

11. With the above direction, the Writ Petition is disposed of. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 23rd April, 2018.
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HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.24755 OF 2007

23/04/2018

Nn.