

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.14940 of 2001

ORDER:

The petitioner who worked as Assistant Engineer in the 1st respondent Corporation filed this writ petition to issue a writ of certiorari and call for the records pertaining to the proceedings No.A2(2)/8327/00, dated 16.02.2001 of the 1st respondent, whereby the request of the petitioner for reinstatement on the ground of acquittal in criminal case in CC.No.67/1990, vide his appeal petition, dated 03.09.1992/23.10.1992 and his representation, dated 04.12.2000 have been considered and rejected, and to quash the same as it being illegal and arbitrary.

The brief facts of the case are that the petitioner while working as Assistant Engineer (Housing) in the 1st respondent Corporation, a charge memo No.1/88 DMM, dated 08.04.1988 was issued to him framing the following charges:

1. That he failed to account for the wheat allotted to him to the extent of 35.25 MTs out of 53.35 MTs and that he had distributed wheat to the beneficiaries of Dhadithota colony excess of value of work done.
2. That he failed to account for the cement allotted to him to the extent of 254 bags out of 2200 bags and also 848 bags of cement received from Sri Balavarada Reddy, the then Asst.Engineer (Housing), Dharmavaram.
3. That he has not disbursed amounts to the beneficiaries of Nagasamudram housing colony to the extent of Rs.1,09,424.00”

The petitioner was placed under suspension from 02.05.1988 vide proceedings No.Rc.495/88/H4, dated 02.05.1988, pending enquiry. The Enquiry Officer was appointed and he conducted enquiry. In the enquiry,

the petitioner was given full opportunity to defend his case. The Enquiry Officer on considering the material before him, held that the charges are proved and recommended to recovery of Rs.4,23,323/- from the petitioner. A criminal complaint was also lodged against the petitioner before the Station House Officer, Tadimarri (Mandal) based on the report given by the Deputy Executive Engineer (Housing). The same was numbered as CC.No.67/1990 on the file of the Judicial 1st class Magistrate, Dharmavaram. The Enquiry Officer, in the enquiry, stated that the beneficiaries had denied the receipt of wheat from the petitioner. The cost of 35.25 MTs of wheat Rs.70,500/- has to be recovered from the petitioner and the petitioner is also responsible for misuse of 1941 bags of cement, worth of Rs.1,16,460/- which were used for his personal gain, and he also did not furnish account for 970 bags of cement. The District Collector/Executive Director, A.P.State Housing Corporation Limited, Anantapur District had issued a show cause notice to the petitioner on 02.01.1990, giving him one month time to show cause as to why he should not be terminated from service. The petitioner had not submitted any explanation to the show cause notice. The District Collector, after considering the Enquiry Officer's report and material available on record, passed termination order, vide proceedings No.495/88/H4, dated 19.02.1990, terminating the petitioner from service. The petitioner preferred Appeal Petition dated 03.09.1992 / 23.10.1992 before the 1st respondent. The petitioner was called for before the Managing Director, A.P.State Housing Corporation Limited Head Office on 04.12.2000 at 11 a.m. Accordingly, the petitioner appeared before the Managing Director and submitted his written explanation. The Appellate Authority/Managing Director not satisfied with the explanation submitted by the petitioner as

no fresh evidence was produced in support of the statement of defence. The petitioner, pursuant to the orders of this Court, dated 11.12.1996, passed in W.P.No.26349/1996, submitted a representation to the 1st respondent/appellate authority to reinstate him on the ground that he was acquitted in the criminal case. The Managing Director/Appellate Authority has rejected the appeal petition and also the representation of the petitioner, dated 04.12.2000, vide the impugned order in Procd.No.A2(2)/8327/00, dated 16.02.2001. Questioning the same, the present writ petition is filed.

Sri G.Ram Gopal, counsel for the petitioner, would contend that the petitioner was appointed as Supervisor/Asst.Engineer on 08.07.1993 by the 1st respondent. While the petitioner was working as Assistant Engineer at Battalapalli, Anantapur District, a charge memo, dated 08.04.1988 was issued to the petitioner and he submitted his explanation on 27.04.1988. The enquiry was conducted by the Deputy Executive Engineer, A.P.State Housing Corporation Limited, Dharmavaram, Anantapuram District. No beneficiaries were examined during the enquiry. The Enquiry Officer, without considering the explanation of the petitioner and his statements during the enquiry, submitted enquiry report, stating that the charges are proved. The learned counsel would further contend that the Enquiry Officer recommended for recovery of Rs.4,23,323/- from the petitioner. Subsequently, the Deputy Executive Engineer (II), Dharmavaram had traced out some of the vouchers submitted by the petitioner to the extent of Rs.1,35,931/-. The Enquiry Officer has not taken into consideration the said vouchers and the evidence produced in the enquiry. The District Collector/Executive Director of the A.P.State Housing Corporation Limited, Anantapuram

District issued a show cause notice, dated 02.01.1990. The learned counsel for the petitioner has also contended that the District Collector/Executive Director is not competent to issue show cause notice and termination order, as per Andhra Pradesh State Housing Corporation Limited Employees Service Rules, 1984 (for short "the Rules"). Counsel for the petitioner would further contend that the petitioner was not paid subsistence allowance during the period of suspension and also the enquiry and thereby denied the opportunity to defend his case properly before the Enquiry Officer. He would further contend that the appellate authority has not considered the appeal on the grounds stated in the appeal petition and mechanically dismissed the appeal.

Sri M.Ravindranath Reddy, counsel for the respondent Corporation, would contend that the petitioner was temporarily appointed as a Supervisor/Assistant Engineer by the District Collector on 19.07.1983. While he was working as Assistant Engineer at Battalapalli, Anantapur District, he had committed misconduct and misappropriation of funds, meant for the housing schemes, amounting to Rs.4,23,323/-, for which a charge memo was given and the petitioner had submitted his explanation. Not satisfying with the explanation of the petitioner, the Deputy Executive Engineer, A.P.State Housing Corporation Limited, Dharmavaram, had appointed an Enquiry Officer. The Enquiry Officer conducted enquiry as per the Rules. The Enquiry Officer had taken the depositions of the petitioner and the beneficiaries of Dadithota housing colony. As per the findings of the Enquiry Officer, the beneficiaries have denied the receipt of wheat from the petitioner, the quantity of wheat 35.25 MTs, costing of Rs.70,500/- was misused by the petitioner and the petitioner also misused 1941 cement bags, worth of Rs.1,16,460/- for his personal use. The

petitioner did not furnish accounts for 970 bags of cement. All the charges against the petitioner are proved in the enquiry. The District Collector/Executive Director had issued show cause notice on 02.01.1990, giving one month time to him to submit his explanation, but the petitioner failed to give any explanation to the show cause notice. The District Collector/Executive Director, on considering the Enquiry Officer's Report and the evidence available before him, came to the conclusion independently that the charges are proved in the enquiry and passed the termination order, dated 19.02.1990, terminating the petitioner from service. The learned counsel for the respondents Corporation would further contend that the petitioner preferred appeal dated 03.09.1992 / 23.10.1992 and a representation, dated 04.12.2000, to the Managing Director, and the Managing Director, after giving personal hearing, and on considering the written explanation submitted by the petitioner along with documents, and also considering the grounds of appeal, independently came to the conclusion that the petitioner has not submitted any fresh evidence, documents in support of his statement of defence, rejected the appeal as well as the representation, by the impugned order, dated 16.02.2001. The learned counsel for the respondent Corporation also contended that the petitioner was paid subsistence allowance during the suspension period and having received and satisfied with the same, the petitioner suppressing the real facts, filed the present writ petition. The learned counsel would further contend that acquittal in a criminal case has no bearing on the disciplinary proceedings initiated independently by framing charges.

In view of the facts and circumstances of the case, this court is of the considered view that the petitioner had committed serious misconduct

and embezzlement of funds of the respondent Corporation, for which, he was issued charge memo and he submitted his explanation. Enquiry Officer was appointed and in the enquiry, the petitioner was given ample opportunity to defend his case, but the petitioner failed to produce vouchers and documents with regard to utilization of wheat and cement. The enquiry officer having examined the evidence available on record, submitted his report holding that the charges leveled against the petitioner are proved. This court finds that there is no perversity in the findings of the enquiry officer. Basing on the enquiry Officer's report, the order of termination, dated 19.02.1990, was passed terminating the services of the petitioner.

The petitioner contends that he may be reinstated on the ground that he was acquitted in the criminal case. He also approached this court by filing W.P.No.26349/1996 seeking a direction to the disciplinary authority to consider his case and the same disposed of, directing the petitioner to make a representation to the disciplinary authority and directed the disciplinary authority to consider his case, as per law. Pursuant to the orders of this Court, the petitioner made a representation, dated 04.12.2000, before the disciplinary authority. The petitioner has also preferred appeal against his removal order. This court, while disposing of W.P.No.26349/1996, filed by the petitioner, observed that Rule 42(b) of A.P.State Housing Corporation Employees Service Rules has no application whatsoever, as the termination order of the petitioner was not based on any judgment of the court, but after necessary disciplinary enquiry by the competent authority. The disciplinary authority had considered the appeal petition dated 03.09.1992 / 23.10.1992 and the

representation of the petitioner dated 04.12.2000 and rejected the same vide the impugned order, dated 16.02.2001.

The petitioner has not challenged the termination order and he only challenged the order of the appellate authority, wherein his representation for reinstatement based on the acquittal in the criminal case was rejected. The petitioner at no point of time submitted any representation for payment of subsistence allowance, as he had been receiving subsistence allowance. The contentions of the counsel for the petitioner that as per Rule-19(2) of the Rules, the power to terminate the service of an employee shall be exercised by the Managing Director in the category of class III & V and with approval of the Board as the case may be for the posts in the category I and II, and that the petitioner will come under Category of Class-III and hence, the Managing Director is competent to terminate the services of the petitioner are untenable, as the petitioner was appointed as Supervisor by the Collector.

The petitioner involved in serious misconduct of misappropriation of funds of the respondent corporation and the same was proved in the departmental enquiry. In view of the facts and circumstances of the case, no lenience could be shown to the petitioner. This court does not find any illegality or irregularity warranting interference with the impugned order, dated 16.02.2001.

For the reasons stated above, the writ petition is dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.GANGA RAO,J

Date: 12.07.2018
Dsr