

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

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
And
HON'BLE MS. JUSTICE J. UMA DEVI

+ W.P.No.3767 of 2010

% Date: 27-11-2018

Between:

V. V. Adinarayana, S/o. Mohana Rao,
R/o. Srikakulam.

... Petitioner

Vs.

1. The Hon'ble High Court of Andhra Pradesh, Hyderabad rep. by its Registrar (Management).
2. District Judge, Srikakulam, Srikakulam District.

... Respondents

! For the Petitioner : Mr. S. Ashok Anand Kumar

^ For the Respondent No.1 : Mr. S. Sri Ram S.C

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? Cases referred

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND

HON'BLE MS. JUSTICE J. UMA DEVI

W.P.No.3767 of 2010

ORDER: (per VRS,J)

Challenging a penalty of dismissal from service passed by the District Judge and confirmed by the High Court on appeal, a Junior Assistant has come up with the above writ petition.

2. Heard Mr. Ashok Anand Kumar, learned counsel for the petitioner and Mr. S. Sri Ram, learned Standing Counsel appearing for the respondents.

3. When the petitioner was working as Junior Assistant, in the Prohibition and Excise Court, Srikakulam during the period from 31.05.2003 to 30.04.2005 a Record Assistant by name Reddipalli Chinnammadu, who was also working in the same Court got promotion to the post of Junior Assistant, on the basis of a degree certificate produced by her. Incidentally, the husband of the said Chinnammadu, by name E. Vijayarama Swamy was also working as Record Assistant in the Junior Civil Judge's Court, Tekkali.

4. Complaining that the degree certificate produced by the said Chinnammadu was a fake one, a Copyist by name Kanta Rao, working in the Magistrate's Court, Narasannapet sent a petition dated 08.03.2006 to the High Court. His grievance was that he ought to have been promoted, but the said Chinnammadu was promoted on the basis of a fake degree certificate.

5. The High Court directed the District Judge to scrutinize the relevant records and to submit a report.

6. Thereafter, the District Judge Srikakulam issued a memo dated 22.02.2006 to the said. R. Chinnammadu calling upon her to produce the original SSLC, Intermediate and Degree certificates. Accordingly she submitted the certificates.

7. On 06.03.2007, the Administrative Officer of the District Court, who received the certificates, prepared a note and got it approved by the in-charge District Judge, so that necessary enquiry could be undertaken into the genuineness of the degree certificate produced by the petitioner. Thereafter, the Administrative Officer by name V. Rajgopala Rao is said to have prepared a letter addressed to the Controller of Examinations, Andhra University. The said letter was not forwarded to the Controller of Examinations. Therefore, nothing has happened.

8. After the High Court issued a reminder to the District Judge about the report to be submitted in the matter, the District Judge addressed a letter to the Registrar of the Andhra University. The Joint Registrar/Controller of Examinations sent a reply to the District Judge, dated 24.03.2006 stating that he did not receive the certificates. Therefore, the District Judge directed the copies of the documents to be sent. But the University reported that the original envelop sent on 08.03.2006 was received in the record room of the University, but it was not to be traced.

9. When the Administrative Officer was issued a memo about the manner in which he sent the confidential cover, he pointed out fingers at somebody else. Therefore, charges were framed for major penalty proceedings against 4 individuals namely (i) Chinnammadu, Junior Assistant, (ii) her husband E. Vijayarama Swamy (iii) the Administrative Officer V. Rajagopala Rao and (iv) the petitioner herein. The summary of

the charges framed against the petitioner herein, by the memo dated 28.10.2006 was (1) that he took a bribe of R.20,000/- from R. Chinnammadu and got her a fake degree certificate, which enabled her to get her qualification entered in the service register and gaining promotion; (2) that the petitioner took the assistance of the Administrative Officer by name V. Rajagopala Rao and got the evidence screened up by paying Rs.3,000/- to the Administrative Officer; and (3) that he received a confidential cover containing the original degree certificate of Chinnammadu, addressed to the Controller of Examinations, who suppressed and kept the confidential cover with him, but sent merely a letter to the University with a view to help Chinnammadu to escape the consequences.

10. Separate charges were framed against the main culprit, viz., Chinnammadu, her husband E. Vijayarama Swamy and the Administrative Officer Mr. V. Rajagopala Rao.

11. A common enquiry followed in which seven witnesses were examined on the side of the prosecution. Two witnesses were examined on the side of the charged employees and several documents were marked.

12. The Enquiry Officer came to the conclusion that two charges were proved against Chinnammadu, two other charges were proved against the Administrative Officer, one charge was proved against the husband of the main culprit and a part of one of the three charges alone was proved against the petitioner herein.

13. Eventually the main culprit Chinnammadu and the petitioner herein alone were imposed with the penalty of dismissal from service. The husband of the main culprit Mr. E. Vijayarama Swamy was exonerated of

the charges. The Administrative Officer, V. Rajagopala Rao retired from service before the conclusion of proceedings and hence he was imposed with a penalty of 25% cut in the pension for a period of two years from the date of retirement.

14. As against the order of dismissal, the petitioner filed a statutory appeal, but the same was dismissed by the High Court by order dated 16.09.2008. Therefore, aggrieved by the original order of dismissal from service and the order of the appellate authority, the petitioner has come up with the above writ petition.

15. The main contention of Mr. Ashok Anand Kumar, learned counsel for the petitioner is that the disciplinary authority issued a notice to show cause against the proposed penalty, under Rule 21(4) of the A.P. Civil Services (CC & A) Rules 1961, which relates only to minor penalties and that therefore a major penalty of dismissal from service could not have been imposed.

16. It is true that there are two different sub-Rules under Rule 21, one dealing with a notice to show cause against any of the penalties specified in Clauses (i) to (v) of Rule 9 and the other dealing with a notice to show cause against the penalties prescribed under Clauses (vi) to (x) of Rule 9. The penalty of dismissal is found in Rule 9(x). The notice to show cause against the penalties proposed under Clauses (vi) to (x) of Rule 9, are to be issued under Rule 21 (5). The notice to show cause against the penalties under Clauses (i) to (v) of Rule 9 are to be issued under Rule 21.

17. But as rightly pointed out by the appellate authority, the very quoting of a wrong provision of law will not take away the power of the disciplinary authority to impose the appropriate penalty. In fact, the petitioner has already had an opportunity to submit his objections to the

findings of the enquiry officer. What was issued in terms of Rule 21(4) was only a second show cause notice against the proposed penalty. The second show cause notice as against the proposed penalty is not constitutionally guaranteed after the 42nd Amendment to the Constitution. The reply dated 20.07.2007 issued by the petitioner to the show cause notice, has covered all the aspects including the merits of the case. It is not as though the petitioner gave a reply casually to the second show cause notice, with the belief that it happened to be only for a minor penalty. Therefore, no prejudice was caused to the petitioner by the quoting of the wrong provision of law. Hence this argument is liable to be rejected.

18. The second contention of Mr. Ashok Anand Kumar, learned counsel for the petitioner is that the third charge, a part of which is held proved against the petitioner, runs contrary to the findings on charges 4 and 5 against the charged employee No.3. The charges 4 and 5 held proved against the Administrative Officer related to the retention of the cover containing the original degree certificate and the sending of an empty cover to the university to ensure that no enquiry into the genuineness of the degree certificate was conducted. The contention of the petitioner is that after holding this charge proved against the Administrative Officer, the same cannot be held proved against the petitioner.

19. But there is a fallacy in the above argument. The third charge specifically contains an imputation that the petitioner acted in collusion with the Administrative Officer V. Rajagopala Rao. Therefore, the charge did not run contrary to the charges 4 and 5 framed against the Administrative Officer.

20. The learned counsel for the petitioner next contended that the finding with regard to a portion of the charge No.3 was perverse. We do not think so. A careful look at the findings of the enquiry officer would show that the petitioner was exonerated of charges 1 and 2 and also of a part of charge No.3. It has come on record that it is only after the District Judge seriously pursued the matter with the university that instead of posting the envelop, the Administrative Officer sent it through the petitioner herein. Therefore, the finding cannot be said to be perverse.

21. The last contention of the learned counsel for the petitioner is about the proportionality of punishment. It is the contention of the learned counsel for the petitioner that the penalty of dismissal from service is grossly disproportionate to the gravity of misconduct held proved.

22. This contention requires a detailed scrutiny.

23. The three articles of charges framed against the petitioner herein are as follows:

ARTICLE-1

That you Sri V.V. Adinarayana, Junior Assistant (Under Suspension), Junior Civil Judge's Court, Pathapatnam while functioning as Junior Assistant in Prohibition & Excise Court, Srikakulam during the period from 31.05.2003 to 30.04.2005 have got acquaintance with Reddipalli Chinnammadu, who was working as Record Assistant in the said Court and with a view to help the said Reddipalli Chinnammadu in getting promotion from Examiner to the post of Junior Assistant, he (you) took Rs.20,000-00 from her for creation of fake B.A. Degree Certificate and having receiving Rs.20,000-00 you obtained a fake B.A. Degree certificate through one Gopalaswamy in January, 2004 in the name of Reddipalli Chinnammadu and handed over the said Fake Certificate to her and she in turn got entered the Degree Qualification in her Service Register in the month of JULY, 2004 and basing on the Fake Degree Certificate, Reddipalli Chinnammadu got promotion as Junior Assistant. Thus you have got created Fake B.A. Degree Certificate of Smt. Reddipalli Chinnammadu and thereby you have misconducted and acted in a manner detrimental to the interest of District Court Administration, which acts of yours, if proved or established, would amount to grave misconduct and unbecoming of a Government Servant within the meaning of Rule 3 of A.P.C.S (Conduct) Rules, 1964.

ARTICLE-2

That you Sri V.V. Adinarayana, on 08.03.2006, while working as Junior Assistant in the Junior Civil Judge's Court, Pathapatnam took the assistance of Sri V. Rajagopalarao, Administrative Officer, District Court, Srikakulam and pulled him into Fake rocket for screening up of the evidence by giving Rs.3,000-00 to him and that you, in collusion with Sri V. Rajagopalarao, Administrative Officer, District Court, Srikakulam have misconducted and acted in a manner detrimental to the interest of District Court Administration which acts of yours, if proved or established, would amount to grave misconduct and unbecoming of a Government Servant within the meaning of Rule 3 of A.P.C.S. (Conduct) Rules 1964.

ARTICLE-3

That you Sri V.V. Adinaryana, Junior Assistant, during the period from 08.03.2006 to 29.03.2006 and while functioning as Junior Assistant in the Junior Civil Judge's Court at Pathapatnam, had obtained the Confidential cover containing the original Provisional BA Degree Certificate bearing Register No.38722 dated 18.07.1996 issued in the name of Smt. Reddipalli Chinnammadu and the letter dt.08.03.2006 addressed to the controller of Examinations, Andhra University, Visakhapatnam from the Administrative Officer, District Court, Srikakulam for registration of the said cover at Post Office and you suppressed and kept the confidential cover and original Provisional certificate No.38722 dated 18.07.2006 alone to the University Authorities by registered Post vide RI.No.4565 dated 08.03.2006 to make believe that the Provisional Certificate was sent. Having come to know the enquires made by the District Judge, Srikakulam for delay in respect of reply from Andhra University, you in collusion with Sri V. Rajagopalarao, Administrative Officer, have then sent the said original cover along with original Provisional B.A Degree Certificate of Smt. Reddipalli Chinnammadu through one S. Janardhanarao, driver of P.G. Center, Etcherla to the University by intentional and fraudulently giving your name as "Vijayaramaswamy" who is the husband of Reddipalli Chinnammadu, with a view to escape from further liabilities in the matter and thus, you have misconducted and acted in a manner detrimental to the interests of District court Administration which acts of yours, if proved or established, would amount to grave misconduct and unbecoming of a Government Servant within the meaning of Rule 3 of A.P.C.S. (Conduct) Rules, 1964.

24. Out of the above 3 charges, charge Nos.1 and 2 were held not proved. What was held proved was only a part of charge No.3, viz., that the petitioner was used as a conduit to send the envelop through one S. Janardhana Rao. The relevant finding in paragraphs 20 and 21 of the enquiry report are extracted as follows:

20. Therefore, for the foregoing reasons, it is amply established that the charged employee No.3 actually involved in retaining the cover which must be for the purpose of protecting the charged employee No.1 and subsequently, the charged employee No.4 was sent to hand over the cover to the University through somebody and PW.4 was picked up to act as conducive pipe in that context. Further in fact it is contended by the Presenting Officer that when the District Judge seriously pursued the matter with the University, the charged employee No.3 resorted to sending the cover to the University without posting it by making use of the charged employee No.4 who happened to be a close associate of the charged employee No.1 at the instance of the charged employee No.1, to avoid his impeachment in the matter. Examining the circumstances of the case, his argument is quite acceptable and hence it is accordingly accepted. By virtue of the conduct of the charged employee Nos.3 and 1 definitely such a conclusion has to be drawn here.

21. Further there is no basis to say that the charged employee No.4 actually retained the cover with him whereas the circumstances of the case proved that the charged employee No.3 actually retained it and got sent a blank cover to the university on 08.03.2006. Hence, article No.3 against the charged employee No.4 so far as this aspect is concerned is not proved whereas the remaining part of the charge which is with reference to actually sending the cover to the University through Sri S. Janardhanarao is proved.

25. On the basis of the aforesaid finding, it is contended by the learned for the petitioner that the penalty of dismissal from service is highly disproportionate. According to the learned counsel, the Administrative Officer, who allegedly used the petitioner, escaped with a 25% cut in the pension for a period of two years, but the petitioner has been dismissed from service.

26. In response to the above contentions, it is argued by Mr. S. Sri Ram, learned Standing Counsel for the Registry that the Court cannot take out that portion of Charge No.3, which was held proved with surgical precession and examine the question whether the same would warrant a penalty of dismissal or not. According to the learned Standing counsel, the charge held proved against the petitioner should be examined in the context of the background facts which are very shocking. If an employee in the Judicial Ministerial Service could produce a fake degree certificate

for the purpose of gaining promotion and if another servant in the Ministerial Service helps the guilty to avoid or postpone the investigation, by not forwarding the certificate for scrutiny by the university, the same cannot be seen as less serious. It is also contended by Mr. S. Sri Ram, learned Standing Counsel that in any case, the scope of interference in such matters under Article 226 is extremely circumscribed as Article 14 cannot be applied per se and unless the penalty is shockingly disproportionate, the court will not interfere.

27. In support of the above contentions, Mr. S. Sri Ram, learned Standing Counsel also relied upon the following decisions of the Supreme Court and this Court:

- i) State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya¹,
- ii) Govt. of India & anr. V. George Philip²,
- iii) Lucknow Kshetriya Gramin Bank & Ant. V. Rajendra Singh³,
- iv) G. Kanthimathi v. Govt. of AP⁴,
- v) P.C.Kakkar v. Chairman & Managing Director, United Commercial Bank⁵,
- vi) Deputy Inspector General of Police & Anr. V. S. Samuthiram⁶.

28. We have carefully examined the above submissions.

29. As rightly contended by Mr. S. Sri Ram, learned Standing Counsel, the background facts of the case are very shocking. The charged employee Nos.1 and 2 were wife and husband respectively. The charged employee No.1 was the beneficiary of a fraud. She was granted promotion

¹ (2011) 4 SCC 584

² (2001) 13 SCC 1

³ (2013) 12 SCC 372

⁴ 2017 (5) ALT 542

⁵ (2003) 4 SCC 364

⁶ (2013) 1 SCC 598

on the basis of a fake degree certificate. After finding her guilty, she has been dismissed from service.

30. But her husband, who was the charged employee No.2 escaped completely unhurt. The charged employee No.3, who was the Administrative Officer, as against whom a more grievous charge was held proved also escaped the guillotine, since he retired from service, before the conclusion of the proceedings.

31. It is true that in cases of this type, the nature and extent of the role played by each of the actors in a fraud cannot be scrutinized with magnifying glasses to find out the penalty that would be proportionate to the role played by each. The charge held proved should actually be seen in the context in which the entire sequence of events had arisen.

32. But at the same time, a person who acted merely as a messenger, even if such act bordered on something like abetment, cannot be placed on par with the main culprit. We have already extracted the findings of the enquiry officer in paragraphs 20 and 21 of his report. Unfortunately, the disciplinary authority did not choose to defer from the findings of the enquiry officer on the charges held not proved against the petitioner. The charged employee No.3, viz., the Administrative Officer, who was held guilty of the main part of charge No.3, escaped with minimum damage. Under Rule 9 of the A.P. Revised Pension Rules, the charged employee No.3 could have been imposed with a harsher penalty than what was imposed on him. It is in that context that the question of proportionality of penalty has to be examined.

33. In fact the decision in *State Bank of Bikaner & Jaipur*, relied upon by Mr. S. Sri Ram, learned Standing counsel for the Registry, can actually be seen to be in favour of the petitioner. In that case, the

Supreme Court actually substituted the penalty of dismissal from service with compulsory retirement, on the ground that the proven charge did not involve either misappropriation or fraudulent conduct. But it is true that the punishment should not merely be disproportionate but shockingly excessive, as pointed out by the Supreme Court in *George Philip*.

34. The contention of the learned Standing Counsel for the Registry that Article 14 has no place in matters of penalty is undoubtedly well founded. As held by the Supreme court in *Lucknow Kshetriya Gramin Bank*, there has to be a complete parity between two employees not only in respect of the nature of the charge, but subsequent conduct. The Supreme Court held that even if the nature of misconduct committed by two sets of employees is the same, the circumstances may warrant imposition of different penalties.

35. But in the case on hand, the only circumstance which went in favour of the charged employee No.3 was his retirement. Even then a penalty of deprivation of the whole pension could have been awarded, considering the more serious nature of the charges held proved against him. But it was not done. Therefore, the decision in *Lucknow Kshetriya Gramin Bank*, cannot be pressed into service.

36. Relying upon the decision of the Supreme Court in *PC Kakkar v. Chairman & Managing Director, United Commercial Bank*, it is contended by the learned Standing Counsel for the Registry that even in cases where the punishment is found to be shockingly disproportionate, the Court should normally remit the matter back to the disciplinary authority for a reconsideration of the penalty. We have no difficulty in accepting this proposition. But we may have to take note of the long efflux of time. The

original order of penalty was dated 14.11.2007. The order of the appellate authority is dated 16.09.2008.

37. Therefore a remand of the matter back to the disciplinary authority for a fresh consideration with regard to the quantum of penalty, may result only in another round of litigation. Hence we directed the learned counsel for the petitioner to provide the service particulars of the petitioner. The petitioner filed an affidavit stating that he was appointed originally as an Amin on 13.10.1993 and was promoted as Junior Assistant on 05.12.1998. At the time when he was dismissed from service, he had put in 14 years of service.

38. Once it is found that the first charge of taking bribe and the second charge of screening the evidence are held not proved and a part of the third charge of retaining the confidential envelop deliberately, also stands disproved, we do not think that a penalty of dismissal could be proportionate to the only misconduct held proved. The only misconduct held proved was that the petitioner sent the envelop through a driver rather than by register post. Coupled with the fact that the very same part of the third charge held not proved against the petitioner, was also held proved against the Administrative Officer, but he escaped with a lesser penalty on account of circumstances favorable to him, the penalty of dismissal from service appears to be shockingly disproportionate and it warrants interference.

39. As we have stated above, the petitioner had put in 14 years of service as on the date of the order of dismissal. Therefore, converting the penalty of dismissal into one of compulsory retirement may meet the ends of justice.

40. Accordingly, the writ petition is allowed, the impugned orders are set aside and the penalty of compulsory retirement is imposed in the place of dismissal from service. The terminal benefits that the petitioner may be entitled to, in view of the order of compulsory retirement, may be settled within a period of 12 weeks from the date of receipt of a copy of this order. There will be no order as to costs.

41. As a sequel, the miscellaneous petitions pending in this writ petition, if any, shall stand closed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J.

J. UMA DEVI, J.

27th November, 2018
Js.



HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE MS. JUSTICE J. UMA DEVI

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