

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
&
HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.23197 OF 2017

ORDER: (per Hon'ble Sri Justice Abhinand Kumar Shavili)

1. This writ petition is filed seeking to issue a writ of Certiorari calling for the records relating to and connected with the order dated 17.2.2017 in O.A.No.8121 of 2013 on the file of the A.P. Administrative Tribunal, Hyderabad, and to quash the same, and consequently, to allow the O.A. with all consequential benefits.

2. Heard Sri G. Ram Gopal, learned Counsel for the petitioner and the learned Government Pleader for Revenue, learned Government Pleader for Services I (Andhra Pradesh) and the learned Government Pleader for Endowments (Andhra Pradesh).

3. Brief facts of the case are as follows:

(i) While the petitioner was working as Executive Officer Grade-II in Korukonda Group of Institutions, Korukonda Mandal of East Godavari District, he noticed that the junior assistant of the temple viz., A.S.S. Markandeyulu misappropriated temple funds by forging the signatures of the functionaries. The petitioner being the competent authority issued proceedings suspending him pending disciplinary proceedings.

(ii) While so, the 3rd respondent issued a memo dated 25.4.1996 to the petitioner directing him to give an explanation for allowing the said clerk-Markandeyulu to hold the custody of the records, documents, accounts and to misappropriate the FDRs of Korukonda Group of Institutions, for which, the petitioner submitted his explanation dated 15.5.1996 and thereafter, the 2nd respondent placed the petitioner under

suspension and issued a charge memo dated 31.5.1996 to the petitioner and to K. Ramalingaiah, former Executive Officer. In the very same proceedings, the Enquiry Officer was appointed and the petitioner was directed to submit explanation to the Enquiry Officer, for which the petitioner submitted explanation requesting for his reinstatement. The 2nd respondent revoked suspension pending enquiry. The 3rd respondent issued consequential proceedings posting the petitioner as Executive Officer of Sri Gandhi Choultry, Tuni. After conducting enquiry, the Enquiry Officer submitted a report dated 29.4.1997 holding that the charges were proved. The disciplinary authority has not taken any further proceedings.

(iii) On 31.1.2004, the petitioner retired from service on attaining the age of superannuation. The 2nd respondent issued proceedings dated 8.1.2004 to that effect, while mentioning therein that the retirement of the petitioner is subject to result of O.A. and disciplinary case, if any pending. After retirement from service, the pension of the petitioner was fixed at Rs.4,500/- from 1.2.2004 onwards and an amount of Rs.1,48,500/- was quantified as death-cum-retirement gratuity.

(iv) While so, the 1st respondent issued a notice dated 27.4.2012 informing the petitioner that the Government provisionally decided to impose punishment of withholding of his entire pension and gratuity, for which, he submitted his explanation. The 1st respondent passed order dated 20.8.2013 imposing punishment of withholding of the entire pension and gratuity of the petitioner. Aggrieved by the same, the petitioner filed O.A.No.8121 of 2013 before the A.P. Administrative Tribunal, Hyderabad. The learned Tribunal dismissed the same. Hence, the petitioner filed this writ petition.

4. The 2nd respondent filed a counter-affidavit stating that the petitioner allowed the Junior Assistant-Markandeyulu to hold the records and FDRs in his custody, contrary to the statutory provisions and that the petitioner is responsible for the loss caused to the temple. It is further stated that the copy of the enquiry report was communicated to the petitioner by the Commissioner, Endowments, Hyderabad asking him to submit his further explanation and that the petitioner having acknowledged the receipt of the same, did not choose to submit his explanation. Further, it is stated that the petitioner retired from service on 31.1.2004 on attaining the age of superannuation during the pendency of disciplinary proceedings subject to the result of O.A. and the disciplinary proceedings, if any and therefore, his retirement does not absolve him from his official liabilities and commitments. It is further stated that as per Rule 9 of the A.P. Revised Pension Rules, 1980, the Government is the competent authority to take disciplinary action against the retired Government Servants and hence, the Commissioner submitted a report dated 22.2.2012 to the Government to take further action against the petitioner and that the Government issued show cause notice dated 27.4.2012 to the petitioner, for which he submitted his explanation and then, the Government issued orders dated 20.8.2013 imposing the above punishment. The learned Tribunal considered all the aspects and rightly dismissed the O.A. filed by the petitioner.

5. The learned Counsel for the petitioner submits that charge memo was issued on 31.5.1996 and the enquiry report was filed on 29.4.1997, and after lapse of about 16 years from the date of charge memo, 1st respondent issued show cause notice dated 27.4.2012 on the proposed action and subsequently, passed the impugned order on 20.8.2013

withholding the service pension and gratuity of the petitioner. He submits that no witnesses were examined and no documents were marked during the course of enquiry and that the Enquiry Officer did not follow the procedure in conducting the enquiry. Further, he submits that before appointing the Enquiry Officer, no explanation was called for on the charges and therefore, the very issuance of charge sheet is contrary to the rules. He submits that two persons viz., K. Ramalingaiah, predecessor of the petitioner and A.S.S. Markandeyulu, Junior Assistant were removed from service on the ground that they are responsible for misappropriation of funds of the subject institutions, and therefore, it cannot be said that the petitioner is responsible for the alleged misappropriation. He further submits that there is no explanation forthcoming for conclusion of the disciplinary proceedings and for submission of the report by the Commissioner to the Government in the year 2012 i.e., after lapse of 15 years from the date of the enquiry report and that the learned Tribunal has not considered all these aspects and therefore, the order of the learned Tribunal warrants interference.

6. The learned Government Pleader for Services submits that as the charges were framed basing only on the documents available, the same were relied upon and that there was no necessity to examine the witnesses or marking the documents. It is submitted that after receiving the enquiry report, the petitioner did not submit any representation till show cause notice was issued on 27.4.2012 under Rule 9 of the A.P. Revised Pension Rules, 1980 and therefore, the petitioner cannot take a plea of delay in conclusion of the disciplinary proceedings and that the learned Tribunal considered all the aspects and rightly dismissed the O.A and that there are no merits in the writ petition and hence, the same is liable to be dismissed.

7. After considering the rival submissions, this Court has come to a conclusion that the punishment of 100% cut in pension and gratuity imposed by the 1st respondent vide G.O.Ms.No.467, dated 20.8.2013 is unsustainable for the following reasons:

8. The petitioner was given charge sheet on 31.5.1996, enquiry officer was appointed on 31.5.1996 and the enquiry report was filed on 29.4.1997 and thereafter, the petitioner was asked to submit his objections to the said report and thereafter, the respondents have not moved further and the petitioner was allowed to retire from service after attaining the age of superannuation on 31.1.2004.

9. For proper appreciation of the facts, it is necessary to refer to Rule 9 of the A.P. Revised Pension Rules, which reads as follows :

“Right of Government to withhold or withdraw pension :--(1) The State Government reserves themselves the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused, to the Government and to the local authority if, in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement;

Provided that the Andhra Pradesh Public Service Commission shall be consulted before any final orders are passed. However, consultation with the Andhra Pradesh Public Service Commission is not necessary, when the pensioner is found guilty in any judicial proceedings.

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the limit specified in Sub-rule (5) of Rule 45.

Provided also that the penalty of withholding of entire pension or gratuity or both may be imposed against the retirement Government Servant upon being found guilty or upon conviction in a Court of Law for the offences of grave charges namely—proved cases of misappropriation, bribery, bigamy, corruption, moral turpitude, forgery, outraging the modesty of women and misconduct. (Added by G.O.Ms.No.664, Fin. Dated 7.10.2004)

(2)(a) The departmental proceedings referred to in Sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service :

Provided that where the departmental proceedings are instituted by an authority subordinate to the State Government, that authority shall submit a report recording its findings to the State Government.

Note :-The function of the disciplinary authority is only to reach a finding on the charges and to submit a report recording its findings to the Government. It is then for the Government to consider the findings and take a final decision under this rule. In case Government decide to take action under this rule in the light of the findings of the disciplinary authority, the Government will serve the person concerned with a show-cause notice specifying the action proposed to be taken under this rule and the person concerned will be required to submit his reply to the show-cause notice within such time as may be specified by the Government. The Government will consider the reply and consult the Andhra Pradesh Public Service Commission. If as a result of such consideration in consultation with the Commission, it is decided to pass an order under the rule, necessary orders will be issued in the name of the Government.

(b) The Departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment:

- (i) shall not be instituted save with the sanction of the Government;
- (ii) shall not be in respect of any event which took place more than four years before such institution; and
- (iii) shall be conducted by such authority and in such place as the State Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3)[x x x]

(4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 52 shall be sanctioned.

(5) Where the State Government decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule--

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner or if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) Judicial proceedings shall be deemed to be instituted--

(i) in the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrates takes cognizance, is made; and

(ii) in the case of civil proceedings, on the date the plaint is presented in the Court.

(7) Even though a Government servant has retired from service and was not before his retirement charge sheeted or called upon to explain why a pecuniary loss caused to the Government (or local authority) due to his negligence, while he was in service, should not be recovered from him, the Government if they are satisfied that the loss is due to him, shall recoup the pecuniary loss besides all Government dues (or local authority dues) from the Retirement Gratuity. For this purpose, it shall not be necessary to get the consent of the Government servant or the consent of the members of his family in the case of a deceased Government servant, as the case may be. In such cases, it shall be indicated in the sanction clearly the amount of Retirement Gratuity admissible, a stated amount which shall be deducted from the Retirement Gratuity on account of Government dues or local authority dues or loss sustained by the Government servant due to negligence and the net amount of Retirement Gratuity payable to the retired Government servant.

8. When a Government servant dies before conclusion of the disciplinary proceedings, a family pension beneficiary or legal heir is entitled to receive the balance of 25% or remaining part of the full pension, as the case may be, and the further proceedings shall abate.

10. It is interesting to note that the respondents issued proceedings dated 8.1.2004, wherein it was stated that the petitioner and others were permitted to retire on attaining the age of superannuation on 31.1.2004 subject to result of O.A. and disciplinary cases, if any pending against them. But the said notice of retirement is very vague one and it does not disclose any specific case of disciplinary proceedings pending against any of such officers and further, it does not disclose against whom such proceedings are pending. Apart from that, there is also reference of O.As pending against them. Therefore, this Court has specifically asked the learned Government Pleader as to which O.A., there was reference in the said retirement notice. Admittedly, in the instant case, the petitioner has filed O.A. only in the year 2013 challenging the punishment order of the 1st respondent, for which the learned Government Pleader has sought time to produce the original retirement order of the petitioner so as to know whether the respondents have reserved any right to continue the disciplinary proceedings under Rule 9 of A.P. Revised Pension Rules against the petitioner. But the learned Government Pleader could not produce the same. While reserving the case, opportunity was given to the learned Government Pleader to produce the retirement order of the petitioner within two days from the date of reserving the matter. But the learned Government Pleader has not produced the copy of retirement order of the petitioner.

11. From the material now available on record, it is obvious that at the time of retirement and even after retirement, the petitioners have not reserved their right to proceed against the petitioner by invoking Rule 9 of

A.P. Revised Pension Rules, 1980. If it is the case of the respondents that they have reserved the right to conclude the disciplinary proceedings, which were pending against the petitioner, this Court is unable to understand as to why the respondents have granted full pensionary benefits to the petitioner. The respondents ought not to have granted full pensionary benefits to the petitioner and they should have granted provisional pension. The fact that the petitioner was granted full pensionary benefits and gratuity, discloses that the respondents have not reserved their right to conclude the disciplinary proceedings said to have been initiated way back in the year 1996 and after retirement of the petitioner only, the Commissioner, Endowments Department submitted proposals to the Government to conclude the disciplinary proceedings. On 27.4.2012 only, the respondents have issued show cause notice. Reading of the said show cause notice makes it abundantly clear that on 22.2.2012, the Commissioner, Endowments Department submitted proposals to the Government for taking disciplinary action against the petitioner under Rule 9 of the A.P. Revised Pension Rules, 1980. The said issue was discussed at paragraph No.4 of the said show cause notice, which reads as follows:

“Since the Charged Officer had retired from service on 31.1.2004, the Commissioner, Endowments Department, Hyderabad has furnished the proposals to Government for taking disciplinary action under Rule 9 of A.P. Revised Pension Rules, 1980 against Sri S. Satyanarayana, former Executive Officer, Sri Lakshmi Narasimha Swamy Temple etc., Korukonda, East Godavari District.”

The plain reading of the above paragraph No.4 of the show cause notice dated 27.4.2012 makes it abundantly clear that after lapse of eight years of the retirement of the petitioner, the Commissioner, Endowments furnished

the proposals to the State Government to initiate disciplinary action against the petitioner and on 20.8.2013, the 1st respondent passed order imposing 100% cut in pension and gratuity vide G.O.Ms.No.467, dated 20.8.2013. When once the petitioner has been granted full pensionary benefits, after retirement of 9 years from service, the respondents cannot impose punishment withholding 100% pension and gratuity by invoking Rule 9 of the A.P. Revised Pension Rules, 1980 as the same is contrary to the provisions of Rule 9 of the A.P. Revised Pension Rules. 1980. The learned Tribunal failed to appreciate the said rule position and it had mechanically dismissed the O.A.No.8121 of 2013 filed by the petitioner on 17.2.2017. Therefore, the order passed by the 1st respondent dated 20.8.2013 is liable to be set aside.

12. Accordingly, the Writ Petition is allowed setting aside the order dated 17.2.2017 passed by the learned Tribunal in O.A.No.8121 of 2013 and setting aside the order passed by the 1st respondent vide G.O.Ms.No.467, dated 20.8.2013. Consequently, the said O.A.No.8121 of 2013 is allowed with all consequential benefits. No costs. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE SURESH KUMAR KAIT

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 23rd March, 2018.
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HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
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HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.23197 OF 2017

(Order delivered by AKS,J)



23/03/2018

Nn.