

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO**

WRIT PETITION No. 26372 OF 2013

ORDER: *(Per Hon'ble Sri Justice M.Ganga Rao)*

The State of Andhra Pradesh and its officials filed this Writ Petition being aggrieved by the order dated 13.09.2012 passed in O.A.No.4254 of 2011 by the Andhra Pradesh Administrative Tribunal, Hyderabad, whereby the Tribunal allowed the O.A. directing the petitioners/respondents to regularize the applicant's suspension period from 03.07.2007 to 07.11.2008 as on duty on par with one Sri M.Nagender and Sri K.Senapathy covered by G.O.Rt.No.652, Social Welfare (Ser.III.2) Department, dated 12.08.2011 with all consequential benefits and to pass appropriate orders within a period of six weeks from the date of receipt of the copy of the order.

2. The brief facts of the case are that the 1st respondent herein, the applicant, was appointed as a Warden in the year 1974 and worked during the period from 1984-85 and 1986-87 in Kattalamandi Hostel, Hyderabad. He was also promoted as Assistant Social Welfare Officer (ASWO) in the year 1986 and transferred to Medak District. While he was working at Medak District, he was placed under suspension along with 30 others on 14.12.1987 vide proceedings dated 11.12.1987 issued by the 2nd petitioner alleging that they

were responsible for the sanction of mess charges and scholarships to fictitious and discontinued Scheduled Caste and Backward Class students resulting in misappropriation of Government funds to the tune of Rs.7,57,957.50 Ps. during the year 1984-85 to 1986-87. The 1st respondent filed RP.No.3501 of 1988 before the Tribunal and the same was allowed on 30.08.1988 and thereby he was reinstated to duty vide proceedings dated 23.01.1990 pending finalisation of disciplinary proceedings. For the very same allegations, a case in Crime No.3 of 1994 for the offences under Sections 120(B), 477-A, 409 and 420 IPC was registered by the CBCID against the 1st respondent and 30 others, wherein the 1st respondent and 9 others were arrested. Since the 1st respondent was remanded to judicial custody, again the 2nd petitioner issued orders dated 03.07.2007 placing the 1st respondent under suspension retrospectively w.e.f. 19.06.2007. Questioning the said suspension, the 1st respondent filed O.A.No.382 of 2008 before the Tribunal and the said O.A. was allowed on 13.06.2008. Pursuant to the same, he was reinstated to duty on 07.11.2008. When the 2nd petitioner has not considered the representation of the 1st respondent for regularization of his suspension period from 03.07.2007 to 07.11.2008 as on duty for all purposes, the 1st respondent filed O.A.No.4254 of 2011. The Tribunal, vide impugned order, allowed the O.A. holding that since the charge memo and the consequential proceedings were set

aside by the Tribunal in O.A.No.7478 of 2008, the suspension period from 03.07.2007 to 07.11.2008 has to be regularized as on duty with all consequential benefits irrespective of pendency of criminal proceedings in view of the fact that the suspension period of other employees who were alleged to have been involved in the misappropriation case along with 1st respondent was regularized as on duty vide G.O.Rt.No.652 dated 12.08.2011 in pursuance to the order dated 21.08.2009 passed by the Tribunal in O.A.Nos.7825 of 2008, 383 of 2008 and 7481 of 2008, and also O.A.No.730 of 2008 dated 13.06.2009. Being aggrieved by the same, the State and its officials filed the present writ petition.

3. The learned Government Pleader would contend that initially the 1st respondent was placed under suspension on 14.12.1987 on the allegation that he along with 30 others was responsible for the sanction of mess charges, scholarships, etc., to fictitious and discontinued S.C. and B.C. students resulting in misappropriation of Government funds to the tune of Rs.7,57,957.50 Ps. during the years 1984-85 and 1986-87. He was reinstated to duty on 23.01.1990 pending finalisation of disciplinary proceedings. Subsequently, a charge memo was issued on 28.05.1994. He submitted his explanation on 30.12.1994. Thereafter, an amended charge memo dated 17.03.1997 was issued alleging that he was responsible for the sanction of mess charges/scholarships to

fictitious and non-existing S.C. students in Hyderabad District and misappropriated Government funds to the tune of Rs.1,28,925/-. He submitted his explanation on 21.04.1997. Thus, an Enquiry Officer was appointed and after conducting enquiry, he submitted enquiry report to the Government on 23.06.2005. Thereafter, the 1st respondent and 8 others were arrested and remanded to judicial custody in connection with Crime No.3 of 1994 of CID P.S., Hyderabad registered for the offences punishable under Sections 120(B), 477-A, 409 and 420 IPC. Hence, the 1st respondent was again placed under suspension on 03.07.2007, pending enquiry under sub-rule (2) of Rule 8 of A.P. Civil Services (CCA) Rules, 1991. The 1st respondent was reinstated to duty on 07.11.2008, as per the order of the Tribunal dated 13.06.2008 passed in O.A.No.382 of 2008, without prejudice to the continuance of the departmental enquiry and criminal proceedings. In the meanwhile, being not satisfied with the enquiry report submitted on 23.06.2005, the Government appointed another Enquiry Officer to conduct regular, detailed and common enquiry into the allegations and the Enquiry Officer submitted his report on 06.08.2010. In view of the pendency of the criminal case, further disciplinary proceedings could not be concluded. However, the ACB Officers registered a Crime No.20/ACB-HR/2007 under Section 13(2) r/w 13(1)(a) of P.C. Act, 1988 on 10.09.2007 alleging possession of

disproportionate assets and the same is under investigation. Subsequently, the 1st respondent was retired from service on attaining the age of superannuation on 30.06.2011. Thus, the learned Government Pleader would contend that as the disciplinary proceedings are pending against the 1st respondent in respect of the misappropriation of scholarship funds and ACB case, revocation of suspension cannot be done without finalisation of the said two cases. Hence, the order of the Tribunal passed in O.A.No.4254 of 2011 dated 13.09.2012 is arbitrary, illegal and liable to be set aside.

4. Per contra, Sri G.Seena Kumar, learned counsel for the 1st respondent would contend that the charge memo dated 28.05.1994, amended charge memo dated 17.03.1997 and Government Memo dated 15.05.2006 were challenged in O.A.No.7478 of 2008 and the same was allowed on 10.02.2010 by setting aside the charge memo dated 28.05.1994 holding that the proceedings dated 28.05.1994 is not a charge memo and is only a show-cause notice and it was also directed to treat the report dated 23.06.2005 as preliminary enquiry report. The Tribunal also held that basing on such preliminary enquiry report, there cannot be any further enquiry and the consequential orders dated 15.05.2006 are also liable to be set aside as being without jurisdiction. The Tribunal gave liberty to the petitioners to

proceed against the 1st respondent by issuing a fresh charge memo basing on the preliminary enquiry report dated 23.06.2005. However, the petitioners have not chosen to issue fresh charge memo as per the orders in O.A.No.7478 of 2008 and therefore it is deemed that there are no departmental proceedings against the 1st respondent either in pursuance to the suspension order dated 14.07.1987 or 03.07.2007. The 1st respondent was retired from service on 30.06.2011 on attaining the age of superannuation and on the date of his retirement, there was no suspension either for the allegations pertaining to the possession of disproportionate assets in pursuance of the criminal case registered by ACB or departmental proceedings. As such, the relief sought before the Tribunal in O.A.No.4254 of 2011 is pertaining to the allegations of 1984-1987 and the petitioners cannot deny the request of the 1st respondent for regularizing the suspension period from 03.07.2007 to 07.11.2008 as extended to the similarly situated persons vide G.O.Rt.No. 652 dated 12.08.2011. The Tribunal allowed the said O.A. on 13.09.2012 directing the petitioners to regularize the suspension period from 03.07.2007 to 07.11.2008 as on duty on par with Sri M.Nagender and Sri K.Senapathi, who are covered by G.O.Rt.No.652 dated 12.08.2011. Instead of complying with the said order, the petitioners filed the present writ petition. Subsequent to the filing of the present writ petition, the departmental proceedings were concluded as

per order dated 16.02.2016 passed in O.A.Nos.7214 of 2013 and batch and as no appeals were preferred, the said order became final. Insofar as the criminal proceedings are concerned, the same were quashed in CrI.P.No.6523 of 2012 by an order dated 13.07.2017 and the same was confirmed by the Hon'ble Supreme Court. Since both the departmental as well as the criminal proceedings were concluded, the 1st respondent is legally entitled to get regularized the period of suspension from 14.12.1987 to 21.01.1990 and from 19.06.2007 to 07.01.2008 as on duty with all consequential benefits as was done in the case of others vide G.O.Rt.No.652 dated 12.08.2011.

5. Having heard the rival contentions of the learned counsel and having perused the record, we find that while the 1st respondent was working as an Assistant Social Welfare Officer at Medak District, he was placed under suspension on 14.12.1987 vide proceedings dated 11.12.1987 along with 30 others by the 2nd petitioner alleging that they were responsible for the sanction of mess charges and scholarships to fictitious S.C. and B.C. students resulting in misappropriation of Government funds. He was reinstated to duty vide proceedings dated 23.01.1990 pending finalisation of disciplinary proceedings. For the very same allegations, a case in Crime No.3 of 1994 was registered by CBCID against 31 persons for the offences punishable under Sections 120-B,

477-A, 409 and 420 IPC, wherein the 1st respondent and 8 others were arrested. Since the 1st respondent was remanded to judicial custody, the 2nd petitioner again placed the 1st respondent under suspension vide proceedings dated 03.07.2007 retrospectively w.e.f. 19.06.2007 for the same incident for which earlier he was placed under suspension on 14.12.1987. He was reinstated to duty on 07.11.2008 as per the orders dated 13.06.2008 passed in O.A.No.382 of 2008. The 1st respondent filed O.A.No.4254 of 2011 for regularisation of his suspension period as on duty since his representation was not considered by the 2nd petitioner. The Tribunal allowed the O.A. on 13.09.2012 directing the petitioners to regularize the suspension period from 03.07.2007 to 07.11.2008 as on duty on par with M.Nagender and K.Senapathy covered by G.O.Rt.No.652 dated 12.08.2011 with all consequential benefits and to pass appropriate orders, mainly holding that similarly situated employees who were alleged to have been involved in the misappropriation of funds and criminal case and who were suspended along with the 1st respondent were reinstated and their suspension period was regularised vide G.O.Rt.No.652 dated 12.08.2011 as per the orders of the Tribunal passed in O.A.Nos.7825 of 2008, 383 of 2008, 7481 of 2008 and 730 of 2008. The Tribunal also held that since the charge memo and the consequential proceedings issued against the 1st respondent were set aside in O.A.No.7478 of 2008, the

suspension period has to be regularized as on duty irrespective of pendency of criminal proceedings. Accordingly, the Tribunal directed the petitioners to treat the suspension period as on duty with all consequential benefits.

6. In our considered view, the pendency of Crime No.20/ACB-HR/2007, which is registered subsequently and under investigation, may not be an impediment to consider the case of the 1st respondent for regularization of the suspension period as on duty under Rule 54 of the Fundamental Rules, as per the impugned order passed in O.A.No.4254 of 2011.

7. For the reasons stated supra, we find that there is no irregularity or illegality in the impugned order warranting interference by this Court under Article 226 of the Constitution of India.

8. The Writ Petition is accordingly dismissed. Pending miscellaneous petitions, if any, shall stand dismissed. No order as to costs.

SANJAY KUMAR, J

M.GANGA RAO, J

Date: 04.10.2018

anr

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO**



WRIT PETITION No. 26372 OF 2013
(per Hon'ble Sri Justice M.Ganga Rao)

04.10.2018

anr