

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHA RAO

WRIT PETITION NO.15066 of 2017

ORDER: (per SK,J)

The original petitioner in this writ petition was the applicant in O.A.No.524 of 2011 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad. His challenge therein was to G.O.Ms.No.349 dated 22.09.2008 issued by the Government visiting upon him the penalty of 100% cut in pension and withholding the entire gratuity amount payable to him permanently. By order dated 23.01.2017, the Tribunal dismissed the O.A. Significantly, the Tribunal took note of the fact that a co-charged employee, one S.Subba Rao, was visited with the penalty of dismissal from service under G.O.Ms.No.351 dated 22.09.2008 and observed that having regard to the penalties imposed on the co-charged officers, the original petitioner/applicant was not entitled to any indulgence in the matter of the quantum of penalty on grounds of proportionality. The G.O. under challenge was accordingly upheld and the O.A. was dismissed.

During the pendency of this writ petition, the original petitioner/applicant died and his legal representatives were brought on record as petitioners 2 to 4.

Ms.S.Pranathi, learned counsel for the petitioners, would state that the Tribunal lost sight of the fact that S.Subba Rao filed O.A.No.4226 of 2009 before it assailing G.O.Ms.No.351 dated 22.09.2008, whereby he was dismissed from service and the said O.A. was allowed on 23.07.2012 holding that the enquiry held against him was not in accordance with the procedure prescribed under Rule 20 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991. The Tribunal also found that there was violation of the procedure as S.Subba Rao was not given an opportunity to

cross-examine witnesses which would amount to transgression of the principles of natural justice. The Tribunal accordingly set aside the order of dismissal of S.Subba Rao from service and permitted the authorities to conduct the enquiry afresh in accordance with the due procedure.

It is not in dispute that the enquiry held against S.Subba Rao and the original petitioner/applicant in this case was a common enquiry. That being so, as the order in O.A.No.4226 of 2009 has admittedly attained finality, the findings of the Tribunal therein that the enquiry was illegal being in contravention of the prescribed procedure would also enure to the benefit of the original petitioner/applicant. On the strength of such a tainted enquiry, it is not open to the authorities to sustain the punishment visited upon the original petitioner/applicant *vide* G.O.Ms.No.349 dated 22.09.2008.

On this short ground, G.O.Ms.No.349 dated 22.09.2008 issued by the Government is set aside. As the original petitioner/applicant already expired, the retirement benefits due to him would have to be paid to his legal representatives, petitioners 2 to 4, in accordance with the due procedure. This exercise shall be completed by the respondents expeditiously and, in any event, not later than four weeks from the date of receipt of a copy of this order.

The writ petition is accordingly allowed. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

P.KESHAHA RAO,J

Date:09.04.2018

GJ