

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

* * * *

WRIT PETITION NOS.25587, 26311 AND 26381 OF 2018

C.Mallem Kondaiah

... Petitioner

Vs.

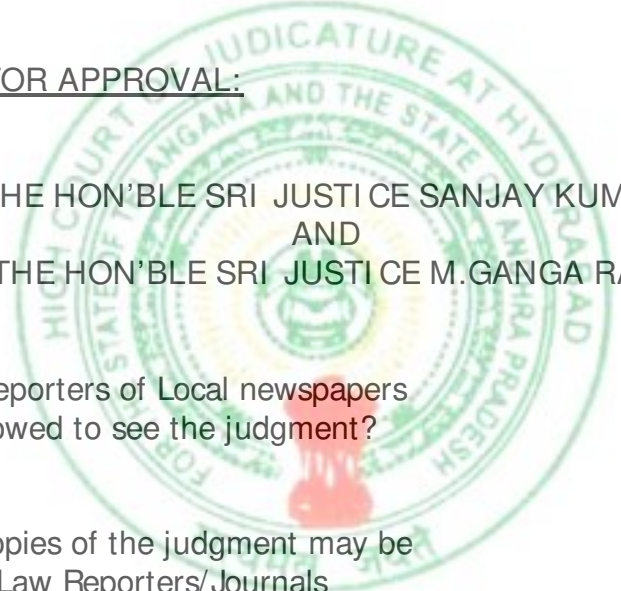
The State of Andhra Pradesh, rep by its
Principal Secretary to Government
Revenue (Excise.I) Department and others

... Respondents

Date of Judgment Pronouncement: 15th NOVEMBER, 2018

SUBMITTED FOR APPROVAL:

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

- 
1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
 2. Whether copies of the judgment may be marked to Law Reporters/Journals Yes/No
 3. Whether His Lordship wishes to see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

M. GANGA RAO, J

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AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

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< Gist:

> Head Note:

! Counsel for petitioner in all cases : Sri P.Suresh Reddy and
Sri Ramalingeswara Rao Kocherla
Kota

! Counsel for respondents in all cases : Learned Government Pleader for
Services

? CASES REFERRED:

1. (1996) 9 SCC 395
2. W.P.NO.38901 OF 2017 DECIDED ON 17.11.2017
3. (2016) 9 SCC 20
4. (2009) 10 SCC 415
5. 1993 Supp (3) SCC 168
6. (1995) 6 SCC 749

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

WRIT PETITION NOs.25587, 26311 AND 26381 OF 2009

COMMON ORDER
(*Per Sri Justice Sanjay Kumar*)

C.Mallem Kondaiah, the petitioner in these three cases, retired from service as a Prohibition and Excise Inspector in the State of Andhra Pradesh on 28.02.2017. He was subjected to disciplinary proceedings after his retirement. Aggrieved thereby, he approached the Andhra Pradesh Administrative Tribunal, Hyderabad (*for brevity*, 'the Tribunal'). O.A.No.2912 of 2017 was filed by him challenging the Charge Memo dated 21.06.2017 issued by the Tribunal for Disciplinary Proceedings, Hyderabad, in Enquiry Case No.113 of 2013. O.A.No.3046 of 2017 was filed by him challenging the Charge Memo dated 15.09.2017 issued by the Tribunal for Disciplinary Proceedings, Hyderabad, in Enquiry Case No.137 of 2013. O.A.No.3483 of 2017 was filed by him assailing the Charge Memo dated 27.11.2017 issued by the Tribunal for Disciplinary Proceedings, Hyderabad, in Enquiry Case No.169 of 2013. The common ground of challenge in all three O.As. was that initiation of such disciplinary proceedings after his retirement was without jurisdiction, being in violation of Rule 9(2)(b)(ii) of the Andhra Pradesh Revised Pension Rules, 1980 (*for brevity*, 'the Rules of 1980'). He sought a consequential direction in all three O.As. to release his full pension and other retirement benefits.

By common order dated 18.06.2018, the Tribunal opined that Rule 9(2)(b)(ii) of the Rules of 1980 would have no application to cases before the Tribunal for Disciplinary Proceedings and dismissed the O.As. Hence, these writ petitions - W.P.No.25587 of 2018 calls in question the said

common order in so far as it relates to O.A.No.2912 of 2017 while W.P.No.26311 of 2018 relates to O.A.No.3046 of 2017 and W.P.No.26381 of 2018 relates to O.A.No.3483 of 2017.

Heard Sri P.Suresh Reddy, learned senior counsel appearing for Sri Ramalingeswara Rao Kocherla Kota, learned counsel for the petitioner, and the learned Government Pleader for Services, State of Andhra Pradesh, for the respondents.

It is not in dispute that the petitioner was allowed to retire from service unconditionally on 28.02.2017, upon attaining the age of superannuation. It appears that the Government of Andhra Pradesh entrusted three reference cases against Prohibition and Excise officials of Guntur District, including the petitioner, to the Tribunal for Disciplinary Proceedings, Hyderabad, under Memo No.45926/Vig.V(2)/2012-1 dated 16.01.2013, Memo No.45965/Vig.V(2)/ 2012-1 dated 16.01.2013 and Memo No.51902/Vig.V(2)/2012-1 dated 16.01.2013. It is on the strength of these references that the impugned Charge Memos came to be issued to the petitioner. Charge Memos dated 21.06.2017 and 27.11.2017 issued by the Tribunal for Disciplinary Proceedings, Hyderabad, related to a surprise check conducted at Karimnagar on 13.12.2011, resulting in the petitioner being charged with abuse of his official position by receiving bribes apart from exhibiting lack of integrity and devotion to duty. The Charge Memo dated 15.09.2017 related to searches conducted at the offices of the Excise Superintendents at Guntur, Tenali and Narasaraopet of Guntur District on 05.03.2012, resulting in the charge that the petitioner had received mamools (bribes) and abused his official position by omission of lawful duties.

Thereupon, only provisional pension was sanctioned to him in view of the pendency of these disciplinary proceedings.

The issue presently is whether initiation of such disciplinary proceedings is rendered illegal in terms of Rule 9(2)(b)(ii) of the Rules of 1980.

Rule 9(2)(b) of the Rules of 1980 reads as under:

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

(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.’

It would also be pertinent to note the contents of Rule 9(6) of the Rules of 1980, to the extent relevant:

‘(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 –

.....’

Sri P.Suresh Reddy, learned senior counsel, would contend that as the departmental proceedings against the petitioner were instituted only upon issuance of the impugned Charge Memos long after his retirement from service, such institution stood vitiated under Rule 9(2)(b)(ii) of the Rules of 1980, which prohibits such departmental proceedings being instituted in respect of an event which took place more than four years before such institution. As the impugned Charge Memos themselves demonstrated that they related to instances of 2011 and 2012, the learned senior counsel would assert that the aforestated Rule would apply on all fours and the very

institution of departmental proceedings against the petitioner would have to fall to the ground. Learned senior counsel would further assert that the interpretation placed on the aforesaid Rule by the Tribunal would mean that any case referred to a Tribunal for Disciplinary Proceedings would stand excluded from the application of the Rule and such exclusion would be wholly unsustainable in law.

It may be noted that the Tribunal for Disciplinary Proceedings, Hyderabad, traces its origin to Section 3 of the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Act, 1960 (*for brevity*, 'the Act of 1960'). Section 4 of this enactment empowers the Government to refer cases to the Tribunal for Disciplinary Proceedings for enquiry and report. Sections 5 and 6 deal with the procedure to be followed while making such enquiry. The procedure prescribed finds greater elaboration in Rule 6 of the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Rules, 1989, framed in exercise of power under Section 10(1) of the Act of 1960. Rule 6(1) provides that notwithstanding anything contained in the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (*for brevity*, 'the Rules of 1991'), the Tribunal for Disciplinary Proceedings shall follow the procedure set out therein for conducting enquiries into cases of misconduct referred to it under Section 4 of the Act of 1960. Rule 6(1)(a) states to the effect that as soon as the records relating to the allegations of misconduct are received, the Tribunal for Disciplinary Proceedings shall frame appropriate charges and communicate them to the Government servant along with the list of witnesses proposed to be examined. It is therefore clear that unlike the procedure prescribed in the Rules of 1991, the drawing up of charges is not undertaken by the Disciplinary Authority and the

Tribunal for Disciplinary Proceedings is itself empowered to undertake this exercise upon reference of the case to it under Section 4 of the Act of 1960.

This being the legal position, we are at a loss to understand as to how the Tribunal came to the opinion that the impugned Charge Memos were not really 'Charge Memos' issued by the Tribunal for Disciplinary Proceedings and were merely 'charges' framed by it. It is not the case of the authorities that apart from the impugned Charge Memos issued by the Tribunal for Disciplinary Proceedings, Hyderabad, there were any other Charge Memos issued at an earlier point of time by the Government of Andhra Pradesh. The distinction sought to be drawn by the Tribunal on the strength of the phrase 'the Tribunal shall frame appropriate charges and communicate them to the Government servant' in Rule 6(1)(a) of the Rules of 1991 to mean that the framing of such charges could not be equated with a Charge Memo issued by the Disciplinary Authority under Rule 20(3) of the Rules of 1991 is farfetched and illogical.

Further, the interpretation placed by the Tribunal upon Rule 9(2)(b)(ii) of the Rules of 1980 practically renders the said Rule redundant in every case referred to the Tribunal for Disciplinary Proceedings under Section 4 of the Act of 1960. According to the Tribunal, in all such cases, the institution of disciplinary proceedings happens upon reference of the case by the Government under Section 4 of the Act of 1960. While concluding so, the Tribunal completely lost sight of Rule 9(6) of the Rules of 1980, which states in categorical terms as to when departmental proceedings are deemed to have been instituted for the purpose of Rule 9. Conveniently, the Tribunal summed up that Rule 9(6) of the Rules of 1980 would not cover cases referred by the Government to the Tribunal for Disciplinary Proceedings. However, the Tribunal did not cite any basis for this conclusion. We find that

there is no such caveat or rider either in the Act of 1960, the Rules of 1989 or the Rules of 1980 which supports such a conclusion. It was therefore not for the Tribunal to legislate and introduce something new into the law.

In this regard, reference may be made to STATE OF U.P. V/ s. SHRI KRI SHNA PANDEY¹, wherein the Supreme Court was dealing with initiation of a departmental enquiry against the respondent therein after his retirement from service. As in Rule 9(2)(b)(ii) of the Rules of 1980, Regulation 351-A of the Civil Services Regulations, which was under consideration, provided that departmental proceedings, if not instituted before retirement, shall not be instituted in respect of an event which took place more than four years before such institution. As in Rule 9(6) of the Rules of 1980, the Explanation to Regulation 351-A provided that departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner were issued to him or from the date of his being placed under suspension, if applicable. Ultimately, the Supreme Court held that departmental proceedings must be instituted before lapse of four years from the date on which the event of misconduct had taken place.

Though the learned Government Pleader would place reliance on the recent judgment of a Division Bench of this Court in L.NAGESWARA RAO V/ s. THE STATE OF ANDHRA PRADESH², wherein it was held that calculation of the period of four years in relation to Rule 9(2)(b)(ii) of the Rules of 1980 would have to commence not from the date on which the event took place but from the date when such event actually came to light, we are of the considered opinion that this judgment does not aid or assist the authorities. Be it noted that the surprise checks which were the basis for the departmental proceedings instituted against the petitioner were

¹ (1996) 9 SCC 395

² W.P.NO.38901 OF 2017 DECIDED ON 17.11.2017

conducted on 13.12.2011 and 05.03.2012 and the Government referred the cases against the petitioner for enquiry to the Tribunal for Disciplinary Proceedings, Hyderabad, on 16.01.2013. Thus, the 'events' had come to light at least by 16.01.2013 but there is a clear gap of more than four years even if the Memos dated 16.01.2013 are taken into consideration, as the Charge Memos were issued by the Tribunal for Disciplinary Proceedings, Hyderabad, only on 21.06.2017, 15.09.2017 and 27.11.2017.

The learned Government Pleader would also place reliance on BRAJENDRA SINGH YAMBEM V/ s. UNION OF INDIA³, wherein Rule 9(2)(b)(ii) of the Central Civil Services (Pension) Rules, 1972, was under consideration. This Rule is akin in all respects to Rule 9(2)(b)(ii) of the Rules of 1980. In that case, the appellant had retired from service on 31.08.2006 and the Memorandum of Charges dated 22.08.2008 issued to him was in relation to an act allegedly committed in the year 1995. In such circumstances, the Supreme Court held that institution of the departmental proceedings stood vitiated by the embargo of four years which found place in the Rule. The Supreme Court observed that if the manner of doing a particular act is prescribed under a statute then the act must be done in that manner or not at all. Having summed up the legal position thus, the Supreme Court however took note of the seriousness of the allegations made against the appellant and, in exercise of power under Article 142 of the Constitution, directed the Disciplinary Authority to continue the departmental proceedings and conclude them within a time frame.

Learned Government Pleader would assert that this is also a deserving case where, notwithstanding the legal position, this Court would be justified in permitting the disciplinary proceedings to proceed to their logical

³ (2016) 9 SCC 20

conclusion. In effect, the learned Government Pleader would have us exercise jurisdiction under Article 142 of the Constitution.

It may however be noted that Article 142 of the Constitution vests only the Supreme Court with the discretionary power to deliver complete justice in a given case. No such power has been conferred upon the High Courts by the Constitution. Trite to state, the orders passed by the Supreme Court in exercise of power under Article 142 would not constitute precedents in terms of Article 141 of the Constitution. This is clear from *BRAJENDRA SINGH YAMBEM*³ wherein, having laid down the law, the Supreme Court exercised power under Article 142 and issued directions directly contrary to the legal position summed up therein.

Further, it may be noted that in *ANIL KUMAR JAIN V/ s. MAYA JAIN*⁴, the Supreme Court specifically pointed out that the power vesting in it under Article 142 of the Constitution was not available to the High Courts. Earlier, in *REKHA CHATURVEDI V/ s. UNIVERSITY OF RAJASTHAN*⁵, the Supreme Court held to the same effect and said that the High Court does not have power under Article 142 of the Constitution to do complete justice and having found on merits in favour of the writ petitioners, the High Court was not justified in declining relief to them.

No doubt, in *B.C. CHATURVEDI V/ s. UNION OF INDIA*⁶, a different opinion was expressed to the effect that High Courts too are to do complete justice, though the power of the High Court would not be as wide as that which the Supreme Court has under Article 142.

In any event, we are of the opinion that in the quest to do complete justice, it would not be within the power of this Court to affirm the legal position one way and give final directions contrary thereto.

⁴ (2009) 10 SCC 415

⁵ 1993 Supp (3) SCC 168

⁶ (1995) 6 SCC 749

In the cases on hand, we find that the very institution of disciplinary proceedings against the petitioner by issuance of Charge Memos in 2017 was hit by the embargo under Rule 9(2)(b)(ii) of the Rules of 1980. Ergo, we cannot permit continuation of such departmental proceedings in the name of doing complete justice, merely because serious allegations were levelled against the petitioner.

The writ petitions are accordingly allowed quashing the Charge Memos dated 27.11.2017, 21.06.2017 and 15.09.2017. The common order dated 18.06.2018 passed by the Tribunal in O.A.Nos.3483, 2912 and 3046 of 2017 shall stand set aside. The finding of the Tribunal therein to the effect that Rule 9(2)(b)(ii) and 9(6) of the Rules of 1980 have no application to a case referred to the Tribunal for Disciplinary Proceedings under Section 4 of the Act of 1960 is held to be without legal basis. The petitioner is held entitled to his full pension and other retirement benefits. Respondents 1 and 2 shall endeavour to release the same expeditiously and, in any event, not later than eight weeks from the date of receipt of a copy of this order.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

M.GANGA RAO,J

15th NOVEMBER, 2018

Note: L.R. copies to be marked.
(B/o) PGS