

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Writ Petition No.26347 of 2003

ORDER:

The writ petitioner herein prays the Court for issuance of writ of Mandamus declaring the action of 2nd respondent in issuing proceedings No.PA/19(12)/2003 ED (C&N), dated 19.09.2003 and also 3rd respondent proceedings No.E5/114(8)/2002-RM(C), dated 03.07.2003 as illegal, arbitrary and unjust and consequently set aside the same and direct the respondents to reinstate the petitioner into service with all consequential benefits thereof.

2) Briefly stating the petitioner's case is thus:

a) The petitioner was posted as Station Manager, APSRTC, Kurnool in 1997 and in the month of March, 2001, he was posted at Rajampet APSRTC bus depot. While-so one Mr. S.Lingaiah gave a complaint to the Additional Director Vigilance & Security, APSRTC, Cuddapah, alleging that the petitioner promised him to provide employment to his daughter as Junior Assistant in APSRTC against backlog vacancies and demanded an amount of Rs.75,000/- and that said Lingaiah paid an amount of Rs.50,000/- to the petitioner through demand draft; the petitioner failed to procure job to his daughter and also failed to return the amount; basing on report, the 5th respondent suspended the petitioner from his services vide proceedings dated 02.11.2002 and issued charge sheet. The petitioner's further case is that respondents without considering his explanation

initiated departmental enquiry; the enquiry officer in his report dated 22.01.2003 held that petitioner was guilty of the charges. Thereafter, respondent—Corporation issued show cause notice dated 30.05.2003 removing the petitioner, for which the petitioner submitted his reply; however without considering the reply, the 3rd respondent issued termination orders dated 03.07.2003 removing the petitioner from the services. Aggrieved, the petitioner preferred an appeal before the 2nd respondent but the same was also rejected vide proceedings dated 19.09.2003.

Hence the writ petition.

b) Respondents filed counter and opposed the petition contending that petitioner suffered many punishments during his service and he was suspended on 02.11.2002 by the 4th respondent basing on a complaint made by one S.Lingaiah for taking Rs.75,000/- from him to give employment to his daughter. Thereafter the enquiry officer conducted enquiry. Respondents while denying that petitioner submitted his explanation to the show cause notice, contended that petitioner submitted a letter dated 09.06.2003, which was received by them on 10.06.2003, wherein it was stated that petitioner fell sick with severe Typhoid fever and requested 10 more days time to submit his explanation. Further, the petitioner submitted another application dated 20.06.2003 enclosing the medical certificate issued by Civil Assistant Surgeon, Government General Hospital, Kurnool dt.10.06.2003, in which the petitioner was advised treatment and absolute bed rest for a period of 15 days from 10.06.2003 to 24.06.2003 and

requested one more week time to submit his explanation and the same was not accepted by the respondents. The respondents submitted that earlier the petitioner filed W.P.No.22518/2002 before the High Court to set aside the suspension order and also filed C.C.No.712/2003 in W.P.No.22518/2002 and the same was dismissed on 25.07.2003. The serious charges are proved in the enquiry and hence the termination order is correct. Finally, it is submitted that had the petitioner claimed subsistence allowance, the same would have been paid by the 5th respondent. Thus, the respondents prayed to dismiss the writ petition.

3) Heard arguments of Sri G.Ravi Mohan, learned counsel for petitioner and learned Standing Counsel for APSRTC/respondents.

4) Severely remonstrating the proceedings No.PA/19(12)/2003 ED (C&N), dated 19.09.2003 passed by the 2nd respondent dismissing the appeal preferred by the petitioner, learned counsel for petitioner would vehemently argue that in this case the department miserably failed to prove any of the corruption charges levelled against the petitioner but the Enquiry Officer submitted a report as if the charges were proved. Without scrutinising the legal validity of the report, the Regional Manager, Kadapa, removed the petitioner from service and the Appellate Authority also dismissed the appeal preferred by the petitioner on erroneous appreciation of the facts and evidence.

a) In expatiation of his argument, learned counsel for petitioner would firstly argued that in this case within short time after sending complaint, the complainant got sent a letter dated 11.06.2002 through his counsel Sri

A.N.Guru Prasad, Ananthapur to the Director, Vigilance and Security, clearly stating therein that he sent the amount to a retired Officer in Secretariat for securing appointment to his daughter and said amount was sent through the petitioner and as the petitioner did not like such things, he returned back the amount to the complainant and therefore, there was no involvement of B.Prasad Rao, the petitioner in the matter of securing appointment to the complainant's daughter either in APSRTC or any other department. Learned counsel strenuously argued that having received the said clarificatory letter-cum-legal notice from the complainant, the department ought to have dropped the proceedings against the writ petitioner. However, they have not given any credence to the legal notice sent by the complainant himself. Therefore, the continuation of the departmental enquiry itself is devoid of legality.

b) Secondly, learned counsel argued that the Enquiry Officer gave a perverse finding to the effect that the charges levelled against the writ petitioner were proved. He argued that the complainant in his evidence did not support the complaint allegations and on the other hand, he turned hostile and revealed that the petitioner had not demanded any bribe from him for securing employment to his daughter in APSRTC or any other department; the complainant had passed on Rs.75,000/- to Manasaiah through petitioner as he happened to be the relative of Manasaiah and friend of complainant; the petitioner did not like this course and had in fact returned the amount to the complainant and thereafter, the complainant himself went to Hyderabad and paid the amount of Rs.75,000/- directly to

Manasaiah; however, Manasaiah neither procured job to his daughter nor returned back the amount and thus cheated him. Learned counsel further argued, complainant has vividly stated that since Manasaiah retired from service, he could not initiate any departmental action against him and therefore, he invented an idea of pressurising the petitioner by giving a complaint against him with the hope that he in turn would pressurise Manasaiah and get back his amount. That was why, he gave complaint against the writ petitioner to the RTC department, though in fact, he paid his amount long prior to the issuing of complaint. Learned counsel would argue that in view of the further clarification given by the complainant in his evidence, it was crystal clear that none of the charges levelled against the petitioner was proved.

c) Finally he argued that though the undertaking letter dated 11.06.2002 allegedly executed by the petitioner was produced during the departmental enquiry, the same was not proved. Basing on the news items in the local newspapers published against the petitioner, the enquiry officer held charges against him were established. He relied upon the decision reported in *Roop Singh Negi vs. Punjab National Bank and others*¹, to contend that mere production of the documents in a departmental enquiry do not amount to proof and they are required to be proved by producing through proper witness. He thus prayed to allow the Writ Petition.

5) In oppugnation, learned Standing Counsel for APSRTC/respondent supported the dismissal order arguing that the petitioner by demanding and

¹ (2009) 2 Supreme Court Cases 570

collecting bribe of Rs.75,000/- from the complainant to secure job to his daughter, committed an act of misconduct and also tarnished the image of the department in the public and therefore, he was rightly punished. He would argue that though the complainant gave report to the department with all facts, however himself and petitioner conspired together and thereby he turned hostile during enquiry. Therefore, he presented a different version as if the petitioner did not demand him any bribe and when complainant tried to send the amount to Manasaiah through the petitioner, not willing to act as an agent to Manasaiah, petitioner returned the amount. Learned counsel vehemently argued that if really the petitioner received the amount not as a bribe and refunded the same to the complainant, there was no reason for him to execute an undertaking dated 11.06.2002 stating that he paid Rs.10,000/- on that day and would pay the remaining Rs.50,000/- in five instalments before 11.11.2002. The complainant in fact enclosed copy of the aforesaid undertaking letter dated 11.06.2002 to his complaints dated 24.09.2002 & 16.10.2002 addressed to Chairman & Managing Director and Chief Managers respectively. The enclosed undertaking thus falsified the contention of the complainant as well as the petitioner. Therefore, the enquiry officer rightly found him guilty. He thus prayed to dismiss the Writ Petition.

6) The point for determination is:

“Whether petitioner was guilty of the charges levelled against him and whether the report of the Enquiry Officer is factually and legally sustainable?”

7) **POINT:** The cardinal principle is that unless the departmental enquiry suffers the vices of perversity, arbitrariness and capriciousness and the punishment imposed by the disciplinary authority is shockingly disproportionate to the proven charges, the Courts and Tribunals, shall not interfere with the same in the judicial review. Vide :

1) *State Bank of Bikaner and Jaipur vs. Nemi Chand Nalwaya*²

2) *V. Ramana vs. A.P.SRTC and others*³

Keeping the above guideline in mind, the case on hand is scrutinised.

8) The substance of the charges levelled against the petitioner is that the petitioner during the relevant period was working as Assistant Manager (T) of Rajampet Depot and he promised the complainant to secure a job for his daughter in APSRTC under backlog vacancies and collected Rs.75,000/- for doing the said favour. However, he did neither get the job nor return the amount. Hence the complainant addressed complaint letters to department.

9) However, during enquiry, the complainant showed *volte-face*. During enquiry, the complainant and the petitioner gave statements. The gist of their version is that the complainant and petitioner were friends. In the year 1999, once complainant went to the house of petitioner at Kurnool, where the petitioner introduced his maternal uncle Manasaiah, who was working as Assistant Secretary in A.P Secretariat at Hyderabad. During conversation, the complainant revealed, he has 3 daughters and a son and requested Manasaiah to help him in securing job to his daughter. After one week he met Manasaiah at Hyderabad. At that time, Manasaiah agreed to

² (2011) 4 SCC 584

³ (2005) 7 SCC 338

arrange a job for his daughter on payment of Rs.75,000/- and asked complainant to pay the said amount through the petitioner. Accordingly, the complainant sent D.D for Rs.50,000/- and STDR for Rs.25,000/- to the petitioner. However, petitioner did not like to act as an agent between them and returned the amount in cash. Thereafter the complainant met Manasaiah at Hyderabad and paid the amount but he failed to secure job to his daughter and he did not return the amount either. Manasaiah retired from service and hence the complainant could not take up any departmental action against him. Therefore, he entertained an idea of getting back his amount by pressurising the petitioner by giving a complaint against him, so that the petitioner in turn would pressurise Manasaiah and get back his amount. Accordingly, he sent complaints personally and through his counsel to the authorities of RTC department against the petitioner as if he demanded bribe of Rs.75,000/- to secure job to his daughter and failed to get the job and return the amount. In view of the pressure of the complaints, the petitioner approached him and agreed to pay him Rs.60,000/- and made a part payment of Rs.10,000/- with an undertaking to pay the balance amount within 5 months by executing an undertaking dated 11.06.2002. On such undertaking the complainant again got sent a letter dated 11.06.2002 through his counsel to department stating as if the petitioner was innocent and did not demand any bribe from him.

10) The Enquiry Officer did not believe their above version. Having narrated the peculiar conduct of the complainant and petitioner, the Enquiry Officer held that both of them came to an understanding. Regarding the

complainant, he observed, the complainant having sent complaints to higher authorities and issuing newspaper statements against the petitioner and thereby tarnishing the image of the department and also seeking indulgence of Chief Minister and making much hungama, later realising and speaking truth was surprising. He took three chances to attend enquiry and requested to conduct enquiry at Anantapur instead of Kadapa and finally he attended the enquiry by turning hostile. All these would show that he had an understanding with the petitioner. Regarding petitioner, the Enquiry Officer observed that he entered into an agreement dated 11.06.2002 on revenue stamp, a copy of which was sent by Lingaiah along with the complaint letters addressed by him to V.C and M.D. If really, the petitioner had no connection with the job issue and repaid the DDs and STDR amount immediately to the complainant as claimed by him in his deposition, there was no need to give a commitment in the agreement dated 11.06.2002 agreeing to pay Rs.60,000/- again. He further observed that the letter dated 11.06.2002 addressed by Sri A.Guru Prasad, Advocate on behalf of the complainant stating that the petitioner was no way connected with the job issue and the subsequent letters dated 24.09.2002 and 16.10.2002 addressed by the complainant to C.M.D and Chief Managers respectively stating that the petitioner still had to refund him the amount would all reveal that there was some understanding between the parties. Thus he ultimately held that the charges were established.

11) I have given my anxious consideration to the enquiry report and other materials. A careful analysis would reveal that neither complainant

nor the petitioner denied the petitioner executing agreement dated 11.06.2002 in favour of complainant stating that he paid Rs.10,000/- and would pay the remaining amount of Rs.50,000/- by 11.11.2002. Since it is an admitted fact, the contention of the counsel for the petitioner that the agreement dated 11.06.2002 and other documents, which are the copies of the complaints sent to the department by the complainant are not duly proved, cannot be accepted. Hence, the cited decision has no application.

a) As rightly observed by the Enquiry Officer, if really the petitioner already returned the amount of Rs.75,000/- to the complainant, there was no need for him to execute an undertaking agreement to again pay Rs.60,000/- to him just because the complainant gave reports against him. So the explanation given by both parties in respect of the agreement dated 11.06.2002, is highly unbelievable. On the other hand, the said agreement leads to an inference that the petitioner executed the agreement dated 11.06.2002 for returning the bribe amount earlier received by him.

b) For another reason also, their version regarding the agreement dated 11.06.2002 is unbelievable. The complainant having satisfied with the agreement dated 11.06.2002, sent legal notice dated 11.06.2002 to the department stating as if the petitioner was innocent. However, he again sent letters dt.24.09.2002 and 16.10.2002 to C.M.D and Chief Managers respectively, complaining that the petitioner took a bribe of Rs.75,000/- from him and subsequently the petitioner approached him on 11.06.2002 agreeing to pay Rs.60,000/- and paid only Rs.10,000/-. He further stated as if his lawyer made him to sign on a blank paper. These two letters will

give an irresistible conclusion that as initially stated by the complainant, the petitioner collected from him Rs.75,000/- and after he gave complaints to authorities, the petitioner entered into an agreement with him on 11.06.2002 to pay Rs.60,000/- and paid Rs.10,000/- agreeing to pay the balance amount by 11.11.2002. Being satisfied with the undertaking agreement dated 11.06.2002, the complainant sent lawyer notice on the very same day i.e, 11.06.2002 to the department as if the petitioner was innocent. However, since the petitioner failed to honour his commitment, he again sent letters dt.24.09.2002 & 16.10.2002 to C.M.D and Chief Managers respectively, again casting aspersions on the petitioner.

c) Therefore, the facts and conduct of the parties clearly depict that the petitioner obtained bribe from the complainant and was thus guilty of misconduct and he was also responsible for tarnishing the image of his department. The report of the enquiry officer and punishment imposed by the authorities do not suffer the vices of perversity or illegality and hence sustainable in law.

12) In the result, this Writ Petition is dismissed. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 07.03.2018

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