

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION Nos.2822 and 6334 of 2009

COMMON ORDER:

These two Writ Petitions are being disposed of by this common order as they were filed by the same petitioner challenging the orders of punishment imposed on him.

2. As per the averments made in the affidavit filed in support of the petition, the petitioner joined the services of the second respondent-Corporation as Assistant Marketing Officer on 17.08.1977. He was promoted to higher post and ultimately to the post of Marketing Manager. While so, he was sent to the first respondent-Corporation as Manager Marketing on 27.06.1992 and he was promoted there in July, 2007 to the rank of Joint Director, Fisheries (by continuing the same designation as Manager Marketing). The first respondent is an Apex Society registered under the provisions of A.P.Co-operative Societies Act, 1987, and it is run by the Board of Directors. While so, the second respondent issued a Charge Memo on 23.05.2008 to the petitioner and he submitted his explanation on 04.06.2008 denying the charges. The second respondent was appointed as an Enquiry Officer on 05.06.2008 and he submitted his report on 23.08.2008. The petitioner was asked to submit his explanation by Memo dated 26.08.2008, of the second respondent and the petitioner submitted his explanation on 09.09.2008 stating that he retired from service on 30.06.2008. In spite of the same, when an order of punishment was passed on 29.10.2008 demoting the petitioner to the lower post and another order dated 11.11.2008 seeking to recover an

amount of Rs.4,48,603/- from the retirement benefits, these two writ petitions were filed.

3. The short point for consideration in these two writ petitions is whether respondents 1 and 2 can pass an order of punishment after retirement of the petitioner on 30.06.2008.

4. Learned counsel for the petitioner relied on a decision of the Hon'ble Supreme Court in **Dev Prakash Tewari v. U.P.Cooperative Institutional Service Board, Lucknow and others** (Civil Appeal No (s). 5848-49 of 2014).

5. Learned Government Pleader, on the other hand, justified the order of punishment and relied on **V.Padmanabham v. Government of Andhra Pradesh and others**¹.

6. The service conditions of the petitioner are regulated by Special Bye-laws framed by the first respondent. The charge levelled against the petitioner was that he failed to open 10 new HSD Oil Outlets in different places before the end of August 2007 even though it was promised during the Managing Committee Meeting held in the month of July 2007 and thus, he wilfully evaded attending and discharging his duties, which is in utter disregard and violation of Conduct Rules of a public servant. Another charge related to non-verification of electricity charges to be paid by the lessee from time to time resulting in accumulation of arrears to a tune of Rs.3,13,963/-. It was also alleged that the petitioner failed to monitor functioning of Ice plant and bring to the notice of higher officials for taking remedial measures. The

¹ (2009) 15 Supreme Court Cases 537

Enquiry Officer held that charges were proved and accordingly, submitted a report on 20.09.2008. In the meanwhile, the petitioner retired from service on 30.06.2008. When the petitioner was asked to submit his explanation, the petitioner simply stated on 15.10.2008 that since he retired from service on 30.06.2008 on attaining the age of superannuation of 58 years, he is unable to submit any explanation. The first respondent passed order on 21.10.2008 demoting the petitioner to lower post i.e., Marketing Manager in the cadre of Deputy Director and also passed another order on 11.11.2008 proposing to recover an amount of Rs.4,48,603/- comprising of lease amount of Ice plant and electricity charges from retirement benefits.

7. These facts are not in dispute. This Court while admitting the Writ Petition on 19.02.2009 granted interim stay with regard to recovery of amounts pursuant to the proceedings dated 21.10.2008, and as a result of the same, no amount was recovered from the petitioner.

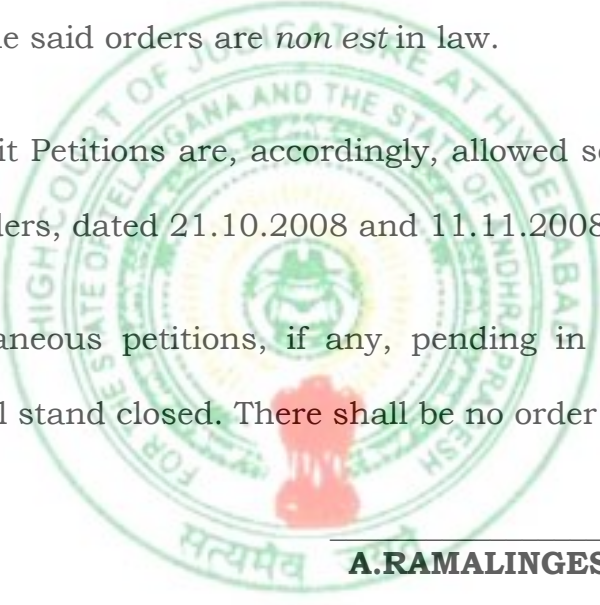
8. There is no provision in the Bye-laws applicable to the first respondent Corporation regulating the service conditions of the employees to continue the disciplinary proceedings even after retirement. The Hon'ble Supreme Court in **Dev Prakash Tewari's case** held that against employees who retired from service, in the absence of any provision, the disciplinary proceedings cannot be continued. A similarly view was taken in **Bhagirathi Jena v. Board of Directors, O.S.F.C & Others**². The decision relied on by the learned Government Pleader in **Bhagirathi's** case is of no

² 1999 2 SLR 355

assistance as the said case was decided on the basis of Rule 9 (2) of A.P.Pension Code, providing continuance of departmental proceedings even after retirement. Admittedly, A.P. Pension Code is not applicable to the petitioner and the service rendered by him does not result in payment of any pension. Though the petitioner was allowed to retire from service on 30.06.2008, action has been taken against him after his retirement in the absence of any provision enabling to take action. Though learned Government Pleader pointed out that proceedings were initiated while the petitioner was in service, since the orders were passed after retirement, the said orders are *non est* in law.

9. The Writ Petitions are, accordingly, allowed setting aside the impugned orders, dated 21.10.2008 and 11.11.2008.

Miscellaneous petitions, if any, pending in these two writ petitions shall stand closed. There shall be no order as to costs.



A.RAMALINGESWARA RAO, J

JANUARY 02, 2018
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Date: 02.01.2018

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