

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

WRIT PETITION NO.27469 OF 2018

ORDER: (per SK,J)

The petitioners are the legal representatives of late G.J.V.Prabhakar Rao, the applicant in O.A.No.3938 of 2014 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad. They filed this writ petition aggrieved by the order dated 18.10.2017 passed by the Tribunal dismissing the said O.A. The prayer of late G.J.V.Prabhakar Rao in the O.A. was to quash or set aside G.O.Rt.No.1199 dated 30.07.2013 issued by the Government of Andhra Pradesh. By way of the said G.O., the Government imposed upon late G.J.V.Prabhakar Rao the penalty of withholding his entire pension and gratuity permanently.

Heard Sri K.Rama Subba Rao, learned counsel for the writ petitioners, and the learned Government Pleader for Services, State of Andhra Pradesh, for the respondents.

It may be noted that late G.J.V.Prabhakar Rao was subjected to disciplinary proceedings under Government Memo dated 17.12.2002. He retired from service on 31.07.2008.

In terms of Rule 9(1) of the Andhra Pradesh Revised Pension Rules, 1980 (for short, 'the Rules of 1980'), the State Government is empowered to withhold the pension or gratuity, or both, either in full or in part, or withdraw the pension in full or in part, whether permanently or for a specified period, if the pensioner is found guilty of grave misconduct or negligence during the period of his service in any departmental or judicial proceedings. The proviso to Rule 9(1) however stipulates that the Andhra Pradesh Public Service Commission should be consulted before any final

orders are passed under Rule 9(1) but such consultation would not be necessary, when the pensioner is found guilty in any judicial proceedings.

Perusal of G.O.Rt.No.1199, Revenue (Vigilance-II) Department, dated 30.07.2013 does not demonstrate that the Government took into confidence the Andhra Pradesh Public Service Commission before passing the final order withholding the pension of late G.J.V.Prabhakar Rao in its entirety.

Learned Government Pleader for Services would however contend that the proviso to Rule 9(1) of the Rules of 1980 would not apply as late G.J.V.Prabhakar Rao was held guilty of grave misconduct in judicial proceedings. She would place reliance on para 10 of the counter-affidavit filed by the Assistant Secretary to Government, Revenue (Vigilance-III) Department, Andhra Pradesh, which reads as under:

“In reply to para-6(e) it is respectfully submitted that as per proviso one to rule 9(1) of the Andhra Pradesh Revised Pension Rules, 1980, the consultation of the Andhra Pradesh Public Service Commission is not necessary when the petitioner is found guilty in any judicial proceedings. Tribunal for disciplinary proceedings is constituted under section 3 of the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Act, 1960. Section 3(3) of the said act prescribes that every member of the Tribunal shall be Judicial Officer of the status of a District Judge and his appointment shall be made by the Government out of panel of names forwarded by the High Court, under section 5 of the said Act, the said tribunal for the purpose of conducting enquiry is having powers of Civil Court while trying to suit under the Code of Civil Procedure, 1908 in respect of the specified matters in clauses (i) to (iii) therein. Under Section 5(2) of the Act, the said Tribunal may examine any person on oath supposed to be acquainted with the matter under enquiry or any fact relevant thereto, and may record his evidence. Sub-Section 4 of Section 5 states that any person who

wilfully or without reasonable excuse, disobeys any summons or order issued, shall be liable to be penalties laid down for the disobedience of the summons or orders issued by a Civil Court. Thus, having regard to the above provisions of Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Act, 1960, the said Tribunal is judicial Tribunal and enquiry report given by the said Tribunal is judicial proceedings. Hence, the concurrence of the Andhra Pradesh Public Service Commission is not required for passing orders.”

Sri K.Rama Subba Rao, learned counsel, would however contend that the proceedings before the Tribunal for Disciplinary Proceedings constituted under the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Act, 1960, cannot be said to be judicial proceedings within the meaning of the proviso to Rule 9(1) of the Rules of 1980.

We find merit in this submission.

Merely because the Tribunal for Disciplinary Proceedings is presided over by a Judicial Officer, it would not have the effect of converting the proceedings before the said Tribunal into judicial proceedings. The said Tribunal is constituted only for conducting an enquiry into the charges framed against an employee. It can therefore only submit an enquiry report with regard to its fact findings on the charges framed against a delinquent employee and no further. The proceedings of such Tribunal cannot therefore be likened to judicial proceedings within the meaning of the proviso to Rule 9(1) of the Rules of 1980.

As it is an admitted fact that the final order embodied in G.O.Rt.No.1199 dated 30.07.2013 was issued by the Government without consulting the Andhra Pradesh Public Service Commission in terms of the proviso to Rule 9(1) of the Rules of 1980, the said final order cannot be

sustained. The Tribunal, unfortunately, did not take note of this aspect and dismissed the O.A.

The writ petition is accordingly allowed setting aside the order dated 18.10.2017 passed by the Tribunal in O.A.No.3938 of 2014 and also G.O.Rt.No.1199 dated 30.07.2013. This order shall however not preclude the authorities from passing orders afresh, if warranted, in accordance with the due procedure. It is made clear that we have not gone into the merits of the matter and all issues are left open.

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

Date:12.10.2018

PGS/GJ