

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

WRIT PETITION No.28960 OF 2018

ORDER: (per Hon'ble Sri Justice Sanjay Kumar)

The State and its officials filed this writ petition aggrieved by the common order dated 21.11.2017 passed by the Andhra Pradesh Administrative Tribunal (*hereinafter*, 'the Tribunal'), Hyderabad, in so far as it pertained to O.A.No.660 of 2017. The said O.A. was filed by the respondent herein assailing the Memo dated 14.02.2017 issued by the State of Andhra Pradesh and seeking a consequential direction to the authorities to revoke her suspension forthwith and extend to her all consequential benefits, including payment of salary, by treating the period of suspension as on duty. She also sought a further direction to the authorities to consider her case for promotion as a Professor with effect from the date her juniors were considered for promotion. By the order under challenge, the Tribunal allowed the O.A. and granted relief to her.

The respondent-applicant, while working as an Associate Professor of Obstetrics and Gynaecology in Rajiv Gandhi Institute of Medical Sciences, Kadapa, was suspended under G.O.Rt.No.76 dated 18.02.2016 pending enquiry under the provisions of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (for short, 'the Rules of 1991'). This was pursuant to charge memo dated 06.02.2016 issued by the disciplinary authority, viz., the Director of Medical Education, Andhra Pradesh, framing a single charge against her. After conducting an enquiry under Rule 20 of the Rules of 1991, the enquiry officer submitted a report holding that the charge against the respondent-applicant was not proved. Thereupon, the Director of Medical Education, Andhra Pradesh, the

disciplinary authority, issued proceedings dated 16.08.2016 dropping further proceedings against the respondent-applicant. The disciplinary authority subsequently addressed letter dated 07.09.2016 to the Principal Secretary to the Government, Health, Medical and Family Welfare Department, Government of Andhra Pradesh, requesting the Government to revoke the suspension of the respondent-applicant and regularize her suspension period as on duty. However, the Government issued the impugned Memo dated 14.02.2017 requesting the Director of Medical Education, Andhra Pradesh, to conduct further enquiry against the respondent-applicant as per the Rules of 1991. It is against this Memo that the respondent-applicant filed the subject O.A.

The Tribunal found that once the disciplinary authority accepted the finding of the enquiry officer to the effect that the charge against the respondent-applicant was not proved, there was no scope for the Government to order further enquiry in the matter under Rule 21 of the Rules of 1991. It is in these circumstances that the Tribunal allowed the subject O.A. and granted relief to the respondent-applicant.

Learned Government Pleader for Services appearing for the petitioners does not dispute that the stand taken before the Tribunal as well as this Court is that the impugned Memo was issued in exercise of power under Rule 21(2) of the Rules of 1991. The said Rule authorizes the disciplinary authority to record reasons for disagreement, if any, with the findings of the enquiry officer on any Article of Charge and requires the Government servant concerned to submit his written representation to the disciplinary authority within fifteen days in relation thereto. As rightly pointed out by the Tribunal, the disciplinary authority, in so far as the respondent-applicant is concerned, is not the Government but the Director

of Medical Education, Andhra Pradesh. This aspect of the matter is not disputed before us by the learned Government Pleader.

That being so, Rule 21(2) of the Rules of 1991 would have no application to the Government which sought to disturb the finding of the enquiry officer which had already been accepted by the disciplinary authority. Further, as rightly pointed out by the Tribunal, the Government did not even purport to exercise the power of revision vesting in it under Rule 40 of the Rules of 1991 and that was not its case before the Tribunal or this Court. The impugned Memo dated 14.02.2017 cannot therefore be traced to exercise of revisionary power under Rule 40 of the Rules of 1991. This being the situation, the Tribunal was absolutely correct in holding that the interference by the Government, purportedly under Rule 21 of the Rules of 1991, was wholly unsustainable in the eye of law. The order passed by the Tribunal holding to this effect and granting relief to the respondent-applicant therefore does not warrant interference.

The writ petition is accordingly dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed.

No order as to costs.

SANJAY KUMAR, J

M. GANGA RAO, J

Dt: 29.08.2018
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