

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

WRIT PETITION NO.32506 OF 2018

ORDER

(Per Hon'ble Sri Justice Sanjay Kumar)

The petitioner is an Inspector of Police in the service of the State of Andhra Pradesh. He was subjected to disciplinary proceedings which culminated in imposition of the punishment of reduction in his timescale of pay by one stage for one year with an effect on his future increments and pension. This punishment order was passed by the Government of Andhra Pradesh, *vide* G.O.Rt.No.854, Home (SC.A) Department, dated 20.07.2015. Challenging the same he approached the Andhra Pradesh Administrative Tribunal, Hyderabad (*hereinafter*, 'the Tribunal'), by way of O.A.No.6419 of 2015. The said O.A. was dismissed by the Tribunal, *vide* order dated 18.07.2018. Aggrieved thereby, he is before this Court.

Sri K.R.Srinivas, learned counsel for the petitioner, would point out that the disciplinary authority in relation to the petitioner is the Commissioner of Police, Visakhapatnam City, and it was he who issued Charge Memo dated 15.07.2013 framing three charges against him. Learned counsel would also point out that as against the disciplinary action taken by the Commissioner of Police, Visakhapatnam City, an appeal would lie to the Government. That being so, learned counsel would contend that imposition of the punishment by the appellate authority, *vide* G.O.Rt.No.854 dated 20.07.2015, would deprive the petitioner of his right of appeal.

Learned Government Pleader for Services, State of Andhra Pradesh, fairly concedes that there is no scope or possibility of the petitioner filing an appeal as the appellate authority passed the punishment order against him.

Losing sight of this vital aspect, the Tribunal proceeded on the ground that as the highest authority, being the Government, had considered the case of the petitioner, he could have no grievance with regard to the punishment imposed. This approach completely loses sight of the fact that as against the punishment order passed by the disciplinary authority, the aggrieved employee has a vested right of appeal and such right cannot be denied to him by the appellate authority itself stepping into the shoes of the disciplinary authority. It is only when such a punishment order passed by the appellate authority is capable of being tested before a higher authority that such transgression of jurisdiction can be condoned. In the case on hand, it is the admitted position that there is no such possibility of the petitioner going before a higher authority as the Government, being the highest authority and being the only appellate authority, chose to play the role of the disciplinary authority.

Though the learned Government Pleader would point out that Rule 12 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (for brevity, 'the Rules of 1991'), vests the Government with the power to impose penalties on any member of the State Services, it may be noticed that Rule 11 of the Rules of 1991 sets out the hierarchy of disciplinary authorities in respect of various State Service employees. Exceptional power is vested in the Government under Rule 12 which states that notwithstanding anything in Rule 11, the Government may impose any of the penalties specified in Rule 9 on members of the State Services. This power would obviously have to be exercised in exceptional and deserving cases and not as a matter of course. Otherwise, the right of appeal provided in Part VI of the Rules of 1991 would be rendered nugatory if the

Government, being the highest body, chooses to pass orders in every case notwithstanding the exhaustive list of disciplinary authorities prescribed in Rule 11 of the Rules of 1991. That apart, we find that the impugned G.O. does not even state to the effect that the Government exercised power under Rule 12 of the Rules of 1991 and imposed punishment upon the petitioner. We therefore find no grounds to hold that this is a case where the Government exercised power under Rule 12 of the Rules of 1991.

On the above analysis, the writ petition is allowed setting aside the order dated 18.07.2018 passed by the Tribunal in O.A.No.6419 of 2015 and also G.O.Rt.No.854 dated 20.07.2015, whereby the petitioner was imposed with the impugned major punishment. Any consequential proceedings issued pursuant to the aforesaid G.O. shall also stand set aside. This order shall however not preclude the disciplinary authority from taking further action, on the strength of the disciplinary proceedings already initiated, in accordance with the due procedure.

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

24th OCTOBER, 2018

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