

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

WRIT PETITION NO.34526 OF 2018

ORDER: (per SK,J)

The petitioner is the applicant in O.A.No.1634 of 2018 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad. He is aggrieved by the rejection of his prayer for interim relief pending the disposal of the O.A., *vide* order dated 05.09.2018 passed by the Tribunal.

Perusal of the said order reflects that the Tribunal took note of the petitioner-applicant's argument that the charge in the disciplinary proceedings and the charge in the criminal case were one and the same, but opined upon comparison of the two that there was no such parity. It is on this basis that an interim order was rejected by the Tribunal while admitting the O.A.

Sri Mamidi Venu Madhav, learned counsel for the petitioner-applicant, would contend that the Tribunal failed to take note of all the grounds urged in the O.A. while considering the prayer for interim relief and the said failure on the part of the Tribunal warrants interference by this Court in exercise of the power of judicial review under Article 226 of the Constitution.

Perusal of the O.A. reflects that the petitioner-applicant, a Police Constable, was subjected to criminal proceedings and also disciplinary proceedings in relation to his alleged Chit Fund business activity. He was suspended from service in April, 2002, and remained under suspension for a period of five years. The disciplinary proceedings initiated under Charge Memo dated 02.11.2002 culminated in the punishment order dated 21.06.2007 whereby the petitioner-applicant was visited with the

punishment of reduction in the time scale of pay to the minimum scale for a period of three years with cumulative effect. The said punishment was set aside by the Tribunal *vide* order dated 25.02.2012 passed in O.A.No.6757 of 2008. The Tribunal however granted liberty to the authorities to initiate fresh disciplinary proceedings against the petitioner-applicant in accordance with the rules. It is on the strength of this liberty that the disciplinary proceedings were initiated afresh against him *vide* Charge Memo dated 26.09.2015. It appears that in the meanwhile, the criminal proceedings ended in acquittal of the petitioner-applicant.

In the light of these circumstances, the petitioner-applicant raised the following grounds in the O.A:

- i) There is no provision in the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991, to conduct a fresh enquiry when once the punishment is set aside by the Court of law;
- ii) Inordinate delay of three years in initiating second Charge Memo would prejudice the petitioner-applicant;
- iii) The first and second Charge Memos stand on a different footing;
- iv) In the light of the acquittal in the criminal proceedings, the departmental proceedings based on the same set of facts are not maintainable;
- v) The time limit fixed in the G.O.Ms.No.679 dated 01.11.2008 has not been adhered to;
- vi) There is no point in conducting the oral enquiry after 16 years as witnesses would not be able to recall the incidents in question?

The aforestated grounds require examination in the main O.A. This is also clear from the fact that the petitioner-applicant himself mentioned in Ground No.(ix) that the other grounds would be urged by him at the time of hearing. It may also be noted that the main relief sought for by the petitioner-applicant in the O.A. is to call for the records relating to the second Charge Memo dated 26.09.2015 and the subsequent proceedings in the light of the acquittal of the petitioner-applicant in C.C.No.420 of 2002 on the file of the learned II Additional Judicial Magistrate of First Class, Bheemavaram, on the similar set of facts and drop all further proceedings. The main prayer therefore proceeds on the ground that the acquittal of the petitioner-applicant in the criminal case in relation to the very same incident should vitiate the disciplinary proceedings and the same are liable to be quashed.

In the light of this main prayer, the Tribunal was justified in examining as to whether the charge in the criminal proceedings was identical to that in the disciplinary proceedings. Having found it to be otherwise, the Tribunal refused to grant interim stay as prayed for. As the other issues sought to be raised in the O.A. would have to be addressed in the main O.A. itself, we find no grounds to interfere with the order under challenge, whereby the Tribunal refused interim relief to the petitioner-applicant. It may be noted that in the light of the liberty granted by the Tribunal in the first instance while setting aside the order of punishment imposed upon the petitioner-applicant, which remained unchallenged, it is not open to him to refuse to face the disciplinary proceedings.

The writ petition is therefore devoid of merit and is accordingly dismissed.

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

No order as to costs.

SANJAY KUMAR,J

M.GANGA RAO,J

Date:26.09.2018

GJ

