

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

* * * *

WRIT PETITION NO.36497 OF 2018

Between:

P.Augustine Vara Prasad

... Petitioner

and

The State of A.P. rep. by its Principal
Secretary, Panchayat Raj & Rural
Employment Department and others

... Respondents

Date of Judgment Pronouncement: 21st December, 2018

SUBMITTED FOR APPROVAL:

THE HONOURABLE SRI JUSTICE SANJAY KUMAR
AND
THE HONOURABLE SRI JUSTICE M.GANGA RAO

- 
1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
 2. Whether copies of the judgment may be marked to Law Reporters/Journals Yes/No
 3. Whether His Lordship wishes to see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

M. GANGA RAO, J

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AND
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< Gist:

> Head Note:

! Counsel for petitioner : Sri K.R.Srinivas

^ Counsel for respondent : Government Pleader for Services (AP)

? CASES REFERRED: --



THE HONOURABLE SRI JUSTICE SANJAY KUMAR
AND
THE HONOURABLE SRI JUSTICE M.GANGA RAO

WRIT PETITION NO.36497 OF 2018

ORDER

(Per Hon'ble Sri Justice Sanjay Kumar)

O.A.No.111 of 2015 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (*hereinafter*, 'the Tribunal'), was filed by the petitioner herein assailing G.O.Rt.No.1129, Panchayat Raj and Rural Development (Vig.I) Department, dated 15.12.2014, whereby the period of his suspension from service and the period covered by his dismissal from service were treated as 'not on duty'. He sought a consequential direction to the authorities to treat the period from 14.08.1997 to 09.09.1999 (suspension period) and the period from 24.04.2004 to 30.09.2012 (dismissal period) as 'on duty'. By order dated 07.09.2018, the Tribunal dismissed the O.A. Aggrieved thereby, he is before this Court by way of this writ petition.

Heard Sri K.R.Srinivas, learned counsel for the petitioner, and the learned Government Pleader for Services, State of Andhra Pradesh, for the respondents.

While working as a Senior Assistant in the Panchayat Raj Sub-division at Rampachodavaram in East Godavari District, the petitioner-applicant was suspended from service under proceedings dated 06.08.1997 of the Chief Executive Officer, Zilla Parishad, East Godavari District. He was however reinstated in service pending finalization of the disciplinary proceedings by the Commissioner of Panchayat Raj and Rural Employment, Andhra Pradesh, *vide* proceedings dated 04.08.1999. He was dismissed from service and visited with recovery of a sum of Rs.1,80,333/- on the charge of misappropriation of Government funds, *vide* G.O.Ms.No.443, Panchayat Raj & Rural Development (VS-I) Department, dated 23.02.2004. Aggrieved

thereby, he filed O.A.No.3044 of 2004 before the Tribunal. The said O.A. was allowed, *vide* order dated 03.05.2007, setting aside the dismissal order on the ground that it was not a speaking and reasoned order. The Tribunal however left it open to the authorities to proceed against the petitioner-applicant in accordance with rules.

Thereupon, the petitioner-applicant was again placed under suspension, *vide* G.O.Rt.No.795, Panchayat Raj & Rural Development (Vig.II) Department, dated 31.05.2008. This suspension, pending a fresh enquiry into the matter, was with retrospective effect from the date of the original order of dismissal. During the pendency of the disciplinary proceedings, by notice dated 18.07.2012, the Chief Executive Officer, Zilla Praja Parishad, East Godavari District, informed the petitioner-applicant that he was to retire from service on 30.09.2012 upon attaining the age of superannuation but such retirement would be without prejudice to the disciplinary cases/enquiries pending against him. However, by report dated 19.07.2012, the enquiry officer opined that the charge against the petitioner-applicant was not proved.

At that stage, the Government of Andhra Pradesh issued G.O.Rt.No.1958, Panchayat Raj and Rural Development (Vig.II) Department, dated 29.10.2012, stating that the Government had considered the circumstances of the case and decided to drop further action against the petitioner-applicant as the charge against him was held not proved in the enquiry. The Government accordingly ordered to drop further action and directed release of all pensionary benefits to the petitioner-applicant as per rules in force. The Chief Executive Officer, Zilla Praja Parishad, East Godavari District, was directed to take further necessary action accordingly. Thereupon, the Chief Executive Officer, Zilla Praja Parishad, East Godavari

District, issued proceedings dated 18.11.2014 stating that pursuant to G.O.Rt.No.1958 dated 29.10.2012, upon consideration of the application dated 26.08.2014 filed by the petitioner-applicant and keeping in view F.Rs.53, 54(1)(a)&(b) and 54(2), his suspension period from 14.08.1997 to 09.09.1999 and from 24.04.2004 to 30.09.2012 was regulated as spent on duty for all purposes. The Mandal Parishad Development Officer, Mandal Praja Parishad, Tuni, was directed to pay to him the full pay and allowances admissible for the above regulated period of suspension after deducting the subsistence allowance already paid to him. In turn, the Mandal Parishad Development Officer, Mandal Praja Parishad, Tuni, issued proceedings dated 22.12.2014, giving effect to the proceedings of the Chief Executive Officer, Zilla Praja Parishad, East Godavari District. Thereby, the petitioner-applicant was held entitled to a sum of Rs.8,10,347/- as arrears payable for the period from 01.01.1998 to 30.09.2012.

However, even before issuance of the aforestated proceedings dated 22.12.2014, the Government of Andhra Pradesh issued G.O.Rt.No.1129 dated 15.12.2014. Therein, the Government noted the sequence of events in relation to the petitioner-applicant's case and observed that the petitioner-applicant had requested, *vide* his representation dated 20.11.2012, that the period of suspension and his dismissal period should be treated as period spent on duty for all purposes. The Government further stated that having carefully examined the matter, it had been decided that the suspension period of the petitioner-applicant from 14.08.1997 to 09.09.1999 and his dismissal period from 24.04.2004 to 30.09.2012 should be treated as 'not on duty' as per the provisions of F.R.54-B(7) and that, if he so desired, it could be converted into leave due/EOL for the purpose of notional increments and pension.

It is against this order that the petitioner-applicant filed O.A.No.111 of 2015. Perusal of the order passed in the said O.A. reflects that the Tribunal, having taken note of the fact that it was the Chief Executive Officer, Zilla Praja Parishad, East Godavari District, who was the disciplinary authority of the petitioner-applicant, observed that as it was the Government that took over the disciplinary proceedings under Rule 24 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (*for brevity*, 'the Rules of 1991'), whereby it initiated the second enquiry and acted upon the report submitted thereon, it had power under F.R.54-B to decide as to how the suspension period undergone by the petitioner-applicant should be treated. The Tribunal opined that the proceedings dated 18.11.2014 of the Chief Executive Officer, Zilla Praja Parishad, East Godavari District, were incompetent and illegal. The Tribunal further opined that as liberty had been given to the authorities while allowing O.A.No.3044 of 2004, it could not be said that the suspension of the petitioner-applicant was not justified and therefore, G.O.Rt.No.1129 dated 15.12.2014 was in accordance with law. It is on the strength of this reasoning that the Tribunal dismissed the O.A.

It is surprising to note that the Tribunal made out a new case for the authorities, which was not even put forth by them. Rule 24 of the Rules of 1991 reads as follows:

'Rule 24. Common proceedings :—(1) Where two or more Government Servants of the same service or different services are concerned in any case the Govt. or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceedings :

Provided that if the authorities competent to impose the penalty of dismissal on such Government servants are different, such authorities not being the Government, an order for holding such inquiry in a common proceeding may be made by the highest of such

authorities with the consent of the other authorities competent to impose the said penalty on the others.

(2) Subject to the other provisions of these rules, every such order shall specify—

(i) the authority which may function as the disciplinary authority for the purpose of such common proceedings ;

(ii) the penalties specified in Rule 9 and Rule 10 which such disciplinary authority shall be competent to impose ;

(iii) whether the procedure laid down in Rule 20 and Rule 21 or Rule 22 shall be followed in the proceedings.'

There is no evidence of any order having been passed by the Government in exercise of power under the aforesaid Rule that disciplinary action against all the employees allegedly involved in the misappropriation of Government funds should be taken in a common proceeding. Further, the enquiry report submitted on 19.07.2012 indicates that a joint enquiry was held against the petitioner-applicant, a Senior Assistant, and one P.Suresh Kumar, a Junior Assistant, in terms of the *proviso* to Rule 24 of the Rules of 1991. Rule 24 requires that if the authorities competent to impose the penalty of dismissal on such Government Servants, against whom a common enquiry is initiated, are different, such authorities not being the Government, an order for holding such enquiry in a common proceeding may be made by the highest of such authorities. Further, every such order passed under the *proviso* to Rule 24 of the Rules of 1991 would require the authority concerned to specify as to who would function as the disciplinary authority for the purpose of such common proceedings and the penalties which such disciplinary authority shall be competent to impose. Admittedly, the disciplinary authority, be it for the petitioner-applicant or for P.Suresh Kumar, a Junior Assistant, would not be the Government. Therefore, the question of the Government exercising power under Rule 24 of the Rules of 1991, as opined by the Tribunal, did not even arise. Further, as already stated *supra*,

this was not even the case put forth by the Government as per the impugned proceedings or even in its counter filed in the O.A.

On the other hand, G.O.Rt.No.1958 dated 29.10.2012 reflects that the Government, having considered the enquiry report submitted on 19.07.2012 and the circumstances of the case, decided to drop further action against the petitioner-applicant as the charge against him was held not proved. It is relevant to note that having decided to drop further action against the petitioner-applicant, the Government itself directed release of all his pensionary benefits as per rules in force and directed that the Chief Executive Officer, Zilla Praja Parishad, East Godavari District, should take further necessary action accordingly. It is pursuant to this direction that the Chief Executive Officer, Zilla Praja Parishad, East Godavari District, issued the proceedings dated 18.11.2014 resulting in the proceedings dated 22.12.2014 of the Mandal Parishad Development Officer, Mandal Praja Parishad, Tuni.

Significantly, G.O.Rt.No.1129 dated 15.12.2014 does not even take note of these proceedings which were issued pursuant to the Government's own directive in G.O.Rt.No.1958 dated 29.12.2012. Having left it to the Chief Executive Officer, Zilla Praja Parishad, East Godavari District, to take further necessary action in relation to release of all the pensionary benefits of the petitioner-applicant as per rules in force, the question that arises is whether the Government can brush aside all that has been done by the Chief Executive Officer, Zilla Praja Parishad, East Godavari District, in the capacity of the disciplinary authority of the petitioner-applicant and in exercise of power under F.R.54-B and seek to undo all that was done by the said disciplinary authority. It may also be noted that G.O.Rt.No.1129 dated 15.12.2014 does not even demonstrate as to how the Government purported to exercise power under F.R.54-B, having already directed the disciplinary

authority, viz., the Chief Executive Officer, Zilla Praja Parishad, East Godavari District, to do the needful.

F.R.54-B(1) makes it clear that when a Government Servant who has been suspended is reinstated or would have been so reinstated but for his retirement while under suspension, the authority competent to order reinstatement should consider and make a specific order regarding the pay and allowances to be paid to him during the period of suspension ending with his reinstatement or the date of his retirement, as the case may be, and whether or not the said period should be treated as period spent on duty. Needless to state, the authority competent to order reinstatement of the petitioner-applicant into service, had he not retired from service, was the Chief Executive Officer, Zilla Praja Parishad, East Godavari District, his disciplinary authority. F.R.54-B(3) provides that where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government Servant should be paid the full pay and allowances to which he would have been entitled, subject to the provisions of F.R.54-B(8). F.R.54-B(8) merely provides that the payment of allowances under sub-rules (2), (3) or (5) should be subject to all other conditions under which such allowances are admissible. F.R.54-B(4) makes it clear that in a case falling under F.R.54-B(3), the period of suspension should be treated as period spent on duty for all purposes.

In the present case, the initial dismissal order visited upon the petitioner-applicant, *vide* G.O.Rt.No.443 dated 23.02.2004, was set aside by the Tribunal in O.A.No.3044 of 2004. The reason cited by the Tribunal for the same was that the order of dismissal was not a reasoned one and it was on this technical ground that the dismissal order was set aside. The Tribunal however observed that its order would not preclude the authorities from

proceeding against the petitioner-applicant in accordance with rules. That liberty does not in any manner reflect upon the validity of the charge against the petitioner-applicant or the validity of his period of suspension, as opined by the Tribunal in the order under challenge.

Therefore, as matters stand, the disciplinary authority, the Chief Executive Officer, Zilla Praja Parishad, East Godavari District, being the competent authority in terms of F.R.54-B, passed proceedings dated 18.11.2014 opining that the suspension period undergone by the petitioner-applicant should be treated as on duty for all purposes. As the very charge leveled against the petitioner-applicant was held not proved and as the said finding was accepted by the Government also, there is no demonstrable justification for his being kept under suspension until he attained the age of retirement. Be it noted that the subsequent suspension visited upon him under G.O.Rt.No.795 dated 31.05.2008 covered the period that he remained out of service due to the dismissal order also and therefore, the entire period would have to be treated as on suspension only. When there is no apparent justification for his suspension from service, the case would invariably fall under F.R.54-B(3) and therefore, the Chief Executive Officer, Zilla Praja Parishad, East Godavari District, was fully justified in treating the period of suspension undergone by the petitioner-applicant as 'on duty for all purposes'. As already pointed out, there was no justification or basis for the Government to interfere in the matter independently by way of G.O.Rt.No.1129 dated 15.12.2014, as it was not even the competent authority under F.R.54-B and had already passed orders, *vide* G.O.Rt.No.1958 dated 29.10.2012, requiring the competent authority, viz., the Chief Executive Officer, Zilla Praja Parishad, East Godavari District, to do the needful as per rules.

The learned Government Pleader would argue that in terms of Rule 9(2)(a) of the Revised Pension Rules, 1980 (*for brevity*, 'the Rules of 1980'), where departmental proceedings are instituted by an authority subordinate to the State Government prior to the retirement of the Government Servant but the same are concluded after his retirement, the said authority should submit a report recording its findings to the State Government. She would point out that as per the Note appended to the *proviso* to Rule 9(2)(a) of the Rules of 1980, it is for the Government to consider the findings and take a final decision. She would seek to justify the Government's action on the strength of this Rule. However, this Rule merely speaks of the Government being the competent authority to pass a final order in relation to the disciplinary proceedings initiated against a Government Servant while in service but he retires from service thereafter but prior to conclusion of the disciplinary proceedings. This Rule was obviously acted upon when the Government, having received and considered the enquiry report dated 19.07.2012, took the final decision embodied in G.O.Rt.No.1958 dated 29.10.2012 to the effect that further action against the petitioner-applicant should be dropped. However, this Rule does not justify the Government stepping into the shoes of the competent authority in terms of F.R.54-B, which speaks of only the authority competent to direct reinstatement of the Government Servant dealing with both his pay and allowances during such suspension as well as how his period of suspension should be treated. This Rule does not justify the Government usurping the power of the competent authority, as prescribed in F.R.54-B.

We are therefore of the considered opinion that the Tribunal gravely erred in non-suiting the petitioner-applicant by making out a fresh but patently unsustainable case for the authorities and in holding against the

petitioner-applicant. Having given our earnest consideration to the matter as set out *supra*, we are of the opinion that the Government of Andhra Pradesh was wholly unjustified, on facts, in issuing G.O.Rt.No.1129 dated 15.12.2014. Further, exercise of power by the Government in issuing the said G.O. was bereft of lawful foundation as the competent authority under F.R.54-B, viz., the Chief Executive Officer, Zilla Praja Parishad, East Godavari District, independently issued proceedings pursuant to the directive issued by the Government itself under G.O.Rt.No.1958 dated 29.12.2012. The Government therefore had no role to play in the matter thereafter and issuance of G.O.Rt.No.1129 dated 15.12.2014 was without jurisdiction.

The writ petition is accordingly allowed setting aside G.O.Rt.No.1129 dated 15.12.2014. The authorities shall abide by and act upon the proceedings dated 18.11.2014 of the Chief Executive Officer, Zilla Praja Parishad, East Godavari District, and the consequential proceedings dated 22.12.2014 of the Mandal Parishad Development Officer, Mandal Praja Parishad, Tuni. Payments due to the petitioner-applicant in terms thereof, if any, shall be remitted to him expeditiously and in any event, not later than six weeks from the date of receipt of a copy of this order.

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

21st DECEMBER, 2018

**Note: L.R. copy to be marked
B/o Svv**