

HONOURABLE SRI JUSTICE RAMESH RANGANATHAN
AND

HONOURABLE SRI JUSTICE N. BALAYOGI

WRIT PETITION Nos. 21899 and 22056 OF 2014

COMMON ORDER: (per HON'BLE SRI JUSTICE RAMESH RANGANATHAN)

In Writ Petition No. 21899 of 2014, a Writ of Certiorari is sought to quash the proceedings of the District Judge, West Godavari at Eluru dated 07.02.2013 imposing, on the petitioner, the punishment of withholding of three increments with cumulative effect, which was affirmed by the appellate authority in its proceedings dated 26.10.2013, as arbitrary and illegal. In Writ Petition No.22056 of 2014, a Writ of Certiorari is sought to quash the proceedings of the District Judge, West Godavari at Eluru dated 13.04.2012, as affirmed by the appellate authority in his proceedings dated 18.03.2013, as arbitrary and illegal.

While working as a Junior Assistant in the Mobile Court, West Godavari, Eluru, the petitioner failed to prepare and entrust the Non Bailable Warrant (NBW), issued against the accused in C.C.No.68 of 2009, within the stipulated time; there was an abnormal delay of 37 days in entrusting the same to the police which not only constituted gross dereliction of duty on his part, but also amounted to lack of devotion to duty as contemplated under Rule 3 of the Conduct Rules. Disciplinary proceedings were initiated, and a charge-sheet was issued. On completion of the disciplinary enquiry, the enquiry officer submitted his report wherein he stated that, while the Presiding Officer of the Mobile Court had ordered that an NBW be issued on 26.10.2009, the same was prepared by the petitioner only

on 25.11.2009, the warrant was entrusted to the police only on 1.12.2009, and in the meanwhile the accused had secured bail.

The petitioner's explanation for the NBW not being executed for one month, was that he had undergone surgery and was taking treatment in Care Hospital. This was disbelieved by the Enquiry Officer who, In his report, pointed out that it was four months after the petitioner's discharge from the hospital that the Presiding Officer had directed on 26.10.2009 that an NBW be issued; and in the meanwhile the accused, against whom NBW was issued, had obtained regular bail. The Enquiry Officer rejected the petitioner's plea that his ill health was the cause for the delay, and held him guilty of the charge. Though the punishment of compulsory retirement from service was proposed, the disciplinary authority took a lenient view and awarded the petitioner the punishment of withholding of one increment with cumulative effect vide his proceedings dated 13.4.2012. The said order of punishment was affirmed by the High Court (Appellate Authority) vide proceedings dated 18.03.2013.

While the delay after 25.11.2009 till 1.12.2009 may possibly not be attributable to the petitioner, it was undoubtedly his duty to prepare the NBW which he failed to do for a period of one month; and, in the meanwhile, the accused in CC.No.68 of 2009 obtained regular bail. The Enquiry Officer held that the charge levelled against the petitioner was established, and the reasons furnished by him, for the inordinate delay in preparation and entrustment of the warrant to the police officials, was wholly unsatisfactory.

The petitioner was thereafter issued another charge memo alleging that, while functioning as a Bench Clerk (Junior Assistant) of the Special Mobile Court, West Godavari District, at Eluru, the documents in CC.No.348 of 2009 i.e. (1) original complaint, (2) stamped receipt, (3) cheque for Rs.1,00,000/- bearing No.288978 of Andhra Bank. Eluru, (4) cheque return Memo, (5) office copy of the legal notice, (6) acknowledgment from the accused, and (7) reply notice given by the accused, were found missing from the record; inspite of granting adequate time, he had failed to trace out the same, which not only constituted dereliction of duty on his part, but also constituted lack of devotion to duty. The petitioner submitted his written statement of defence denying those allegations. Thereafter a regular departmental enquiry was held wherein the Enquiry Officer held the petitioner guilty of the charge levelled against him, and to be responsible for missing of the documents in CC.No.348 of 2009 as he was the custodian of the records.

On a copy of the Enquiry Officer's report being made available to him, the petitioner submitted his written representation wherein he stated that he underwent treatment for heart ailment in Care Hospital, Vijayawada. A final show cause notice was issued to the petitioner proposing the punishment of compulsory retirement from service. In reply thereto, the petitioner referred to the financial plight of his family. The disciplinary authority held that the documents which were found missing were part of the record in C.C.No.348 of 2009; the petitioner i.e charged employee was the custodian of the records during his tenure as the Bench Clerk in the said Court; he

was responsible for the missing of the said documents; and his failure to discharge his duties showed that he was highly lethargic and callous in the discharge of the duties assigned to him, which warranted imposition of the punishment of stoppage of three increments with cumulative effect.

Sri V.V.Raghavan, learned Counsel for the petitioner, would question the order of the disciplinary authority on several grounds, including that the disciplinary authority had failed to consider relevant facts such as shortage of staff, the petitioner being on leave after undergoing heart surgery etc.

It is well settled that, in the exercise of its certiorari jurisdiction under Article 226 of the Constitution of India, this Court would neither substitute its views for that of the disciplinary authority, nor would it don the robes of the appellate authority to re-appreciate the evidence on record, in order to come to a conclusion different from that of the disciplinary authority. It is only if the findings recorded by the disciplinary authority are either perverse or are based on no evidence, would interference be justified. No interference is called for, in judicial review proceedings under Article 226 of the Constitution of India, where the order, impugned in the Writ Petition, does not suffer from an error of jurisdiction or an error of law apparent on the face of the record. (**Syed Yakub v. K.S. Radhakrishnan¹**).

¹ AIR1964 SC 3044

In the present case, it is clear from the Enquiry Officer's report that P.W.1 had stated that she had been dealing with the Criminal Section in the Special Mobile Court; the charged employee came to the Special Mobile Court, Eluru one Sunday when she was attending work, 15 days after she assumed charge; he asked her for the record in C.C.No.348 of 2009, and she handed it over to him; the charged employee returned the record in CC.No.348 of 2009 to her; meanwhile after attending the call, given by the Superintendent, for a while, she came back to her seat; on verification, she did not find the original complaint, or the cheque, pronote, office copy of the legal notice etc., annexed thereto; on her enquiry, the petitioner told her that the original documents may have been mixed up in some other record, and he would search and trace out the same; she informed the matter to the Superintendent present there; in his presence, the petitioner sought one month time to trace out the missing documents; the then Special Judicial First Class Magistrate, Excise Court, who was holding full additional charge of the Special Mobile Court, Eluru, had directed the petitioner to trace out the original complaint, and other documents; the Judicial First Class Magistrate, Special Mobile Court and the Special Judicial First Class Magistrate (Excise) Court were also examined as P.Ws.2 and 3, and their evidence revealed that the explanation of the charged employee was called for, but he sought time vide his letter dated 19.9.2011; even after availing ample time, he had failed to submit his explanation within the stipulated time which was extended from time to time; and finally he submitted his explanation on 2.2.2012.

The Enquiry Officer held that the charged employee had accepted that the original complaint, and other material documents annexed to CC.No.348 of 2009, were misplaced during his tenure; except a suggestion that the post of record assistant was kept vacant, no other suggestion was put to P.W.1; it was clear from the evidence of P.W.1 that the material documents annexed to CC.No.348 of 2009 were misplaced when the petitioner was dealing with the Criminal Section; and the charged employee could not trace out the missing documents in CC.No.348 of 2009 inspite of being granted adequate time. The conclusion of the Enquiry Officer, in holding the petitioner guilty of the charge, is based on the evidence on record, and discloses that the petitioner received the case bundle in CC.No.348 of 2009 from P.W.1; and when he handed it back to P.W.1, the material documents were found missing. To the extent, the disciplinary authority affirmed the findings of the Enquiry Officer, holding the petitioner guilty of the charge, no interference is called for.

Sri V.V.Raghavan, learned Counsel for the petitioner, would contend that the earlier punishment imposed on the petitioner could not have been taken into consideration without the petitioner being put on notice thereof. We are not impressed with this submission since the petitioner was well aware of his having been imposed the punishment of stoppage of one increment with cumulative effect, which order he has himself subjected to challenge in W.P. No.22056 of 2014.

Sri V.V. Raghavan, learned Counsel for the petitioner would then submit that the petitioner retired from service two years ago; and because of the punishment imposed on him, the pension, which he is entitled to, has been reduced by half, besides a substantial reduction in his terminal benefits.

In the exercise of its jurisdiction under Article 226 of the Constitution of India, this Court would not substitute the punishment, imposed on the charged employee by the disciplinary authority, with another. However, taking into consideration the fact that the petitioner has retired from service, and stoppage of three increments with cumulative effect has caused him huge financial loss in terms of a substantial cut in his pension and other terminal benefits, we request the appellate authority to re-examine whether the punishment imposed on the petitioner, of stoppage of three increments with cumulative effect, is proportionate to the charge held established.

While the order passed by the disciplinary authority dated 07.02.2013 shall remain in force till the appellate authority considers the matter afresh, the order of the appellate authority dated 26.10.2012, affirming the order passed by the District Judge, West Godavari, is set aside. The appellate authority shall re-examine whether the punishment imposed is proportionate to the gravity of the charge held established, also taking into consideration the fact that the petitioner has since retired from service, and imposition of this major punishment has resulted in a substantial reduction in his pension and other terminal benefits.

Writ Petition No. 22056 of 2014 is dismissed, and Writ Petition No.21899 of 2014 is disposed of accordingly. Miscellaneous petitions, pending consideration if any in the Writ Petitions, shall stand closed in consequence. No order as to costs.

JUSTICE RAMESH RANGANATHAN

JUSTICE N. BALAYOGI

Dated 9th AUGUST, 2018.
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