

**HONOURABLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN**

AND

HONOURABLE SRI JUSTICE A. RAJASHEKER REDDY

WRIT PETITION No.9532 OF 2008

ORDER: (ORAL) (Per Hon'ble the Chief Justice Sri Thottathil B. Radhakrishnan)

This is a Writ Petition under Article 227 of the Constitution of India is by the State. It challenges the decision of the State Administrative Tribunal; hereinafter referred to as 'Tribunal'; interfering with an order of removal from service issued invoking Clause (b) under the second proviso to Article 311 of the Constitution of India and Rule 25(ii) of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991.

2. We have heard learned Special Government Pleader for the State of Telangana and learned counsel for the respondents - applicants.

3. On the premise that the respondents, police officers, had involved in activities for which prosecution was initiated for the offences punishable under Sections 393, 427, 506(ii) and 120-B of the Indian Penal Code, 1860, and Sections 25(i)(a) and 27 of the Indian Arms Act, 1959; the case of the respondents in relation to such conduct was assessed, but the department proceeded to say that in

view of the gravity of the offences and the allegations on the respondents, police officers, being involved with the activities of an organization, which is named in the impugned proceedings, the authority empowered to dismiss or remove them from service, satisfied that it is not reasonably practicable to hold such enquiry. The Tribunal interfered with such decision at the instance of the respondents, the delinquents. However, the Tribunal was not persuaded by the respondents to act upon the acquittal order by the criminal Court. We say so, because the Tribunal has noticed the broad contents of the order of acquittal passed by the criminal Court. Needless to say that it is not necessary for the Tribunal to go into the arguments advanced by the respondents based on the order of acquittal because that was not the subject matter of an issue that would fall when Clause (b) under second proviso to Article 311 of the Constitution is raised.

4. Be that as it may, hearing the learned counsel for the State and the learned counsel for the respondents, we are of the view that the Tribunal was justified in holding that it is not a case where it could have been concluded that it is not reasonably practicable to hold such an enquiry. This is so, because the relevant clause in the Constitution pivots on the aspect “whether it is reasonably practicable to hold such an enquiry.” It is the impracticability of holding enquiry that is relevant for consideration while invoking the power under that particular clause to the second proviso to Article 311 of the

Constitution. The content and quality of the allegations by themselves may not form the foundation to invoke that particular provision except in exceptionally glaring situations where larger national interest may require certain issues to be excluded from the purview of an enquiry.

5. In the aforesaid view of the matter, we do not find that the Tribunal acted illegally in setting aside the order of removal from service. The Tribunal was also justified in leaving it open to the establishment to proceed with action on regular departmental proceedings basis. We hasten to add that whatever the Tribunal said about the contents of the order of acquittal and whatever would be the impact of such order of acquittal on the disciplinary proceedings in the light of the judgments of the Apex Court in **G.M. Tank v. State of Gujarat**¹ and **M. Paul Anthony v. Bharat Gold Mines Limited**² and that line of decisions, which deal with prevention of corruption cases *qua* disciplinary proceedings, would stand open for independent consideration by the disciplinary authority, since the principles in this judicial precedent cannot be applied in all cases where a particular Government servant gets involved in a criminal case.

6. Subject to the aforesaid, this Writ Petition is dismissed.
No order as to costs.

¹ (2006) 5 SCC 446

² (1999) 3 SCC 679

As a sequel thereto, Miscellaneous Petitions, if any pending, in the writ petition stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

A. RAJASHEKER REDDY, J

March 25, 2019.

PV/DSK

