

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILU

WRIT PETITION (TR).No.5005 of 2017

ORDER:

This writ petition is filed seeking the following relief :-

“.... to issue an order or orders calling for the records relating to impugned proceedings of the 3rd respondent in Proceedings Rc.No.1856/ C1I2015, dt 29.8.2015 in removing the applicant from service without following the due process of law as contemplated under Rule 20 of APCS(CC&A) Rules 1991 is illegal, arbitrary, highhanded and in gross violation of principles of natural justice and the procedure contemplated in Rule 20 of APCS (CC&A) Rules and quash the same by holding it as illegal, arbitrary, high handed and cannot be justified in the eye of the law and consequently direct the respondents to settle the pension and pensionary benefits without reference to the impugned proceedings dt.29.8.2015 of the 3rd respondent forthwith by treating the period from 16.7.2003 to 31.8.2015 as compulsory waiting for posting orders in the interest of justice....”.

Heard Mr.Ch.Srinivas, learned counsel for the petitioner and the learned Government Pleader for respondents.

It has been contended by the petitioner that the respondents have imposed major penalty of removal without conducting any enquiry. Though the charge memo was issued on 12.08.2001, the respondents have not taken the said charge memo to the logical conclusion and just one day prior to his retirement, the respondents have invoked G.O.Ms.No.128 dated 01.06.2007 and imposed punishment of removal from service.

Learned counsel for petitioner submits that the impugned removal order is liable to be set aside as the said order was passed without giving any opportunity to the petitioner nor was it passed in accordance with the CCCA Rules. Therefore, the impugned order is liable to be set aside on the short ground that the principles of

natural justice and the CCCA Rules have not been followed by the respondents.

The learned Government Pleader appearing for the respondents has contended that the petitioner has approached this Court without exhausting alternative remedy of appeal. Without exhausting the alternative remedy, the petitioner cannot challenge the impugned order. Apart from that, the petitioner was unauthorizedly absent from 2001 onwards and the respondents having waited for 14 long years rightly imposed the punishment of removal in terms of G.O.Ms.No.128 dated 01.06.2007. Hence, there are no merits in the writ petition and the same is liable to be dismissed.

This Court, having considered the rival submissions made by the learned counsel for the respective parties, is of the considered view that since there is an efficacious alternative remedy available to the petitioner against the impugned order before the appellate authority, the writ petition can be disposed of directing the petitioner to prefer an appeal before the appellate authority by raising all legal issues within two weeks from today. It is needless to say that the appellate authority shall entertain the said appeal without reference to the limitation and pass appropriate orders in accordance with law within four months thereafter.

With the above observations, the writ petition is disposed of.
No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVIL, J

Date: 13-08-2019
Prv

