

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.27179 OF 2011

ORDER

This writ petition is filed seeking to issue a Writ of Certiorari calling for the records relating to and connected with the Memo No.CGM(HRD)/JS/AS(DC)/F.No.2551-C1/05-50, dated 02-09-2010 and to quash or set aside the same by holding it as arbitrary and illegal and consequently to direct the respondents to pay an amount of Rs.9,95,487/- with interest at 24% per annum to the petitioner.

During pendency of this writ petition, W.P.M.P.No.50677 of 2015 was filed by the petitioner seeking to amend the names of the respondents and the same was ordered on 17.12.2015.

Heard Sri S.Ravindranath, learned counsel appearing for the petitioner, and Sri Zakir Ali Darish, learned counsel appearing for the respondents.

It is the case of the petitioner that initially, he was appointed as a Bill Collector in the erstwhile Andhra Pradesh State Electricity Board on 19-02-1970. During 1979, the post of Bill Collector was converted as Lower Division Clerk. In the year 1991, he was promoted as Upper Division Clerk and posted at General Revenue Circle, Warangal. Thereafter, he

was further promoted as Junior Accounts Officer in the year 2001 and while he was discharging his duties as such, he was placed under suspension, pending enquiry, on 28-07-2005, on the premise that he had misappropriated an amount of Rs.34,61,748.50 ps. Pursuant thereto, the disciplinary authority had issued a charge sheet, for which, the petitioner has submitted his explanation denying the charges levelled against him. After conducting detailed enquiry and for the proven misconduct, the disciplinary authority has imposed the punishment of dismissal from service on 28.06.2007. Challenging the same, the petitioner has preferred an appeal before the appellate authority. After considering the entire case of the petitioner, the appellate authority had taken a lenient view, and modified the punishment of dismissal to that of compulsory retirement *vide* order dated 27.03.2010.

The grievance of the petitioner is that when the appellate authority had entertained the appeal and modified the punishment of dismissal to that of compulsory retirement *vide* proceedings dated 27.03.2010, the respondents have to pay all the retiral benefits. The respondents have paid the terminal benefits, but withheld an amount of Rs.9,95,487/- without there being any order to that effect.

Learned counsel appearing for the petitioner submits that when the order of dismissal was modified to that of compulsory retirement by the appellate authority by taking a lenient view, in all fairness, the respondents ought to have settled all the retiral benefits of the petitioner, but they cannot withheld the said amount of Rs.9,95,487/-. He further submits that the consequential order dated 2.9.2010 was passed by the Chief General Manager (HRD) directing the Superintending Engineer to recover the said amount from the terminal benefits of the petitioner, behind his back and no opportunity was given to him to put-forth his case.

Learned Standing Counsel appearing for the respondents contends that after modifying the punishment of dismissal to that of compulsory retirement *vide* order dated 27.03.2010, the appellate authority has passed yet another order on the same date, as per the report of the Accounts Officer and directed the Superintending Engineer, who is the disciplinary authority, to recover the said amount of Rs.9,95,487/-, from the terminal benefits of the petitioner for the alleged loss caused by him.

Having considered the rival submissions made by the learned counsel on either side, this Court is of the considered view that the appellate authority has modified the punishment

of dismissal to that of compulsory retirement on the appeal preferred by the petitioner and thereafter, the appellate authority on the very same date, has passed another order to recover the said amount from the petitioner. Thereafter, the Chief General Manager (HRD) passed the consequential order on 2.9.2010 directing the Superintending Engineer to recover an amount of Rs.9,95,487/- from the terminal benefits of the petitioner. The consequential order was *non est* in the eye of law because the said order was passed without giving any opportunity to the petitioner. When once the order of dismissal was modified to that of compulsory retirement, the appeal itself deemed to have been closed and no further power is vested with the appellate authority after passing order in the appeal preferred by the petitioner.

For the foregoing reasons, this Writ Petition is allowed directing the respondents to release the amount of Rs.9,95,487/- to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

24th September, 2018
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