

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

WRIT PETITION No.4809 of 2013

Date: 02.12.2019

Between:

The Government of Andhra Pradesh
and others

..Appellants

And

B.Munu Swamy

..Respondent

Counsel for the appellant : Government Pleader for Services

Counsel for the respondent : Mr.Surya Karan Reddy,
Learned Senior Counsel,
for Smt.Padmaja

The Court made the following:

ORDER: (Per the Hon'ble Sri Justice A.Abhishek Reddy)

Aggrieved by the order, dated 10.04.2012, passed in O.A.No.8623/2011 by the Andhra Pradesh Administrative Tribunal, Hyderabad, whereby the Tribunal had directed the petitioners herein to reinstate the respondent into service with all consequential benefits and pass appropriate orders within a period of four weeks from the date of receipt of the order, the present Writ Petition is filed by the Government

2) The brief facts of the case are that the sole respondent herein had filed O.A.No.8623/2011 questioning the order of removal issued by the third writ petitioner herein in D.O.No.267, No.L&O/B8/NZ/488/1995, dated 23.03.2009, and the consequential proceedings issued by the second writ petitioner rejecting the appeal filed by the respondent herein vide proceedings D.Dis.No.1056/Appeal.2/ 2009, dated 18.07.2009, and also the orders of the 1st petitioner in Memo No.21723 Ser.II/A3/2009, dated 25.4.2011, rejecting the revision filed by the respondent, as arbitrary, illegal and to set aside the same and further to direct the respondents to reinstate him into service with all consequential benefits.

3) It is the case of the sole respondent that he was appointed as Police Constable in the year 1985, following some charges he was kept under suspension on 26.07.1995 along with another police constable by name David Paul, ostensibly on the ground that on 25.07.1995 at around 1:30 a.m. they stopped one woman and her brother, on the S.P. Road, and the said

David Paul had allegedly raped the woman while the respondent kept vigil. A criminal case was registered against the respondent and David Paul in Begumpet Police Station for the offences under Sections 376, 186 and 506 of Indian Penal Code, and the same was numbered as Sessions Case No.131/1996 on the file of the V Metropolitan Sessions Judge. When the departmental proceedings were sought to be initiated, the respondent and David Paul had filed O.A.No.3685/1996 before the Tribunal, for seeking stay of the departmental proceedings till the disposal of S.C.No.131/1996. Vide order, dated 11.07.1996, the Tribunal disposed of O.A.No.3685/1996 with the following directions:

“Considering the submissions made by the learned counsel for the applicants, the Government Pleader and also on a perusal of the records, since the subject matter in both the cases, viz., S.C. 131/96 pending against the applicants for trial before the V Metropolitan Sessions Judge and the departmental enquiry against the applicants, is based on the same set of facts, the disciplinary proceedings in this case against the applicants are stayed till the disposal of the Sessions case in S.C.No.131/96 on the file of the V Metropolitan Sessions Judge-cum-Mahila Court, Hyderabad.”

4) Vide judgment, dated 20.02.2001, the Sessions Court acquitted the respondent and the co-accused viz., David Paul. Thereafter, the disciplinary proceedings were initiated by the department, and the same were concluded on 03.03.2008. During the pendency of the disciplinary proceedings, David Paul died on 02.07.2006. Hence, the proceedings against David Paul stood abated. In the disciplinary proceedings, the respondent

herein was found guilty of the charges; vide Order dated 23.03.2009, he was imposed with a punishment of removal from service. The appeal preferred by the respondent was rejected vide order dated 18.07.2009. Hence, he was constrained to file the O.A. No.8623/2011 before the Tribunal. After elaborately going through the evidence on record, the Tribunal has allowed the O.A. vide order dated 10.04.2012.

5) Heard the learned Government Pleader appearing for the petitioners and Sri Suryakaran Reddy, learned Senior Counsel appearing for Smt.Padmaja, counsel on record for the sole respondent.

6) The learned Government Pleader appearing for the petitioners has vehemently contended that the Tribunal was not right in setting aside the order of removal more particularly in view of the serious charges leveled against the respondent herein, which amounted to gross misconduct. Further, the Tribunal failed to appreciate that the respondent worked in Police department, which is supposed to be a very disciplined one. Therefore, these kind of charges, which were found to be proved in the departmental enquiry, ought not to have been interfered by the Tribunal. Further, when it is not the case of the respondent, that the disciplinary proceedings were not conducted in accordance with law, or that any of the principles of natural justice were violated, or that the respondent-employee was not given a fair chance of hearing, nor an opportunity of participating in the said disciplinary enquiry was not given, the

Tribunal ought not to have set aside the orders passed by the disciplinary authority.

7) Per contra, the learned senior counsel has vehemently contended that when the criminal court has acquitted the employee for the very same charges leveled against the respondent, initiation of the disciplinary proceedings is vitiated. Further more even in the disciplinary proceedings, the alleged victims did not support the version presented by the department, as such, the order of removal was not proper. Therefore, the Tribunal has rightly set aside the same, and ordered for reinstatement of the respondent.

8) Having heard the learned counsel for the parties and perused the entire material on record, it is seen that the alleged victim in this entire episode has neither supported the case of the prosecution in the criminal case, nor supported the version of the department in the disciplinary proceedings. Before the V Additional Metropolitan Sessions Judge, the victim was examined as P.W.1. She stated as under:

Only a quarrel took place between the two Constables i.e., the applicant and David Paul and her brother and except that, nothing had happened. She categorically stated that she was taken to the police station and that they asked her to lodge a complaint, but, she refused to give a complaint, but the police insisted and threatened and got scribed the complaint from her brother. She further deposed that she did not sign in the complaint

and the signature shown to her in the complaint does not belong to her. She also stated that she did not identify the accused as the persons who intercepted her and demanded Rs.10,000/- from her, and also that she gave her statement before the Magistrate as per the directions of the police under Section 164 Cr.P.C., and they were not stated by her voluntarily, and that her clothes were also not seized by the police.”

9) In the disciplinary proceedings K.Satyanarayana, the Beat Constable, who allegedly saw the respondent and co-accused, David Paul, committing the offence on the alleged victim has deposed as under:

On July 25th 1995, I was on beat duty, when I reached Paigha Colony, I saw two persons I can't say who they were initially. Later on they revealed their identity as Constables. One Constable, whose name is David Paul was lying on a women. She was shouting for help. Farooq, PC 3413 was also along with me on night rounds. Muni Swamy was another PC who found in the company of David Paul. We told the constables who were with the lady to come to the Police Station, Begumpet. They were also pleading the lady not to complain against her. SI, Yousuf was on night rounds. He also reached the spot. Then these PCs David Paul and Muni Swamy were taken to the Police Station. The lady after reaching the Police Station identified, as Syamala. She told that these two PC's requested for money. On refuse to pay 10,000/- rupees, they took her forcibly to a mechanic shop and

started raping her. She was sent to Medical examination.

10) The statement of Md.Farooq Hussain, Beat Constable, in the disciplinary proceedings is as under:

On 25/26th night of July 1995, I went to night beat patrolling along with PC Satyanarayana of Begumpet Police Station, we went to Paiga Colony Lane. We saw two persons moving in suspicious circumstances. One scooter was also with them. They started running away towards the main road. We ran after them. When we reached the main road we saw a person standing and catching hold of a person. Upon enquiry we came to know that the person standing on the road was constable Muni Swamy of Tirumalgiri Police Station. The second person name was Raju Muni Swamy started shouting that Police reached the spot and requested David Paul to get out quickly. At the same time we heard the voice of a lady. She was crying we found David Paul on the lady's side. We caught hold of David Paul. He was wearing his underwear and after seeing us he got into the proper dress. When SI, Md. Yousuf reached the spot, all these four persons were handed over to the SI and sent to the Police Station.

11) While the statement of Md.Yousuf, S.I., is to the following effect:

I worked as SI, Shamsheergunj PS, I used to live in Begumpet Police quarters. I was returning back to the home when the incident took place. I saw 2 PCs fighting with civilians. I tried to enquire into the matter. The Begumpet

PCs informed me that these people are drunk and creating nuisance. I took them to the Police Station and handed over those two crime constables of Thirumalagiri to the duty HC of Begumpet. These two crime constables were fighting with the beat PC's when I observed from a distance.

12) The statement of the alleged victim is as under:

I am residing Elchipuram Village of Nizamabad Dist., I had been working as Tailoring Instructor at Tadvai Mandal, Nizamabad District, for four year from 1995. On 25-7-1995 at about 10:00 PM, I was going to Rasoolpura along with my younger brother Peta Raju after getting down from Train. Then two persons introducing themselves as Police Constable stopped them and enquired above our relationship. We told that we are sister and brother. They were not convinced. Then I showed my identity card of Tailoring Instructor in Mahila Mandali. Even then they did not accept and took me to Begumpet Police Station at 10:30 PM. Later I came to know that their names are David Paul and Muniswamy. Though I told Inspector that nothing had happened I was asked to give complaint. I was sent to hospital. Later I went to court to depose evidence.

13) A conjoint reading of the above depositions made by the witnesses in the departmental enquiry clearly shows that they are contradictory to one another; the victim herself states that no offence has taken place as alleged by the prosecution; the statements of the two Beat Constables viz., P.Satyanarayana

and Md.Farooq Hussain, are contrary to each other; the evidence of P.Satyanarayana, as elicited in his cross-examination, the place at which both the delinquents were apprehended is a Mechanical Shed, Meeting Point Hotel. He has further stated that both the delinquents were standing under the tree with a bag. For better analysis, relevant questions and answers from the cross-examination of the witness are reproduced hereunder:

Q.20) Who lifted the person sleeping with the lady?

Ans) Farook

Q.21) Did you help him?

Ans) No I was talking to Muni Swamy.

14) On the other hand, the following answers were elicited from Md.Farooq Hussain-PW.4, Beat Constable, in the cross examination:

Q.12) You have heard the voice of the lady weeping aloud who caught the person raping the woman?

Ans) Satyanarayana, constable caught hold of him. I assisted him.

15) The relevant questions put to Md.Yousuf, SI, and the answers elicited from him are reproduced for better adjudication of the matter:

Q8) Where was the fighting taking place?

Ans) Meeting Point Hotel.

Q10) How many were there?

Ans) Besides there fifteen people, even hotel staff was also present.

16) The statement of M.Madhu, another witness, who is the mechanic shop owner, is to the following effect:

I worked as Scooter Mechanic and maintained a small mechanic shop for about (8) years till 1998. The shop was located near Anand Theatre at Secunderabad. About one year

before closure of my shop one day at about 1:30 PM one Police Constable from Begumpet PS, came to my shop and told me to come to the Begumpet PS, as Sir was calling me. On that myself, my father accompanied the said Constable to the Begumpet PS. Then the SI of the PS, talked to me and enquired about the 'galata' that took place near my shop on the previous days night. I replied that I did not know anything about galata as my shop was closed during night time. Then SI told me to appear in the court as a witness. After (2) months a Police Constable served a summon to me to attend Nampalli Court. On that I appeared before the magistrate and told him that my shop as closed by 7:30 PM, on that day.

17) A reading of the above statements made by the witnesses and the answers elicited during the cross examination would reveal that there are lot of inconsistencies between the statements made by the witnesses and are in variation with one other. While it is the case of the Mechanic that the alleged scene of offence i.e. Mechanic Shop was closed after 7.30, it is the case of the Beat Constable Satyanarayana that the alleged offence took place inside the mechanic shop during the midnight. Further, according to Satyanarayana, Md.Yakoob Hussain had lifted the respondent who was lying on the victim, and that he was standing outside. On the other hand, Md.Yakoob Hussain has stated that it was Satyanarayana, who lifted the respondent, and that he had helped him. Whereas it is the case of the Sub-Inspector Md.Yousuf that only a galata took place and the two

delinquents were taken to the Police Station as they were both drunk and creating nuisance. None of the allegations made by the Prosecution are supported by the victim herself, who says that she was not raped at all and the Police forced her to give a false complaint.

18) After going through the entire evidence available on record, we are of the opinion that the order of the Tribunal directing the petitioners to reinstate the respondent into service is perfectly legal and justified; it does not call for any interference by this Court. In the absence of any cogent and convincing evidence to prove that the charges leveled against the delinquent employee are true and correct, the dismissal of the employee cannot be sustained and as such the Tribunal has rightly set aside the dismissal order. There are any number of contradictions and inconsistencies in the statements made by the witnesses, which do not support the findings in the departmental enquiry. It is true that there is no bar for the department to initiate disciplinary proceedings even in cases where the employee is acquitted by the criminal court, but in this particular case, it is found that in the department enquiry conducted by the writ petitioners, the alleged charges are not supported by any cogent and convincing evidence. It appears that the same were cooked up based on the false complaint given by Beat Constables Satyanarayana and Md.Farooq Hussain.

19) In view of the above mentioned facts and circumstances of the case, we do not find any grounds for

interference in the order, dated 10.04.2012 passed by the Tribunal in O.A.No.8623/2011 and therefore the writ petition is hereby dismissed accordingly.

The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, HCJ

A.ABHISHEK REDDY, J

2nd December, 2019
smr/sur

