HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.33360 OF 2016
&
WRIT PETITION No.37075 of 2017

COMMON ORDER:

In these two writ petitions, the petitioner is one and the same, therefore, these two writ petitions are being disposed of by way of this common order.

W.P.No.33360 of 2016 is filed seeking a writ of Mandamus, declaring the pendency of disciplinary proceedings against the petitioner as arbitrary, illegal, unconstitutional and set aside the same and sought a consequential direction to the respondents to settle and pay the terminal benefits along with 18% interest with effect from 01.12.2008 till the amount is paid in the interest of justice.

W.P.No.37075 of 2017 is filed seeking a writ of Mandamus, declaring the issuance of impugned show cause notice dated 13.07.2017 as wholly illegal, arbitrary, unconstitutional and violative of Articles 14, 16 and 21 of the Constitution of India and also Rule 9 of the Telangana Revised Pension Rules, 1980 and sought a consequential direction to the respondents to settle and pay the entire terminal benefits along with 24% interest from the date of retirement of the petitioner till the same is paid, in the interest of justice.

Heard Sri Pratap Narayan Sanghi, learned counsel for the petitioner, and the learned Government Pleader appearing for the respondents.

It has been contended by the petitioner that he was initially appointed as Assistant Professor with the respondents on 09.04.1979 and later on, he was promoted as Professor during November, 1993 and thereafter promoted as Additional Director during 2006. The petitioner submits that while he was discharging his duties as Superintendent in Government Hospital, Warangal, the respondents have initiated disciplinary proceedings and issued a charge memo on 15.06.2007 alleging that he has misappropriated Government funds while handling with Sukhibhava and Family Planning Incentives during the years 2005 and 2006 and excess amounts were drawn and paid to certain staff towards surrender leave salary and also bills and acquitance registers were not shown for the amounts drawn during the period 2002-06. The petitioner has submitted explanation denying the charges. However, even before appointment of the Enquiry Officer, the petitioner retired from service on 30.11.2008 on attaining the age of superannuation. Since the charge memo was issued on 15.06.2007 i.e., prior to the retirement of the petitioner, the disciplinary proceedings were deemed to have been continued in terms of Rule 9 of the A.P. Revised Pension Rules (for short, 'the Rules') and the Enquiry Officer had conducted a detailed inquiry and submitted a report on 25.09.2010 holding that the charges levelled against the petitioner are not proved. Subsequently, disciplinary proceedings were not concluded and the terminal benefits of the petitioner were not paid on the pretext of pendency of disciplinary proceedings. The petitioner contends that on 14.08.2015, the State Government had issued a disagreement note to the Enquiry Officer's report and thereafter the petitioner has submitted his explanation to the disagreement note on 16.09.2015. Later on, the State Government had issued a show cause notice on 08.10.2015 as to why a penalty of 5% cut in pension for a period of one year should not be imposed on the petitioner. Since the disciplinary proceedings initiated against the petitioner are not being concluded and the terminal benefits are not being paid, the petitioner has filed W.P.No.33360 of 2016 to set aside the disciplinary proceedings on account of delay and to direct the respondents to pay the terminal benefits. Thereafter, the respondents have issued another show cause notice on 13.07.2017 for recovery of misappropriated amount and for filing criminal charges against the petitioner. Challenging the said show cause notice dated 13.07.2017, the petitioner has filed W.P.No.37075 of 2017 on the ground that the said show cause notice was issued after nearly nine years from the date of retirement and, as per the Rules, the respondents could not have issued such a show cause notice.

Learned counsel for the petitioner submits that a perusal of the show cause notice, dated 13.07.2017, discloses that no opportunity was given to the petitioner before issuance of the same and also no enquiry was conducted so as to ascertain whether the petitioner has misappropriated the amount of Rs.2,27,390/- or not. Learned counsel for the petitioner further submits that the challenge to the show cause notice dated 13.07.2017 is on two folds, one is that the said show cause notice was issued without giving an opportunity to the petitioner, and the other is that no enquiry was conducted as to whether the petitioner has misappropriated the amount or not.

In W.P.No.37075 of 2017, the petitioner filed WPMP.No.46035 of 2017 seeking direction to the respondents to pay the entire terminal benefits by withholding a sum of Rs.2,27,390/- pending disposal of the writ petition. On 07.11.2017, this Court was pleased to grant interim direction as prayed for. Thereafter, the petitioner filed Contempt Case No.237 of 2018 complaining non-implementation of the orders passed by this Court on 07.11.2017.

Learned counsel for the petitioner further submits that the impugned show cause notice dated 13.07.2017 is issued after nearly nine years from the date of retirement of the petitioner and also without there being any adjudication as to whether the petitioner has really misappropriated the amount indicated in the show cause notice or not, therefore, on these two grounds, the impugned show cause notice dated 13.07.2017 is liable to be set aside.

So far as W.P.No.33360 of 2016 is concerned, learned counsel for the petitioner submits that since the respondents have issued show cause notice dated 08.10.2015 proposing to impose 5% cut in pension for a period of one year and thereafter not concluding the said disciplinary proceedings, appropriate directions be issued to the respondents to conclude the disciplinary proceedings initiated against the petitioner pursuant to the show cause notice dated 08.10.2015, within a reasonable period of time, preferably within a period of four weeks.

In respect of W.P.No.37075 of 2017 is concerned, learned counsel for the petitioner submits that appropriate orders be passed by setting aside the impugned show cause notice 13.07.2017 on the ground that the same was issued after nearly nine years from the date of retirement of the petitioner and also without there being any adjudication as to whether the petitioner has really misappropriated the amount or not. Learned counsel further submits that as per Rule 9 of the Rules, disciplinary proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall not be in respect of any event which took place more than four years before such institution. Therefore, the action of the respondents in issuing the impugned show cause notice dated 13.07.2017 is not in accordance with the Rules, as such, the same is liable to be set aside.

Learned Government Pleader appearing for the respondents, while drawing attention of this Court to page No.4 of the counter affidavit, wherein the respondents have given a tabulated statement showing the stages of four disciplinary cases pending against the petitioner, had stated that the 1st disciplinary case pertains to the charge memo dated 15.06.2007, which was issued when the petitioner was in service i.e., before the retirement of the petitioner. Learned Government Pleader further stated that the proceedings in respect of the 2nd disciplinary case were dropped, and with regard to the 3rd and 4th disciplinary cases concerning misappropriation of Government funds, which pertain to the year 2013 and 2016, it is stated that the respondents wanted to initiate criminal action against the petitioner, but not disciplinary action. Learned Government Pleader based upon the counter affidavit, had contended that since the criminal action was sought to be initiated against the petitioner in 2013 and 2016, the respondents are not in a position to finalise the disciplinary proceedings initiated against the petitioner in pursuance of the charge memo dated 15.06.2007 and pay the terminal benefits to the petitioner. Therefore, learned Government Pleader submits that if reasonable time is granted to the respondents, they would conclude the disciplinary proceedings initiated against the petitioner in pursuance of the charge memo dated 15.06.2007 and only after conclusion of the criminal proceedings, the respondents would pay the terminal benefits to the petitioner.

This Court, having considered the rival submissions made by the parties, is of the considered view that with regard to the charge memo dated 15.06.2007 is concerned, the respondents have every right to proceed with the disciplinary proceedings against the petitioner, as the said charge memo was issued when the petitioner was in service, and in fact, the respondents have also conducted enquiry and the Enquiry Officer has held that the charges are not proved and thereafter the State Government has issued a disagreement note to the Enquiry Officer's report and issued a show cause notice dated 08.10.2015, to which the petitioner has already submitted explanation. Therefore, the respondents are directed to conclude the disciplinary proceedings initiated against the petitioner in pursuance of the charge memo dated 15.06.2007 and pass appropriate orders on the show cause notice dated 08.10.2015 within a reasonable period of time, preferably within a period of four weeks from the date of receipt of a copy of this order, and release all the terminal benefits to the petitioner in another two months after conclusion of the said disciplinary proceedings.

So far as W.P.No.37075 of 2017 is concerned, this Court is of the considered view that the impugned show cause notice dated 13.07.2017 is issued without there being any adjudication as to whether the petitioner has really misappropriated the amount of Rs.2,27,390/- or not, and without giving any opportunity to the petitioner. Therefore, the impugned show cause notice dated 13.07.2017 is liable to be set aside, as it is violative of principles of natural justice, and the same is accordingly set aside and the respondents are directed to pay all the consequential benefits to the petitioner.

Accordingly, these writ petitions are disposed of. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

2nd August 2019
v v