<u>THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY</u>

<u>WP No.15269 of 2018 & CC No.2983 of 2018</u>

<u>ORDER :</u>

This writ petition is filed seeking to issue a writ of mandamus declaring the action of the 1st respondent in imposing the punishment of 5% cut in pension for three years vide GO Rt.No.349, dated 03-06-2017 and GO Rt. No.182, dated 23-04-2016 respectively, as being arbitrary, erroneous and violative of Articles 14 and 21 of the Constitution and consequently declare that the petitioner is entitled full pension and arrears of revised pay and pension and regularize the suspension period as on duty with all attendant benefits to meet the ends of justice.

02. Facts stated are:-Anti-Corruption Bureau registered a case against the petitioner on the allegation of corruption while he was working as Excise Sub-Inspector, Kachiguda, Hyderabad, relating to demand and acceptance of bribe from the complainant through Prohibition and Excise Constable, for doing official favour to release the auto without registering the case. The petitioner was arrested and remanded to judicial

custody on 08-06-2009 on account of which the disciplinary authority placed him under suspension vide proceedings dated 26-06-2009, but on his request, reinstated him into service on 07-05-2010. The Director General, ACB, conducted investigation and submitted final report dated 15-07-2010 and recommended for prosecution and also for initiation of departmental proceedings against the petitioner and two others. The Government after consideration of the final report of the Director General, thought it fit to initiate only departmental proceedings and accordingly appointed the 3rd respondent Asst. Commissioner of Prohibition and Excise (Distilleries), Hyderabad-II as enquiry officer to inquire into the charges framed against the petitioner. The enquiry officer submitted report dated 12-03-2015 and held the charge as not proved. The Government after examination of the matter and keeping in view the findings of the enquiry officer dropped further action against the petitioner in trap case vide GO Rt. No.181, dated 23-04-2016, but before all this could happen, the petitioner retired from service on 30-04-2012 on attaining the age of superannuation.

03. While matter stood thus, the 1st respondent on the same day issued orders vide GO Ms.No.63, dated 23-04-2016 and accorded sanction under sub-Clause (i) of Clause (b) of sub-Rule (2) of Rule 9 of the Revised Pension Rules, 1980, (for short, "the Rules") to initiate departmental proceedings against the petitioner for not submitting Annual Property Returns (APRs) from the date of his joining service till date i.e. 23-04-2016. Another GO, being GO Rt. No.182, dated 23-04-2016 was issued in that connection where the details of charge and imputation of charge were mentioned. The following charge was farmed duly calling for the written statement of defence:-

"He failed to submit Annual Property Returns from the date of his joining into service to till date, which is in violation of Rule 9 (7) of APCS Conduct Rules, 1964.

That Sri V. Venkata Chary, by his above mentioned act has exhibited lack of integrity, devotion to duty and conduct unbecoming of a Government Servant and thereby contravened Rules 3 (1) and (2) of the AP Civil Services (Conduct) Rules, 1964."

04. The petitioner had submitted written statement of defence on 30-05-2016 stating that he had already filed APRs before the concerned Station House Officers where he worked earlier and due to heavy floods occurred in the year 2002 at Chikkadpalli area, he lost all the photo copies of the APRs and other documents besides damage of property and he could not take that extra care to preserve the APRs, as he never anticipated that he would need them in future. The petitioner made another representation dated 09-08-2016 conveying his willingness to impose any minor penalty of recovery of any amount instead of ordering for regular enquiry as it would take further time, and he was already aged 62 years and suffering with ailments. Thereafter, the Government after forming an opinion to impose a punishment of 5% cut in pension, for a period of three years issued show cause notice dated 22-03-2017, to which the petitioner replied vide his letter dated 23-03-2017 giving his consent to confirm the punishment as proposed and release his pensionary benefits. Thereafter, after obtaining concurrence from the State Public

Service Commission in that behalf, the 1st respondent, vide the impugned GO Rt. No.349, dated 03-06-2017 imposed the punishment of 5% cut in pension for three years under Rule 9 of the Rules. The petitioner seems to have made a representation to the 1st respondent to revise the decision to cut 5% pension for three years, but to no avail. Hence, this writ petition.

05. This Court in the writ petition, when it came up for admission, by order dated 06-04-2018 passed interim orders of suspension of the impugned GOs. As interim order passed was not given effect to by the respondents, the petitioner filed the above contempt case being CC No.2983 of 2018. Thereafter, the respondents came-up with vacate petition seeking to vacate the interim order passed in the writ petition and filed counter affidavit in the writ petition.

06. In the counter affidavit, filed by the Deputy Secretary to Government on being authorized by the 1st respondent, *inter alia,* it is stated that the petitioner himself conveyed his consent for imposition of minor punishment of 5% cut in his

pension for a period of three years and requested to release his pensionary benefits, the petitioner cannot now be permitted to assail the decision taken with his consent. It is also stated that opportunity was afforded to the petitioner and after following the procedure prescribed, the impugned punishment was imposed with the consent of the petitioner and, therefore, no exception can be taken by the petitioner to the punishment imposed vide the impugned GOs stated supra.

07. Heard the learned counsel for the petitioner and the learned Government Pleader for Services-I for the respondents.

08. The controversy rests on a narrow compass. The petitioner was charged for the alleged misconduct of taking bribe through one of his Constables for doing official favour to release the crime auto without registering the case against the complainant way back in the year 2009 while he was working as Excise Sub-Inspector. Admittedly, the enquiry conducted in that behalf and a report submitted on 12-03-2015, given the petitioner clean chit and based on findings of the enquiry officer, having exercised discretion, the Government accepted

the findings of the enquiry officer and dropped further action and orders to that effect were issued vide GO Rt. No.181, dated 23-04-2016. But, curiously, on the same day, 1st respondent issued orders vide GO Ms.No.63, dated 23-04-2016, accorded sanction to initiate departmental proceedings against the petitioner for not submitting APRs from the date of joining service till date *i.e.* 23-04-2016. The imputation of charge was issued vide GO Rt.No.182, dated 23-04-2016 on the same day. It is rather heartening to note that the order vide GO Rt.181, dated 23-04-2016 to drop further action with regard to the trap case and the sanction to initiate departmental proceedings for not submitting APRs was issued on the same date i.e. 23-04-2016. The article of charge and the statement of imputations of misconduct in support of article of charge are detailed under Annexure-I and II appended to GO Rt.No.182, dated 23-04-2016. Imputation of misconduct under Annexure-II is the same charge of trap of the petitioner in corruption case, for which enquiry was held, the charge not proved and further action dropped vide GO

Rt.No.181, dated 23-04-2016. The charge under Annexure-I *i.e.* not submitting APRs to the controlling officers of the petitioner right from the date of entry into service in the year 1977 to till 23-04-2016 has to fall flat for more than one reason, firstly for the reason that the charge is maintainable only in respect of solitary year i.e. for the year 2012. The petitioner retired from service on 30-04-2012. The charge in respect of not filing APRs for the year 2012 was framed on 23-04-2016 which is within limitation, but the entire charge which seeks to fault the petitioner for not filing APRs right from the date of his entry into service in the year 1977 is barred by limitation as per Rule 9 (2) (b) (ii) of the Rules except for the year 2012 and it is to be answered in the affirmative.

09. But the petitioner's case is otherwise and according to him he is stated to have filed the APRs right from his entry into service. A perusal of the written statement of defence at para (ii) submitted by the petitioner to the article of charge, the details of submitting APRs from 01-05-1986 till 15-05-2010 were stated to be furnished by the petitioner during the

course of his service and the details of such APRs submitted by him are given in a tabular form. It is the specific case of the petitioner that till the photo copies of the APRs were destroyed in the heavy floods that inundated his area of residence, he had photo copies thereof and he could not preserve them, as he never anticipated that he would need them in contingency of this nature. Though counter affidavit is filed there is no denial by respondent as to the submission of APRs to the controlling officers under whom the petitioner worked during the relevant periods. Various circulars issued by the department from time to time are also pressed into service to show that it is incumbent upon the controlling officers to ensure that the staff working under their control comply the rule of filing APRs and they are accountable for ensuring the same. There are no details furnished or an endeavour made to call for information from the controlling officers under whom the petitioner worked during the relevant period to ascertain the correctness otherwise of the statement for the petitioner as to submission of APRs.

10. The petitioner's case is the article of charge was received by him on 18-05-2016 and the date of issuance of charge is 23-04-2016 and if 18-05-2016 is construed as the date of issuance of charge, the charge is barred by limitation under Rule 9 (2) (b) (ii) of the Rules. But, Rule 9 (6) (a) of the Rules clarifies that a departmental proceedings shall be deemed to be instituted on the date on which the statement of charge is issued to the Government servant or pensioner if the Government servant has been placed under suspension from an earlier date, on such date. In view of Rule 9 (6) (a) of the Rules the contention of the petitioner's counsel the date of receiving the charge by the petitioner is reckoned for the purpose of period of limitation is of no consequence. Rule 9 (2) (b) (ii) of the Rules enunciates that initiation of departmental proceedings is barred in respect of any event which took place more than four years before such institution. Rule 9 (2) (b) & Rule 9 (2) (b) (ii) of the Rules, is as follows:-

Rule 9 (2) (b) : The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment.

Rule 9 (2) (b) (ii) : Shall not be in respect of any event which took place more than four years before such institution;"

11. In view of the above provision of law, even if it is construed that the petitioner has not filed the APRs, it can be for the relevant year 2012 during which period the petitioner worked at M/s.Rhizome Distillery and wherefrom he retired from service on 30-04-2012. Rule 9 (7) of the Rules details that APRs are to be filed by 15th January of each year. Rule 9 (7) of the Rules is as follows:-

> *"(7) Every Government Employee, other than member of the Andhra Pradesh Last Grade Service and a Record Assistant in the Andhra Pradesh General Sub-ordinate Service, shall on first appointment to the Government Service submit to Government a statement of all immovable property/ properties irrespective of its value and movable property/ properties whose value exceeds Rs.50,000/- owned, acquired or inherited by him or held by him on lease or mortgage either in his own name or in the name of any member of his family, in the forms prescribed in Annexure-I and II separately. <u>He shall also submit to Government before 15 January of each year,</u> through the proper channel, a declaration in the forms given in the Annexure-I and II of all immovable/movable property/properties owned, acquired or inherited by him or held by him on lease or mortgage, either in his own name or in the name of any member of his family. The declaration shall contain such further information as Government may, by a general or special order require. If in any year, a Government employee*

has not acquired or disposed of any immovable or movable property or any interest therein, he shall submit declaration to that effect." (emphasis supplied)

12. Non-submission of APRs every year is to be taken as a single event, as the date of cause of action of each APR arises on the date on which the due date expires i.e. January of each year. The charge for not filing APRs was framed on 23-04-2016, even if it is construed within limitation, it can only be for the year 2012 and so far the charge for the previous years is barred by limitation as the petitioner retired from service on 30-04-2012 and the action for not filing for APRs could not be taken till 23-04-2016, which goes to show that it is a stale charge, less in compliance of the rule and more in chasing the petitioner.

13. Vagaries of life befall more when a person is in helplessness condition. It is stated that, post retirement, the petitioner developed health complications, and prudently sensing that in case departmental proceedings are initiated for the fresh charge of not submitting APRs, which according to him he complied, and it would take considerable time to

conclude, the petitioner chosen to voluntarily succumb to impose some minor punishment and such a request was made by way of 2nd representation after filing his written statement of defence opposing the charge and by the date of filing such a representation he was aged 62 years. When once the charge itself is unfounded, the question of petitioner consenting for a lesser punishment is of no consequence. Such consent is not an acceptance of the charge, but want to scuttle the issue on his own volition and nib the bud at the initial stage so that he can get his pensionary benefits, which was otherwise withheld, which is his bread and succour, in his post retired life and this situation is traceable from the representation made by the petitioner to the authorities. If not on sympathy, but on facts and law the impugned charge is not maintainable.

14. On the above analysis of the matter, the writ petition deserves to be allowed and it is accordingly allowed and the impugned GOs stated supra are set aside. Time to comply the order of this Court is two months from the date of receipt of a copy of this order. In view of the time now granted to comply

the order, no further steps need be taken in the contempt case and it is accordingly closed. Miscellaneous petitions pending if any in the writ petition and the contempt case shall stand disposed of. There shall no order as to costs.

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A.RAJASHEKER REDDY, J

Dated: 04-06-2019
NRG

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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