

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 1192 of 2020

Date : 4.2.2020

Between:

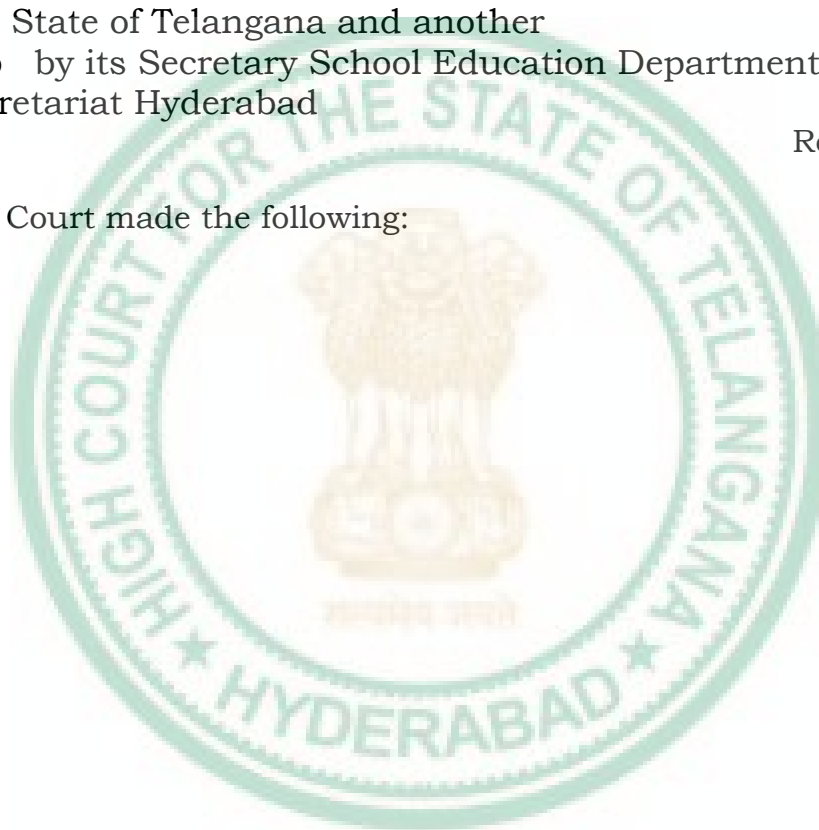
D Ramchander S/o Sri Buggaiah Aged about 50 years Occ
Junior Stenographer O/o the Directorate of Jawahar Bal
Bhavan Public Gardens Nampally Hyderabad R/o Hyderabad
Petitioner

And

The State of Telangana and another
Rep by its Secretary School Education Department
Secretariat Hyderabad

Respondents

The Court made the following:



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ORAL ORDER:

Heard learned counsel for petitioner Sri Goda Siva and learned Government Pleader for Higher Education.

2. Petitioner joined Jawahar Bal Bhavan/2nd respondent as Junior Stenographer in the year 1992 and secured promotion as Senior Assistant with effect from 1.1.2002. Disciplinary action was initiated against the petitioner primarily on the allegation of producing fake degree certificate to secure promotion as Senior Assistant and on some other aspects. It appears this case has checkered history of litigation on various aspects. On 25.3.2017, charge sheet was drawn containing four articles of charges. Enquiry was conducted, enquiry officer submitted his report dividing four articles of charges into five components and holding first component as partially proved; second as proved; third also as proved; fourth as not proved and fifth as partially proved. After considering the explanation of the petitioner on the findings recorded by enquiry officer, disciplinary authority imposed punishment of reversion to the lower post vide proceedings dated 16.9.2017. While so, vide memo dated 16.1.2020, impugned in this writ petition, show cause notice is issued to the petitioner, calling upon the petitioner as to why the punishment should not be enhanced from reversion to that of dismissal from service. In this writ petition, petitioner challenges the said show cause notice.

3. According to learned counsel for petitioner, the show cause notice is not sustainable for the following reasons:

3.1 Firstly, show cause notice refers to G.O.Ms. No.2 General Administration (Ser.C) Department dated 4.1.1990, where-under, policy was notified on imposing punishment of dismissal from service whenever allegations of misappropriation, bribery, bigamy, corruption, moral turpitude, forgery and outraging the modesty of women, are proved. Later, Rule 9 of the Telangana Civil Services (Classification, Control And Appeal) Rules, 1991, was amended incorporating proviso to 9 (x), where-under punishment of dismissal from service is required to be imposed in cases of misappropriation, bribery, bigamy, corruption, moral turpitude, forgery and outraging the modesty of women. He would submit that in the instant case, none of those contingencies are attracted, therefore, invoking G.O. Ms No.2 dated 4.1.1990 is illegal for two reasons i.e., i) G.O.Ms No. 2 dated 4.1.1990 is only an administrative decision and cannot impose fetters on disciplinary authority in imposing punishment and disciplinary authorities should go strictly in accordance with the provisions contained in Rules,1991 and in independent exercise of mind otherwise it would amount to non application of mind, as the allegations leveled against the petitioner do not fall within the parameters mentioned in G.O.Ms No.2 dated 4.1.1990; and ii) that show cause notice would show that Government has already taken a decision to impose the punishment of dismissal from service and no useful purpose would be served by submitting the explanation. It would be a futile exercise for the petitioner and same is illegal.

It deprives an opportunity to submit explanation and consideration of the explanation offered by the delinquent employee objectively.

3.2. Secondly, for an incident occurred in the year 2002, punishment of reversion was already imposed and proposing to enhance the punishment now at this distance of time is unwarranted and would amount to arbitrary exercise of power and intend only to penalize the petitioner and his family. He would submit that if punishment of dismissal from service is imposed, the entire family of petitioner would be put to severe financial constraints and would cause grave hardship to the family members of petitioner.

4. Learned Government Pleader submitted that show cause notice is issued in valid exercise of power. Having regard to the nature of allegations proved, petitioner cannot be allowed to continue in the Government service.

5. Rule 40 (iv) of the Rules, 1991 vests power in the Government to enhance the punishment. However, it prescribes procedure required to be followed before enhancement of punishment. Present show cause notice is issued in exercise of said power. Therefore, it cannot be said that the show cause notice is vitiated on account of lack of power or jurisdiction of the competent authority. Court do not interject disciplinary action at the stage of show cause notice unless it is without jurisdiction and competence.

6. Only issue requires consideration is with regard to mentioning G.O.Ms.No. 2 dated 4.1.1990 and punishment that was proposed to be imposed in the show cause notice.

7. As fairly submitted by the learned counsel for the petitioner, subsequently Rule 9 was also amended and now proviso was incorporated under Rule 9 (x) giving effect to the policy framework notified vide G O Ms No.2 dated 4.1.1990. Therefore, mentioning G.O.Ms No. 2 dated 4.1.1990 in the show cause notice has no significance and it cannot be said that show cause notice is vitiated on this ground.

8. However, I see merit in the submission of the learned counsel for petitioner with regard to indication of punishment that is proposed to be enhanced in the show cause notice. No doubt, Rule 40 (iv) of the Rules, 1991 vests power in the Government to enhance punishment than what was imposed by the disciplinary authority but there are various punishments that can be imposed under the heading of major punishments in Rule 9 which include compulsory retirement, removal from service and dismissal from service by following the procedure prescribed. Indicating the punishment of dismissal from service in the show cause notice would mean that disciplinary authority has already taken a decision to impose said punishment. In such a scenario submission of the explanation to the show cause notice would be an empty formality and amounts to denial of reasonable opportunity.

9. On true and fair construction of Rule 40 (iv) it is safe to assume that it intends to grant opportunity of hearing to delinquent employee

before enhancing the punishment. It would thus imply that the Government must have open mind to consider the explanation offered by employee against proposal to enhance the punishment. When Rule 9 stipulates various punishments, giving discretion to the Government to impose any of the punishments/ not to enhance the punishment, indicating in the show cause notice a particular punishment implies freezing his mind to impose punishment mentioned. In such an event, there would be no scope to consider the explanation offered. It would thus amount to denial of reasonable opportunity.

10. It cannot be said that submission of explanation is empty formality and that no prejudice is caused to employee. In this case, the allegations relate to the year 2002 when he secured promotion and punishment was imposed in the year 2017. Thus, the petitioner may endeavor to persuade the Government to withdraw or to impose any other punishment. Therefore, it cannot be said that petitioner has no explanation to offer. Tenability of explanation that may be offered is entirely a different aspect. Therefore, indicating punishment would certainly cause prejudice to petitioner and is contrary to statutory scheme. Thus, mentioning punishment in the show cause notice is held as not valid.

11. Learned counsel for petitioner made extensive submissions on merits, but in view of the order that is proposed in this case, the Court is not going into said submissions and leaves it open to petitioner to raise all pleas available to him in law and to persuade the Government to withdraw the show cause notice or to impose any other punishment.

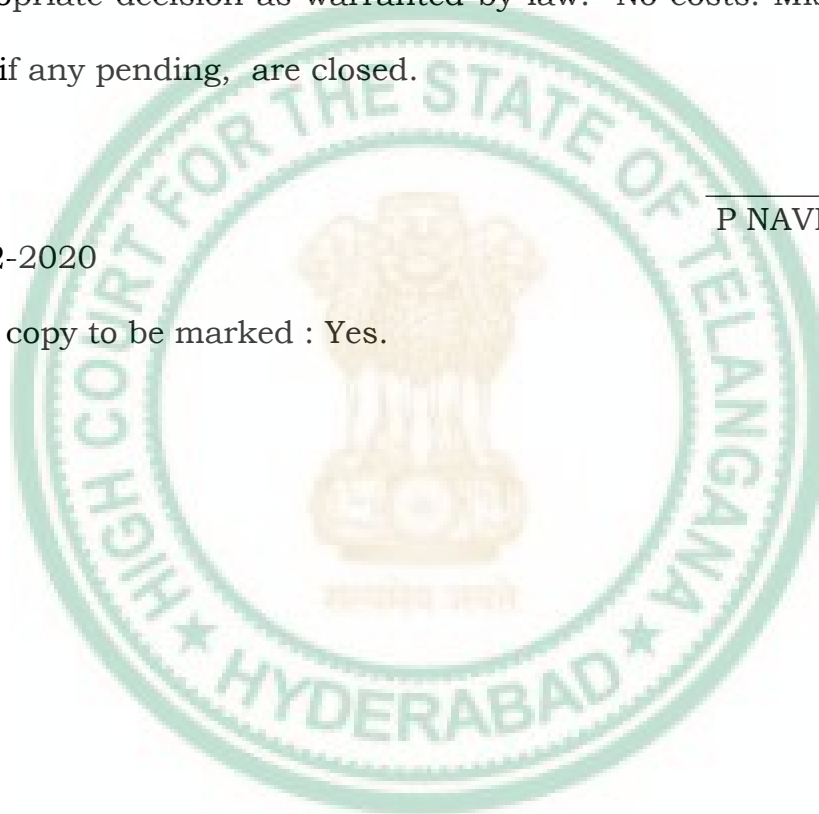
12. In the circumstances, writ petition is disposed of directing the respondent Government to objectively consider the explanation that may be offered by the petitioner in response to the show cause notice. Without regard to mentioning of punishment that is proposed and G.O.Ms.No.2 dated 4.1.1990 in the show cause notice, Government shall consider the explanation objectively and with open mind and without regard to what is mentioned in paragraph 7 of the show cause notice and take appropriate decision as warranted by law. No costs. Miscellaneous petitions, if any pending, are closed.

DATE: 4-2-2020

TVK

Note: L.R. copy to be marked : Yes.

P NAVEEN RAO,J



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