

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION (TR) Nos. 1811, 1817 and 2114 of 2017

COMMON ORDER:

Heard Mr.C.Rajasekhar Reddy, learned counsel for the petitioners and the learned Special Government Pleader for respondents.

Since the issue raised in these writ petitions is one and the same, they are being disposed of by way of this common order.

For the sake of convenience, the facts in W.P.(TR).No.1811 of 2017 are discussed hereunder :-

W.P.(TR).No.1811 of 2017 is filed seeking the following relief :-

“.....to declare the impugned Rc.No. 2259/ D1-161/ App-71/ HR/ 2013, RO.No.114/ 2014, dated 5.2.2014 of the 3rd respondent by reviving his own orders which were set aside the punishment orders of RTSP by three stages for a period of three years without effect on future increments and pension, the suspension period from 25.12.2009 to 17.3.2010 is treated as eligible leave of the 2nd respondent in Rc.No.2259/ D1-161/ App-71/ HR/ 2013, RO No.32/ 2014 dated 9.1.2014 on the appeal petition of the applicant dated 31.12.2013 is highly illegal, arbitrary and also it is clear violation of Rule 18 of A.P.State Classification Control and Appeal Rules 1991 and without any application of mind and set aside the same and consequently direct the respondents to confirm the orders of the 3rd respondent dated 9.1.2014”.

It has been contended by the petitioner that he is working as a Police Constable and he has been discharging his duties to the best satisfaction of his superiors and everyone concerned. While so, the respondents have initiated disciplinary proceedings against him and after conducting a detailed enquiry, for the proven misconduct, had imposed a punishment of reduction of time scale

of pay by three stages for three years without effect on future increments and pension. Aggrieved by the same, he has preferred an appeal before the 3rd respondent on 31.12.2013 and the lower appellate authority, while setting aside the order of punishment, was pleased to pass following order on 09.01.2014 :-

“I have carefully gone through the final orders, connected documents and Appeal petition of the appellant submitted by him. The appellant has brought valid reasons in his appeal petition to consider his request. Hence, I am convinced with his request and the punishment of ‘RTSP by (03) stages for a period of (03) years without effect on future increments and pension’ is set aside taking a lenient view. The suspension period w.e.f., 25.12.2009 to 17.03.2010 is treated as ‘Eligible Leave’.”

Learned counsel for the petitioners in these writ petitions contended that the lower appellate authority was pleased to consider the appeals filed by the petitioners and was pleased to set aside the orders of punishment imposed against them by the disciplinary authority. However, surprisingly, the very same lower appellate authority vide another proceedings dated 05.02.2014 had confirmed the orders passed by the disciplinary authority. When the lower appellate authority has passed orders on 09.01.2014, the lower appellate authority becomes *functus officio* and it has no jurisdiction to once again re-consider the appeals preferred by the petitioners and reject the same by confirming the orders of the disciplinary authority. Therefore, the learned counsel submits that appropriate orders be passed in the writ petitions by setting aside the orders passed by the lower appellate authority on

05.02.2014 as it has no jurisdiction to re-examine the appeals once again and nullify its earlier orders dated 09.01.2014.

Learned Special Government Pleader appearing for the respondents contends that the petitioners, without exhausting the remedy of review available to them, had straight away approached this Court. Therefore, there are no merits in the writ petitions and the same are liable to be dismissed.

This Court, having considered the rival submissions made by the learned counsel for the respective parties, is of the considered view that when the lower appellate authority has examined the appeals filed by the petitioners and allowed the same by setting aside the orders passed by the disciplinary authority vide orders dated 09.01.2014, the very same lower appellate authority cannot sit in the appeals once again and pass different orders contrary to its earlier orders. Therefore, the impugned orders dated 05.02.2014 passed by the lower appellate authority are liable to be set aside and are accordingly set aside.

Accordingly, the writ petitions are allowed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVIL, J

Date: 10-01-2020
Prv

