

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY, THE TWENTY NINTH DAY OF JUNE
TWO THOUSAND AND TWENTY ONE

PRESENT

THE HONOURABLE SRI JUSTICE A. RAJASHEKER REDDY
AND
THE HONOURABLE DR. JUSTICE SHAMEEM AKTHER

WRIT PETITION NO: 19460 OF 2020

Between:

Nadikattu Srinivasa Reddy, S/o Krishna Reddy Aged about 58 years,
Occ. Ex. Defence Estate Officer Pune Circle (under orders of suspension and
Head Quarters as Hyderabad R/o Hyderabad

...PETITIONER

AND

1. The Union of India, Rep. by the Secretary to Government Ministry of Defence,
Sena Bhawan B Wing South Block, New Delhi.
2. The Director General Defence Estates, Ministry of Defence Ulaan Baatar Road,
Delhi Cantt, New Delhi.
3. The Defence Estates Officer, O/o the Defence Estates Officer Andhra Pradesh
Circle, City Civil Court Compound S.P. Road, Secunderabad -500 003

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the
circumstances stated in the affidavit filed therewith, the High Court may be pleased
to issue a direction, order or writ more particularly one in the nature of Certiorari

a. Call for all the relevant records relating to and connected with the order
passed in Original Application No. 454 of 2016 dated 7/10/2020 on the file of the
Learned Central Administrative Tribunal, Hyderabad Bench and set aside the same
as being legally unsustainable.

b. Declare the action of the Respondents in issuing the Memorandum No. No.
24/767/NSR/Vig/DE, dated 11/04/2016 by the 2nd Respondent through Lr. No.
1/954/NSR, dated 18/4/2016 of the 3rd Respondent as arbitrary, illegal, unjust,
violative of principles of natural justice, and violative of Articles 14, 16 and 21 of the
Constitution of India.

c. Consequently, direct the Respondents to continue the Applicant in service
till such time Criminal Appeal No. 1188 of 2013 on the file of the Honourable High
Court at Bombay is disposed off and continue to pay the allowances which are being
paid to him and to which he would be entitled to being an employee under
suspension.

IA NO: 1 OF 2020

Petition under Section 151 GPC praying that in the circumstances stated in
the affidavit filed in support of the petition, the High Court may be pleased to
suspend the operation of the order in Original Application No. 454 of 2016 dated
7/10/2020 as also suspend the Memorandum No. No. 24/767/NSR/Vig/DE, dated
11/04/2016 by the 2nd Respondent through Lr. No. 1/954/NSR, dated 18/4/2016 of
the 3rd Respondent.

Counsel for the Petitioner: SRI. GODA SIVA

**Counsel for the Respondents: SRI. NAMAVARAPU RAJESHWAR RAO, ASST.
SOLICITOR GENERAL**

The Court made the following: order

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**HON'BLE SRI JUSTICE A.RAJASHEKER REDDY
AND
HON'BLE DR. JUSTICE SHAMEEM AKTHER**

Writ Petition No.19460 of 2020

ORDER: *(Per Hon'ble Sri Justice A.Rajasheker Reddy)*

This Writ Petition has been filed seeking for the following relief:-

"a. Call for all the relevant records relating to and connected with the order passed in Original Application No. 454 of 2016, dated 7.10.2020 on the file of the learned Central Administrative Tribunal, Hyderabad Bench and set aside the same as being legally unsustainable;

b. Declare the action of the Respondents in issuing the Memorandum No.24/767/NSR/Vig/DE, dated 11.04.2016 by the 2nd Respondent through Lr.No.1/954/NSR, dated 18.4.2016 of the 3rd Respondent as arbitrary; illegal; unjust; violative of principles of natural justice; and violative of Articles 14, 16 and 21 of the Constitution of India;

c. Consequently, direct the Respondents to continue the Applicant in service till such time Criminal Appeal No.1188 of 2013 on the file of the Hon'ble High Court at Bombay is disposed off and continue to pay the allowances which are being paid to him and to which he would be entitled to being an employee under suspension and pass such other and further order or orders as are deemed fit and proper in the circumstances of the case."

Heard the learned counsel for the petitioner Sri Goda Siva, at length, who submits that show cause notice dated 11-04-2016 was issued with pre-judged mind indicating the proposed punishment and; as such it is bad in law. He also submits that petitioner has filed his explanation to the show cause notice but no orders could be passed till date. Learned counsel further submits that petitioner submitted application for resignation from service to the authorities and the same is also kept pending. It is lastly stated that show cause notice has been issued after a period of 2 ½ years from the date of conviction of the petitioner.

Sri Namavarapu Rajeshwar Rao, learned Asst. Solicitor General of India appearing for the respondents, on the other hand, submits that what is impugned is only a show cause notice and instead of filing explanation to the show cause notice, the petitioner filed OA and also the present writ petition. It is further stated that petitioner has not filed his explanation within a period of four weeks as ordained by this Court. He also submits that the impugned order is in tune with Rule 19 of the CCS (CCA) Rules, 1965, and therefore it cannot be faulted.

This Court at the time of first hearing of the writ petition, passed the following order:-

"The present writ petition is filed for issue of Writ of Certiorari to call for the relevant records relating to and connected with the order passed in O.A.No.454 of 2016, dated 07.10.2020, on the file of the Central Administrative Tribunal, Hyderabad Bench (for short, 'the Tribunal'), and to set aside the same as being legally unsustainable.

By way of interim application, being I.A. No.1 of 2020, the petitioner has sought for suspension of operation of the order passed in O.A.No.454 of 2016, dated 07.10.2020, and also sought suspension of Memorandum No.24/767/NSR/Vig/DE, dated 11.04.2016, issued by respondent No.2 through Lr.No.1/954/NSR, dated 18.04.2016, of respondent No.3.

Heard Sri Goda Siva, learned counsel for the petitioner, and Sri Sanjeev Gillella, learned standing counsel appearing for respondent Nos.1 to 3. Perused the record.

The main grievance of the petitioner in the present writ petition is that the Tribunal passed the impugned order, without taking note of the fact that by proceeding dated 11.04.2016, issued by respondent No.2, though the petitioner was called upon to file objections/reply, the issue has already been pre-judged by the authorities, as by the said notice the authority has indicated its mind to impose major penalty.

Learned counsel for the petitioner would also submit that, though the petitioner was convicted a criminal case under the provisions of the Prevention of Corruption Act, by order, dated 02.09.2013, and the authorities being fully aware of the said criminal proceedings, kept quiet for more than 2 1/2 years before issuing the notice dated 11.04.2016, without any valid justification for such delay. It is submitted that on account of the above factors the petitioner had approached the Tribunal by impugning the notice issued. Learned counsel for the petitioner would further submit that against the order, dated 02.09.2013, whereby the petitioner has been awarded with punishment in a criminal case, a criminal appeal has been preferred before the High Court of Bombay, vide Crl.A.No. 1188 of 2013, and the High Court of Bombay was pleased to suspend the operation of the sentence awarded by its order, dated 25.10.2013.

Learned counsel for the petitioner would further submit that the petitioner had enjoyed the stay during the pendency of the O.A. before the Tribunal and therefore, seeks continuation of the said protection till the present writ petition is decided by this Court.

Per contra, Learned standing counsel appearing for respondent Nos. 1 to 3 would submit that the notice, dated 11.04.2016, is only a notice to which the petitioner can offer his explanation / reply. Instead of filing explanation / reply, the petitioner rushed to the tribunal by questioning the notice issued by filing O.A. If only, the petitioner filed his explanation / reply to the proposal contained in the notice, the authorities could have considered the same in accordance with law. Learned standing counsel would also submit that the authorities after going through the criminal proceeding initiated against the petitioner, the orders passed therein and the sentence awarded, have issued the show cause notice in the year 2016, instead of rushing through the matter. It is also submitted that the punishment indicated in the notice is only a proposal, to which the petitioner is required to offer his explanation and such mention in the notice cannot be considered as

pre-judging the issue. However, learned standing counsel submits that all the above said facts would be before this Court by way of filing a detailed counter-affidavit in the matter.

Having given due consideration to the submissions made by the counsels appearing for the parties as above, prima facie this Court is not inclined to accept the submission of the learned counsel for the petitioner with regard to the challenge being made on the ground that the authority being precluded from initiating action on account of pendency of criminal appeal, in view of the authoritative pronouncements of the Hon'ble Supreme Court in the case of Dy. Director of Collegiate Education (Admn) v. S. Nagoor Meera (1995) 3 SCC 377 followed in K.C. Sareen v. CBI (2001) 6 SCC 584. The view taken in the above two judgments has also been reiterated recently by the Hon'ble Supreme Court in the case of Life Insurance Corporation of India v. Mukesh Poonamchand Shah (2020) SCC Online 234. However, taking note of the fact that the Tribunal, while disposing of the appeal, acceded to the alternate submission of the petitioner for grant of three weeks time to file objections to the notice issued, this Court is of the view that the petitioner can be directed to file his objections / reply to the notice dated 11.04.2016 within a period of four (4) weeks from today, by taking all such pleas available to him in law. Since, on behalf of the respondents, time is sought for filing counter detailing the time taken for issuance of the notice, the respondent authorities shall not adjudicate on the objections / reply to be filed by the petitioner, till the next date of hearing. Post the matter on 31.12.2020."

Inasmuch as the petitioner is stated have filed his explanation to the show cause notice dated 11-04-2016, though not within the time ordained by this Court, but belatedly taking all the pleas, in such circumstances, it is for the authorities to consider the explanation and pass a speaking order. Since the matter is pending with the statutory

authority, we do not propose to go into details of the merits of the case, though learned counsel for the petitioner tried to argue the case on merits of the matter.

We do not see any infirmity or illegality in the impugned show cause notice. Suffice it to direct the respondent-authorities to consider the explanation submitted by the petitioner to the show cause notice dated 11-04-2016 and pass appropriate orders thereon in accordance with law. So far it relates to submission of application seeking to resign from service, again it is a matter to be considered by the respondent-authorities and pass appropriate orders in accordance with law.

With the above directions, the writ petition is disposed of. However, it is made clear that if any adverse order is passed against the petitioner, the same shall not be given effect to for a period of ten days. No order as to costs. Consequently, miscellaneous applications pending, if any, shall stand disposed of.

//TRUE COPY//

SD/- B.SATYAVATHI
ASSISTANT REGISTRAR

SECTION OFFICER

To,

1. The Secretary to Government Ministry of Defence, Union of India, Sena Bhawan B Wing South Block, New Delhi.
2. The Director General Defence Estates, Ministry of Defence Ulaan Baatar Road, Delhi Cantt, New Delhi.
3. The Defence Estates Officer, O/o the Defence Estates Officer Andhra Pradesh Circle, City Civil Court Compound S.P. Road, Secunderabad -500 003
4. One CC to Sri. Goda Siva, Advocate [OPUC]
5. Two CCs to Sri. Namavarapu Rajeshwar Rao, Asst. Solicitor General, High Court for the State of Telangana. (OUT)
6. Two CD Copies.
7. One Spare Copy.

PM

HIGH COURT

DATED:29/06/2021



ORDER

WP.No.19460 of 2020

Disposing of the WP
Without costs.

⑨ VW
6/7/21