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

THURSDAY, THE TWENTY FOURTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

WRIT PETITION NO: 26152 OF 2019

Between:

P.Laxmamma, W/o Late P.Chandra Reddy, aged 64 years R/ o 3-24, Angadi Chittampally Village, Pudur Mandal, Vikarabad District

...PETITIONER

AND

1. State of Telangana, represented by its Special Chief Secretary to Government, Revenue (Vigilance III) Department at Secretariat, Hyderabad
2. The Chief Commissioner of Land Administration,, State of Telangana, at Hyderabad
3. The District Collector, Ranga Reddy District at Lakdikapul, Hyderabad
4. The District Collector, Vikarabad District at Vikarabad
5. The District Collector, Siddipet District at Siddipet .

...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 Writ of Mandamus or any other appropriate Writ or Writs, Order or Direction, declaring the impugned order dated 25/6/2019 in Memo No. 9472/Vig.III/2019 on the file of the first respondent, as illegal, arbitrary, violative of principles of natural justice and in utter violation of Service Rules and Revised Pension Rules and to consequently direct the Respondents to forthwith release all the terminal benefits of petitioners husband in favour of petitioner with interest 12% p.a. apart from granting regular Family Pension in favour of petitioner Award costs

IA NO: 1 OF 2019

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant interim directions to the respondents to forthwith release all the terminal benefits of petitioners husband, including family pension, in favour of petitioner, by withholding 50% out of the recovery ordered in impugned proceedings dated

25.6.2019 in Memo No. 9472/Vig.III/2019 on the file of the first respondent, pending disposal of W.P. No.of 2019 Award Costs

IA NO: 1 OF 2021

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondents to stay the further recovery of amounts from the petitioner in pursuance to the impugned proceedings dated 25/6/2019 in Memo No. 9472/Vig.III/2019 on the file of the first respondent and to consequently direct the Respondents to release the Family Pension in favour of petitioner, pending disposal of W P No. 26152 of 2019

Counsel for the Petitioner: SRI K. V. SUDHAKAR REDDY

Counsel for Respondents: AGP FOR SERVICES
GP FOR REVENUE

The Court made the following: ORDER

HON'BLE MRS JUSTICE SUREPALLI NANDA

WRIT PETITION No.26152 OF 2019

ORDER:

Heard the learned counsel for the petitioner and Learned Assistant Government Pleader for Services.

2. This writ petition is filed to issue a writ of Mandamus or any other appropriate writ or writs, order or direction, declaring the impugned order dated 25.06.2019 in Memo No. No.9472/Vig.III/2019 of the 1st respondent as illegal and in violation of principles of natural justice and in utter violation of Service Rules and Revised Pension Rules and consequently direct the respondents to forthwith release all the terminal benefits of petitioner's husband in favour of petitioner with interest @ 12% per annum apart from granting regular Family Pension in favour of the petitioner and costs.

PERUSED THE RECORD

3. The order impugned dated 25.06.2019 passed in Memo No.9472/Vig.III/2019, reads as under:

"It has been brought to the notice of the Government through the Chief Commissioner of Land

Administration, TS, Hyderabad that the District Collector, Ranga Reddy has placed Sri P.Chandra Reddy, Former DT (CS), Tandur under suspension for committing certain irregularities while working as ST (CS), MLS Point, Tandur and imposed a punishment of demotion to the lowest rank on permanent basis besides recovery of amount of Rs.8,86,442/- towards shortage of commodities against him. Aggrieved by the orders of the District Collector, Ranga Reddy the charged officer has filed an O.A.No.1317/1995, in which the APAT has set aside the orders of the District Collector of imposing punishment and ordered of de nova enquiry and subsequently, the Revenue Divisional Officer, Vikarabad was appointed as Enquiry Officer and the enquiry report is awaited. The Chief Commissioner of Land Administration, TS, Hyderabad, has also informed that The Station House Officer,, Tandur also filed a Criminal Case against Sri Chandra Reddy in C.C.No.107/96 in the Court of Hon,ble Judicial First Class Magistrate, Tandur and the Hon'ble Court in its order dated:20.09.1999 acquitted the Individual holding that the accused is not found guilty. As the matter stood thus, Smt P.Laxmamma W/o.Late Sri P. Chandra Reddy, DAO (Retired), has submitted a representation stating that her husband Sri P.Chandra Reddy, DAO was retired from service on 03.06.2006 and a disciplinary case was pending against him and that her husband was expired on 25.12.2016 and requested to abate the disciplinary

case against him. Finally, the Chief Commissioner of Land Administration, TS, Hyderabad has requested to take further action as per the provision of APRP Rules, 1980.

Government after careful examination of the matter, keeping in view the report of the Chief Commissioner of Land Administration, TS, Hyderabad, have decided to abate further action against Sri P. Chandra Reddy, former DT (CS), Tandur, duly recovering the loss caused to Government as per the G.O.Ms.No.85, Finance & Planning (Finance Wing:Pen-I) Department, dated: 12.07.1999. The Chief Commissioner of Land Administration, TS, Hyderabad is also requested to fix-up the responsibilities against the Enquiry Officer for not completing the de nova enquiry within the stipulated time and report compliance to the Government immediately.

The Chief Commissioner of Land Administration, Telangana State, Hyderbad is therefore, requested to take further necessary action in the matter accordingly".

4. The petitioner's husband on an earlier occasion had filed O.A.No.5936 of 1994 and the said O.A was disposed of by order dated 11.10.1994 directing the respondents to explain as to why the enquiry could not be completed and final orders passed within one year and also the petitioner's husband lateP.Chandra Reddy on earlier occasion had filed O.A.No.348

of 1995 before the erstwhile A.P. Administrative Tribunal, Hyderabad and the Tribunal vide its order dated 31.01.1995 granted stay of all further proceedings pursuant to the impugned show cause notice. But in spite of the said interim order, dated 31.01.1995, the respondents passed final orders on 10.02.1995 imposing punishment. The petitioner's husband challenged the same by filing O.A.No.1317 of 1995 and the same was disposed of by order dated 26.11.2002 observing as follows:

> *"There is some procedural irregularity committed in not giving opportunity by intimating the date of examination of the witnesses, which was received subsequent to the date of posting. So in view of this matter, without going into the merits of the case, this Court feels that an opportunity should be given to the applicant to cross examine the witnesses in the enquiry and on the basis of the evidence so gathered, necessary findings should be given. So to that extent, the enquiry report is vitiated.*
>
> *So, in view of the matter, the enquiry which was conducted being set aside. Consequential order is also set aside but it does not prevent the Government from holding the de novo enquiry in the matter by initiating the necessary proceedings within a period of three months from the date of receipt of a copy of this order.*

The applicant is directed to co-operate in the enquiry properly."

5. The petitioner's husband was given promotion and was posted as DAO and subsequently retired on attaining the age of superannuation in the month of June, 2006 and thereafter, died on 25.12.2016.

DISCUSSIONS AND CONCLUSION

6. A bare perusal of the impugned proceedings dated 25.06.2019 passed in Memo No.9472/Vig.III/2019 clearly indicate that the subject issue pertains to the year 1993 and show cause notice dated 26.12.1994 was issued to the petitioner's husband calling upon the explanation of the petitioner's husband as to why the punishment of demotion to the lower rank could not be imposed besides recovering the amount of Rs. 8,86,442/-.

7. A bare perusal of the order impugned dated 25.06.2019 clearly indicated that the disciplinary proceedings were initiated against the petitioner's husband in the year 1994 by issuing show cause notice dated 26.12.1994, and they were not concluded as on

the date of the death of the petitioner's late husband on 25.12.2016.

8. The Learned Assistant Government Pleader places on record G.O.Ms.No.85, Finance & Planning, dated 12.07.1999 relying on Para 5(a) of the said G.O.Ms No.85, dated 12.7.1999 and submitted that there is no illegality in the proceedings dated 25.06.2019 and loss caused to the Government could be recovered as per G.O.Ms.No.85, dated 12.07.1999 Clause 5 (a).

9. An identical issue came up for consideration before the Division Bench of this Court in W.P.No.21465 of 2008 and the High Court passed order dated 29.09.2008 duly referring the amendment to Sub-Rule 7 of Rule 9 of A.P. Revised Pension Rules in G.O.Ms.No.995, Finance (Pension-I) Department, dated 21.12.2002, observed in particular at Paras 3, 5 and 6 as under:

> "3. *The said proceedings are challenged on the ground that once the disciplinary proceedings against the respondent's husband, which were at the enquiry stage, abated, no further proceedings can be issued as the loss caused to the Government has not been concluded in the*

disciplinary proceedings and no decision has been taken when the respondent's husband is alive with respect to the recovery. Therefore, such impugned orders could not have been issued and the same have to be set-aside as illegal and arbitrary.

5. *The Tribunal held that in view of the above amendment, the Government should get satisfied that the loss is due to the Government Servant in the enquiry while passing an order. In the instant case, no such orders after enquiry were passed against the respondent's husband and no such decision was taken after the enquiry against the respondent's husband and in view of this, the aforesaid amendment cannot be applied to the respondent's husband as the disciplinary proceedings were abated at the initial stage itself and the impugned orders could not have been passed basing on G.O.Ms.No.995, Finance (Pension-I)Department, dated 21.12.2002 for recovery of the said amount. The impugned orders have been issued after abatement of the disciplinary proceedings. Any report or any proceedings submitted after abatement of disciplinary proceedings are illegal and arbitrary and basing on such proceedings, the impugned orders could not have been issued and ultimately, allowed the O.A. setting-side the impugned proceedings.*

6. *Admittedly, the respondent's husband retired from service on 31.1.2005 and he died on 15.6.2005 in a road accident and the disciplinary proceedings initiated against him were abated due to his death and that in the said enquiry neither the respondent's husband filed any explanation nor had he participated in the proceedings. In view of the abatement of the disciplinary proceedings, the orders in G.O.Rt., Pancyayat Raj and Rural development (Vig.I(A)) Department dated 31.07.2006 ought not to have passed basing on G.O.Ms.No.995 Finance (Pension-I) Department, dated 21.12.00 for recovery of the alleged loss caused to the Government.* ***Once the disciplinary proceedings were abated due to the death of the respondent's husband, passing orders dated***

31.07.2006 for recovery of amount against the respondent's husband would not arise and the Tribunal has rightly allowed the O.A. setting aside the impugned order therein. Therefore, we do not find any infirmity in the impugned order dated 17.06.2008, so as to call for interference by this court in exercise of its jurisdiction under Article 226 of the Constitution and the writ petition is liable to be dismissed."

10. Similar view was also taken by another Division Bench of the High Court in W.P.No.19022 of 2016 and the High Court vide its order dated 30.03.2017 observed as follows:

"Given the afore-stated facts, we are of the opinion that the departmental proceedings initiated against the husband of the petitioner as long back as in the year 2000 were not taken to their logical conclusion and in the meanwhile, he died in December, 2012 whereby the said proceedings stood abated. Rule 9(7) of the Rules of 1980 had no application whatsoever to the present case in terms of the provisions contained therein. The Tribunal therefore erred in applying the said rule to the instant case and directing the Government to dispose of the case in terms thereof.

The writ petition is therefore allowed holding that the disciplinary proceedings against the petitioner's husband stood abated on the date of his death and this was not a fit case for invocation of sub-rule 7 of Rule 9 of the Rules of 1980. The authorities shall settle the pensionary benefits,

including Gratuity, Leave Encashment etc., by duly re-fixing the pay of the petitioner's husband as per the Revised Pay Scales and release the net amount payable in this regard to the petitioner. This exercise shall be completed expeditiously and, in any event, not later than eight weeks from the date of receipt of a copy of this order."

11. The learned Assistant Government Pleader on instruction brings on record written instructions dated 12.11.2022 and a bare perusal of the same indicates that provisional pension was sanctioned and sent to the A.G., A.P. Hyderabad vide office Lr.No.Pen-I (1)/1413/2008, dated 20.01.2009 and the A.G., A.P, Hyderabad has released (75%) provisional pension vide Lr. No. P3/II/C-363/SP 1514/2009-01, dated 04.03.2009 vide PPO No. 05-008514/SP, and further that the District Collector vide itsproceedings CCLA's proceedings. No.Pen.I/1413/2008, dated 12.11.2022 had informed to recover an amount of Rs.8.86,442/- from the total admissible pension amount pertaining to Smt P.Laxmamma W/s late Sri P.Chandra Reddy towards the loss caused to the Government and requested to deduct the amount from the family pension and remit into the Government account.

12. The contents of the said letter dated 12.11.2022 further indicates that family pension has been sanctioned vide proceedings dated 19.02.2020 duly recovering the loss caused to the Government for an

amount of Rs.8,86,442/-. This Court opines that the written instructions dated 12.11.2022 in so far as to hold an amount of Rs.8,86,442/- from the pension amount of the petitioner is totally unwarranted and uncalled for.

13. Taking into consideration the view taken by the Division Bench of the High Court dated 29.09.2008 passed in W.P.No.21465 of 2008 and the order dated 30.03.2017 passed by another Division Bench in W.P.No.19022 of 2016 (extracted above), this Court opines that the petitioner is entitled for the relief as prayed for in the present writ petition, in view of the simple fact that petitioner's late husband retired on attaining the age of superannuation in June, 2006 and thereafter, he died on 25.12.2016, and the disciplinary proceedings initiated against him were abated due to his death and further taking into consideration the fact as borne on record that the petitioner's late husband neither filed any explanation nor had participated in the disciplinary proceedings and therefore, this Court opines that in view of the clear abatement of the

disciplinary proceedings, recovery of amount against the petitioners late husband would not arise and the petitioner is entitled for the relief as claimed and therefore, the impugned order dated 25.06.2019 in Memo No.9472/Vig/III/2019 of the 1st respondent is set aside and the respondents are directed to release all the terminal benefits of the petitioner's late husband in favour of the petitioner, within the period of one month from the date of receipt of a copy of the order.

14. Accordingly, the writ petition is allowed. However, there shall be no order as to costs.

Miscellaneous applications, if any, pending shall stand closed.

Sd/- G. SIREESHA
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

One Fair Copy to THE HON'BLE MRS JUSTICE SUREPALLI NANDA
(For Her Lordships' Kind Perusal)

To,

1. The Special Chief Secretary to Government, Revenue (Vigilance III) Department, State of Telangana, at Secretariat, Hyderabad
2. The Chief Commissioner of Land Administration,, State of Telangana, at Hyderabad
3. The District Collector, Ranga Reddy District at Lakdikapul, Hyderabad
4. The District Collector, Vikarabad District at Vikarabad
5. The District Collector, Siddipet District at Siddipet
6. 11 LR Copies.
7. The Under Secretary, Union of India Ministry of Law, Justice and Company Affairs, New Delhi.
8. The Secretary, Telangana Advocates' Association Library, High Court Buildings, Hyderabad.
9. One CC to Sri K V Sudhakar Reddy Advocate [OPUC]
10. Two CCs to GP For Revenue, High Court for the State of Telangana. [OUT]
11. Two CCs to GP For Services, High Court for the State of Telangana. [OUT]
12. Two CD Copies

MBC

HIGH COURT

SN,J

DATED: 24/11/2022

ORDER

WP.No.26152 of 2019

ALLOWING THE WRIT PETITION

WITHOUT COSTS