

**HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
HON'BLE SRI JUSTICE J. SREENIVAS RAO**

WRIT PETITION No.31767 of 2013

Date:05.12.2022

Between:

M SHYAMAL RAO SECUNDERABAD

S/o Late Sri M Suryanarayana Aged about 60 years Occ Retd
Chairman - Industrial Tribunal - cum Labour Court Presently
R/o Villa No 22 Manasa Sarovar Villas-II Near AWUO Opp
Petrol Bunk Khanajiguda Trimulgiri Secunderabad

.....Petitioner

And

SECY LAW DEPT HYDERABAD

Rep by its Secretary law Department
Ap Secretariat Hyderabad and another.

.....Respondents

The Court made the following:

**HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
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ORDER : (Per Hon'ble Sri Justice P.Naveen Rao)

Heard learned counsel Sri P.Shashi Kiran for petitioner and learned standing counsel for High Court for the State of Telangana Sri J.Anil Kumar for respondents.

2. Petitioner was working as I Additional District Judge, Kadapa, from 29.04.2008 to 07.06.2010. It was alleged that he disposed of L.A.O.P.No.1031 of 2001 on 27.11.2008. On the manner in which the said L.A.O.P., was disposed of, complaint petitions were filed on 19.01.2009, 28.03.2009 and 02.04.2009, alleging, *inter-alia* that he awarded compensation to the structures in favour of 89 claimants without there being any evidence and without touching the real controversy between the parties and merely basing on some exhibits marked in L.A.O.P.No.1031 of 2001. On due consideration of the complaints and having *prima facie* found that there is something in the allegations which require deeper consideration, the High Court decided to initiate disciplinary

proceedings against the petitioner. A charge memo was drawn on 17.07.2010 levelling single Charge on petitioner. On due consideration of the explanation offered by the petitioner and not satisfied with the explanation offered, petitioner was subjected to domestic enquiry by appointing an Enquiry Officer. The Enquiry Officer divided the charge into three components and independently considered the evidence brought on record to test whether each of the components mentioned in the charge levelled against petitioner is established.

3. The 1st component of the charge framed against petitioner relates to not giving sufficient opportunity to the Land Acquisition Officer (for short 'LAO') to raise his specific contentions by filing counter affidavit in the L.A.O.P.No.1013 of 2001; the 2nd component relates to deciding the issue in L.A.O.P.No.1013 of 2001 without touching the real controversy between the parties; and 3rd component relates to reliance on unauthenticated pencil writings in the deposition of M.Venkatadri, who was examined as PW.1 in L.A.O.P.No.1013 of 2001.

4. On evaluation of the evidence brought on record, the Enquiry Officer held the first component of charge as 'not proved'. The view taken by the Enquiry Officer for the second component of charge reads as under:

“25. As could be seen from the order dated 27-11-2009 passed in L.A.O.P.No.1013 of 2001, the claimants did not adduce any oral evidence to substantiate their plea as to what were the nature of structures and in which year they put up structures. Indeed the charged officer while being examined as DW-1 admitted in the cross-examination that he did not record a specific finding after formulating the point for determination in LAOP 1013 of 2001 that the structures were in existence prior to Section 4(1) Notification or on the date of notification.....

26. It is crystal clear from the evidence of DW-1 that the claimants have not adduced any oral evidence to substantiate their claim in respect of the structures over the acquired lands. As could be seen from the deposition (Ex.D1) of A.Bayapu Reddy, who was examined as RW-1 in LAOP 1013 of 2001, he did not spell out as to what was the nature of constructions put up by him on the land purchased under an agreement from the pattadars and as to when the land was converted into plots and how he conveyed the plots to other claimants. I am conscious of the fact that the Government filed an appeal assailing the order passed by the charged officer and a Division Bench of this Court has ceased of the same. It is beyond the scope of the enquiry whether the inspection reports dated 7-8-1980 and 22-8-1980 are sufficient to accept the contention of the claimants that they put up constructions prior to Section 4(1) notification. The charged officer as DW-1 admitted in cross-examination that he did not record a specific finding after formulating the point for determination. Therefore, I find that this part of the charge has been proved against the charged officer.”

5. With regard to the third component of the charge, the Enquiry Officer noticed that there were pencil writings in the deposition of M.Venkatadri, who has been examined as PW.1 in L.A.O.P.No.1013 of 2001, and as PW.2 in the enquiry. It is asserted that when PW.2 signed on Ex.P1 deposition, there were no pencil writings and he has asserted that he was not the person who made the pencil writings in the deposition. The Enquiry Officer holds that *“On thorough examination of the evidence brought on record, I am in no doubt to conclude that the pencil writings were made in the deposition of M.Venkatadri after he signed in the deposition. But, who is the author of the pencil writings has not been established. A fact remains that by the time the charged officer dictated the order in LAOP No.1013 of 2001, the deposition of M.Venkatadri contained pencil writings. The charged officer joined in the judicial department on 07.10.1985 and gained experience of about 23 years by the date of his dictating the order.”*

6. The Enquiry Officer records the findings as under:

“Under Section 53 of the Land Acquisition Act, 1894, the provisions of Civil Procedure Code, 1908, shall apply to all proceedings before the Court under the Act. The charged officer referred the pencil writings in the order. The pencil writings relate to the age of structures and also the relevant date for fixing the quantum. These two dates are crucial for adjudicating

the issue involved in the LAOP. Any prudent judicial officer in the given facts and circumstances, would either recall the witness to confirm with the un-authenticated over-writings in the deposition or send the deposition to the officer, who recorded, for his attestation. The charged officer has not opted either of the two. Therefore, I find that the charged officer is not diligent in considering the unauthenticated pencil over-writings in the deposition of M.Venkatadri. Hence, I find that the 2nd part and 3rd part of the charge against the charged officer have been proved.”

7. From the findings recorded by the Enquiry Officer, it is crystal clear that two components of the charges levelled against petitioner are proved, and the findings of the Enquiry Officer are based on evidence brought on record.

8. Learned counsel for the petitioner sought to contend that as can be seen from the material available on record, there were structures in existence and appropriate compensation was determined. Therefore, petitioner cannot be blamed for awarding higher compensation.

9. The question is not with reference to alleged existence of structures. The pertinent aspect required to be noticed as rightly observed by the Enquiry Officer, whether there was any evidence brought on record in L.A.O.P.No.1013 of 2001 to support the findings recorded by the charged officer on existence of structures and awarding higher compensation.

The finding of the Enquiry Officer clearly shows that there was no evidence brought on record to support the said contention. Even the claimants have not deposed anything about existence of structures in L.A.O.P., as on the date of Section 4(1) notification. Therefore, there was no material available on record to award higher compensation. Further, there were interpolations in the deposition of PW.1 who is PW.2 in the domestic enquiry. As rightly observed by the Enquiry Officer, when the interpolations were not counter signed by the previous Officer, he ought to have entertained doubt on the correctness of such interpolations and ought to have recalled the witness to the witness box to ascertain whether those depositions were made by him. It is also pertinent to note that D.Mohan Rao (PW.1) who was PW.2 in the domestic enquiry asserted that he did not make any pencil writings in the deposition and there were no such writings on the date when he signed the deposition.

10. Therefore, we are of the opinion that the finding recorded by the Enquiry Officer is based on the evidence brought on record. The writ Court in exercise of power of judicial review under the Article 226 of the Constitution of

India, cannot re-appreciate such evidence and come to a different conclusion from the conclusion arrived at by the Enquiry Officer, as accepted by the disciplinary authority.

11. Learned counsel for the petitioner made elaborate submissions by taking us through the report of Enquiry Officer and the other material placed on record, to contend that no misconduct was committed by the petitioner in awarding higher compensation and the said higher compensation awarded by him is upheld by the High Court and therefore, the respondents grossly erred in initiating disciplinary proceedings. He further submits that there is no appropriate material placed on record to hold the petitioner guilty and in view thereof, the punishment given to him is liable to be set-aside. In support of these contentions, learned counsel for the petitioner placed reliance on the decisions of the Hon'ble Supreme Court in **Sher Bahadur Vs. Union of India and others**¹, and in **Phulbari Tea Estate Vs. Its Workmen**².

¹ AIR 2002 SUPREME COURT 3030

² Civil Appeal No.205 of 1958

12. We have also gone through the decision cited by learned counsel for the petitioner. On the facts of this case and having regard to the findings recorded by the Enquiry Officer, we are of the opinion that the decisions relied by learned counsel for the petitioner, do not come to the aid of the petitioner.

13. Having regard to the evidence brought on record and the conclusions arrived at by the Enquiry Officer, we do not see any error in the disciplinary authority accepting the report of the Enquiry Officer and recommending imposing punishment of 25% cut in pension. In the facts of this case and having regard to the charge levelled against petitioner, we are also of the opinion that the punishment of 25% cut in the pension cannot be said as excessive punishment, warranting interference of this Court.

14. In this writ petition, petitioner is also challenging the legality and validity of order of retiring him from service on completion of 58 years of age. Learned counsel for the petitioner sought to contend that the same amounts to double punishment and therefore, the same is not valid in law.

15. Imposing of punishment of 25% cut in pension and retiring the petitioner from service on attaining 58 years of age are two independent issues. It is noticed that petitioner was retired from service on overall assessment of his performance. The competent authority reviewed the case of petitioner for assessing the continued utility of service beyond the age of 58 years. On overall review and assessment of the entire material relating to the performance of petitioner, it was found that the petitioner was not fit to be continued in the judicial service beyond the age of 58 years.

16. In **Arun Kumar Gupta Vs. State of Jharkhand and Another**³ the Hon'ble Supreme Court considered the issue of review of performance of the Officers and retirement of judicial Officers on completion of 50, 55 and 58 years of age. In paragraph No.16 of the said judgment, the Hon'ble Supreme Court codified the law on the subject. Paragraph No.16 of the judgement reads as under:

“16. The law on the subject of compulsory retirement, especially in the case of judicial officers may be summarised as follows:

- (i) An order directing compulsory retirement of a judicial officer is not punitive in nature;
- (ii) An order directing compulsory retirement of a judicial officer has no civil consequences;

³ (2020) 13 SCC 355

(iii) While considering the case of a judicial officer for compulsory retirement the entire record of the judicial officer should be taken into consideration, though the latter and more contemporaneous record must be given more weightage;

(iv) Subsequent promotions do not mean that earlier adverse record cannot be looked into while deciding whether a judicial officer should be compulsorily retired;

(v) The 'washed off' theory does not apply in case of judicial officers specially in respect of adverse entries relating to integrity;

(vi) The courts should exercise their power of judicial review with great circumspection and restraint keeping in view the fact that compulsory retirement of a judicial officer is normally directed on the recommendation of a high-powered committee(s) of the High Court.

It is in the light of the aforesaid law that we will now consider the factual aspects of the present case."

17. Therefore, we do not see any error in retiring petitioner from service on completion of 58 years of age and the same does not amount to imposing double punishment as both the issues are independent i.e., the first issue is on review of performance of the Officer in the service and on desirability of his further utility to service and the second issue is with reference to the disciplinary proceedings initiated against him on the alleged delinquency.

18. The writ petition is liable to be dismissed. Accordingly, the Writ Petition is dismissed.

Miscellaneous petitions, pending if any, shall stand closed.

P.NAVEEN RAO, J

J. SREENIVAS RAO, J

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