

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF APRIL
TWO THOUSAND AND NINE

PRESENT
THE HON'BLE MR JUSTICE GHULAM MOHAMMED
and
THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 6618 of 2009

Between:

- 1 The State of Andhra Pradesh, rep by its Principal Secretary,
Panchayat Raj & Rural Development Department, Secretariat,
Hyderabad.
- 2 The Commissioner of Panchayat Raj & rural Development
Department, Government of Andhra Pradesh, Himayathnagar,
Hyderabad.

..... PETITIONER(S)

AND

- 1 T.Satyanarayana, Extension Officer (Panchayat Raj & Rural
Development) (Retd) Nadigudem Mandal,
Nalgonda District.
- 2 The Chief Executive Officer, Zilla Parishad, Nalgonda, Nalgonda
District.
- 3 The Mandal Parishad Development officer, nandigudem, Nalgonda
District.
- 4 The Accountant General, Andhra Pradesh, Government of India,
Lakidikapul, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ order or direction more particularly one in the nature of "Writ of Certiorari" calling for the records relating to the orders of the Hon'ble A.P. Admn. Tribunal, Hyderabad passed in O.A.No.858/2008 dated 26.11.2008 as being erroneous, illegal and unreasonable and quash the same and pass

Counsel for the Petitioner:GP FOR SERVICES II

Counsel for the Respondent No.:

The Court made the following :

ORDER: (Per Sri Justice GHULAM MOHAMMED)

This Writ Petition has been filed challenging the order-dated 26.11.2008 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad in O.A.No. 858 of 2008, by virtue of which, the Tribunal declared that the departmental enquiry initiated against the applicant shall be treated as non-est in the eye of law on the ground of not finalizing the disciplinary proceedings.

Brief facts of the case are that the applicant before the Tribunal while working as Executive Officer, Gram Panchayat Huzurnagar has created false transfer order of Sri Shaik Khaja Moinuddin (Khaja) and issued LPC to him transferring from Huzurnagar Gram Panchayat to Anumula (Halia) Gram Panchayat vide proceedings dated 23.3.1996, without mentioning the date of handing over the charge by Sri Khaja, Bill Collector at Huzurnagar, Gram Panchayat. The Government after examining the report of the Director General, Anti Corruption Bureau, Hyderabad, referred the case to the Tribunal for disciplinary proceedings relating to corruption against the applicant-first respondent. The following charges have been framed against the first respondent:

“CHARGE NO. 1: That Sri T. Satyanarayana, while working as Executive Officer at Huzurnagar Gram Panchayat, Nalgonda District actuated by corrupt motive and in abuse of your official position took bribe and issued transfer orders to Sri Khaja Moinuddin working at Huzurnagar Gram Panchayat on 23.3.1996 to proceed to new place of posting i.e., Anumula (Halia) and caused wrongful loss to the Gram Panchayat funds and wrongful gain to Sri Khaja Moinuddin and you have colluded with all the staff of District Panchayat Office and

allowed Sri Khaja Moinuddin to continue as Bill Collector though he was not appointed legally and in the LPC issued to Sri Khaja Moinuddin, it was mentioned by you that he was drawing basic pay of Rs. 2,135/- up to March, 1996 in the scale of Rs. 1595-3020 but the date of handing over charge by Sri Khaja Moinuddin at Huzurabad Gram Panchayat was not at all mentioned nor the date of LPC issued to him thereby you are guilty of misconduct within the meaning of Rule 2(b) of A.P. Civil Services (Disciplinary Proceedings Tribunal) Rules 1989 framed under the A.P. Civil Services (Disciplinary proceedings Tribunal Rules, 1960 as amended in 1993”.

CHARGE 2: That Sri T. Satyanarayan, while working as Executive Officer at Huzurnagar Gram Panchayat, Nalgonda District actuated by corrupt motive and in abuse of your official position relieved Sri Khaja Moinuddin on 22.4.1996 from Huzurnagar Gram Panchayat vide Proc. No. GPH/8/96, dated 22.4.1996 though he was not on the rolls of the staff of any Gram Panchayat and there was no Service Register in his name and Sri Khaja Moinuddin joined to duty in Halia Gram Panchayat (Anumula) on 25.4.1996 as Bill Collector and Sri D. Railaiah (C.O. in Tec.No. 71/2003) sent intimation to the District Panchayat Officer, Nalgonda about Sri Khaja Moinuddin joining to duty thereby you are guilty of misconduct within the meaning of Rule 2(b) of A.P. Civil Services (Disciplinary Proceedings Tribunal) Rules, 1989 framed under the A.P. Civil Services (Disciplinary Proceedings Tribunal) Rules, 1960 as amended in 1993”.

On the basis of the above charges, the Government placed the first respondent herein on his defence before the Tribunal for Disciplinary Proceedings to inquire into the allegation of corruption under Rule 3 of the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Rules, 1989 (for short “the Rules”) vide Government Memo dated 15.11.2002. After receipt of the report and after following the due procedure as per rules, orders were issued vide G.O.Ms.No. 438 dated 7.11.2008 imposing penalty of 5% cut in pension for 3 years under Rule 9 of A.P. Revised Pension Rules, against the first respondent herein and the suspension period from 5.3.2002 to 1.4.2004 was treated as ‘not duty’ in terms of F. R 54 (B)(7) as he was inflicted with a penalty of 5% cut in pension for three years under Rule 9 of A.P.Revised Pension Rules, 1980. It is also submitted that the counter

affidavit in O.A.No. 858 was filed in February, 2008 and the fact of completion of enquiry and issuance of orders in G.O.Ms.No. 438, P.R and R.D (Vig.III-A) Department dated 7.11.2008 inflicting of punishment of 5% cut in pension for three years under Rule 9 of A.P. Revised Pension Rules on the first respondent herein and treating his suspension period from 5.3.2002 to 1.4.2004 as 'Not duty' in terms of FR 54(B) (7), could not be brought to the notice of the Tribunal at the time of disposal of O.A on 26.11.2008.

The learned Government Pleader contended that the Tribunal has committed serious legal infirmity and committed jurisdictional error in interfering with the departmental proceedings, which is impermissible under law. The punishment was imposed on 7.11.2008 and before imposing punishment, the authorities have issued show cause notice and after receiving the explanation to the show cause notice only punishment was imposed. The Tribunal has not taken note of this aspect and in fact that was not brought to the notice of the Tribunal due to inadvertence. But the Tribunal declared that the departmental enquiry initiated against the first respondent shall be treated as non-est in the eye of law on the ground of not finalizing the disciplinary proceedings within the reasonable time frame. He further contended that when once the charges are proved and the punishment was imposed because of misconduct under FR No. 54, the authority has rightly treated the period as 'not duty' as he was inflicted with a penalty of 5% cut in pension for three years under Rule 9 of A.P. Revised Pension Rules, 1980.

On the other hand, the learned counsel appearing for the first respondent contended that the misconduct is of the year 1996 and he retired from service in the year 1997 and the charge memo was issued on 15.11.2002 and the matter was referred to the Tribunal for Disciplinary Proceedings in the year 2003 and the same was reserved by the Tribunal and no orders were passed. When the judgment was delivered, the Tribunal has rightly invalidated the disciplinary proceedings and held that the departmental enquiry initiated against the first respondent-applicant shall be treated as non-est in the eye of law on the ground of inordinate

delay. He further contended that the expression used under Rule 6(2)(b) is that the authority has to complete and conclude the departmental proceedings by imposing punishment on delinquent employee within the time frame of two months but the authorities have imposed the punishment after a period of four years. Therefore, the Tribunal has rightly considered this aspect and declared that the entire proceedings shall be treated as non-est in the eye of law. In support of his contention learned counsel relied on the decision reported in P.V. MAHADEVAN VS. MD. T.N. HOUSING BOARD^[1]

The point that arises for consideration is whether the Tribunal has committed any error in coming to such conclusion?

The matter was referred to the Tribunal for Disciplinary Proceedings to enquiry into the allegation of corruption under Rule 3 of the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Rules, 1989 vide memo No. 15.11.2002 and after receipt of the report and after following the due process, the authorities have issued G.O.Ms.No. 438, dated 7.11.2008 imposing penalty of 5% cut in pension for three years.

The learned Government Pleader contended that the first respondent himself is responsible for the delay. When the matter was pending, the first respondent addressed a letter to the Home Minister and the matter was held up there and therefore, delay is not on the part of the department and the language used in Rule 6(2)(b) is ordinarily not exceeding one month. Therefore, the Tribunal for Disciplinary Proceedings should complete the process within the time frame of two months. Considering the nature of various aspects, it is contended the delay is attributable on the part of the first respondent also and the Tribunal ought not to have interfered with the departmental proceedings, which is impermissible under law, inasmuch as appropriate punishment was imposed.

We have gone through the Rule 6(2)(b) of the APCS (DPT) Rules, 1989, and the relevant portion that reads as under:

“(b) The Government, after receipt of the report from the Tribunal for Disciplinary Proceedings, shall supply a copy of the report of the Tribunal to the charged Government servant and shall pass final orders after taking into consideration any representation made by him thereto within a reasonable time, ordinarily not exceeding one month. However, it shall not be necessary to give to the person charged any opportunity of making representation on the penalty proposed to be imposed:

Provided that the Government shall consult (the Andhra Pradesh Vigilance Commission) in regard to the course of further action to be taken and take the advice into consideration, before orders are passed;

Provided further that where the Government disagree with the whole or any part of the Tribunal's findings, the point of points of disagreement together with a brief statement of the grounds therefore shall, in case where it affects the Government servant charged adversely or prejudicially be communicated along with the enquiry report of the Tribunal”

In view of the above, it has to be interpreted that considering the various facts involved in the case, merely because there is delay, which is attributable on the part of the first respondent, the entire disciplinary proceedings cannot be invalidated on that ground and the Tribunal ought not to have invalidated the departmental proceedings. The learned counsel appearing for the petitioners had drawn our attention to the judgment reported in DEPUTY REGISTRAR, COOPERATIVE SOCIETY, SAIDABAD VS. SACHITANANDA NATH PANDEY AND OTHERS^[2], wherein it was held that where the charges were very serious viz., misappropriation in absconding along with official records, mere elapsing of a long period from the date of commencement of departmental enquiry is not a sufficient ground to close the matter. More so, when the department alone was not responsible for the delay.

In P.V. MAHADEVAN VS. MD. T.N. HOUSING BOARD (supra-1), case there was inordinate delay of 10 years in initiating departmental enquiry against appellant therein and no convincing explanation was given by the respondent therein. In those circumstances, it was held that

allowing respondent therein to proceed further with departmental proceedings at a distance of time would be very prejudicial to appellant, as appellant already suffered enough and more on account of the disciplinary proceedings. Hence, charge memo issued against him was quashed and departmental enquiry was put to an end. It was also held that the appellant is entitled to all retiral benefits.

It is no doubt true that the charges are proved and the Tribunal has proceeded on the premise that the proceedings are still pending, but this aspect was not brought to the notice of the Tribunal before passing the judgment by the learned Government Pleader as well as the counsel appearing for the first respondent. Inasmuch as, the punishment order was imposed by the authority on 7.11.2008, before inflicting the punishment the first respondent also submitted an explanation to the show cause notice. He has also not brought to the notice of this fact before the Tribunal when the judgment was reserved. However, having regard to the facts and circumstances of the case, when the misconduct is proved with reference to the charge, the Tribunal for Disciplinary Proceedings inflicted punishment of penalty of 5% cut in pension for 3 years under Rule 9 of A.P. Revised Pension Rules, 1980, and the Tribunal upheld the same inasmuch as the same cannot be invalidated merely on the ground of delay, in the circumstances, we think it fit to remit the matter to the petitioners-authorities since the employee has already retired from service.

The learned counsel appearing for the first respondent contended that the first respondent has already retired from service in 1997 itself. Therefore, to meet the ends of justice and to see that the litigation shall not be continued for a further period, we hold that the punishment of 5% cut in pension for three years is set aside and the period of suspension, from 5.3.2002 to 1.4.2004 to be treated as on duty, but as far as the other emoluments be restricted only to the extent of subsistence allowance, which was already received by the first respondent herein. Petitioners-authorities shall complete this exercise within two months from the date of receipt of a copy of this order.

Accordingly, the Writ Petition is disposed of. There shall be no order as to costs.

GHULAM MOHAMMED, J

B. SESHASAYANA REDDY, J

Dt. 23.4.2009
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SECTION OFFICER

To

2 The Chief Executive Officer, Zilla Parishad, Nalgonda, Nalgonda District.

3 The Mandal Parishad Development officer, nandigudem, Nalgonda Disgtrict.

4 The Accountant General, Andhra Pradesh, Government of India, Lakidikapul, Hyderabad.

5. 2CC to G.P. for Services II, High Court of A.P., Hyderabad OUT

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[\[1\]](#) (2005) 6 SCC 636

[\[2\]](#) 1995 (3) SCC 134