

THE HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

AND

THE HONOURABLE SRI JUSTICE PULLA KARTHIK

Writ Petition No.8024 of 2014

and

Writ Petition No.43303 of 2016

COMMON ORDER: *(Per Hon'ble Sri Justice Abhinand Kumar Shavili)*

With the consent of both parties, both these Writ Petitions are being disposed of by way of this Common Order as the issue raised in these two Writ Petitions is one and the same.

2. W.P.No.8024 of 2014 is filed by the petitioners under Article 226 of the Constitution of India seeking a *Writ of Certiorari* by calling for the records relating to and connected with order dated 27.02.2013 passed in O.A.No.9118 of 2011 by the Andhra Pradesh Administrative Tribunal, Hyderabad **(for short, 'the Tribunal')**, and to quash or set aside the same by holding it as erroneous and contrary to law; and W.P.No.43303 of 2016 is filed by the petitioner under Article 226 of the Constitution of India praying the Court to issue a writ / order preferably in the nature of Mandamus / and declare the action of respondents in not releasing full pension, gratuity and other

pensionary benefits to the petitioner, as illegal, arbitrary, contrary to law and violative of life guaranteed under Article 21 of the Constitution of India; and consequently, to direct the respondents to pay all such benefits to the petitioner with effect from the date of superannuation from service with penal interest.

3. Heard the learned Government Pleader for Services-III, for the petitioners in W.P.No.8024 of 2014, and for the respondents in W.P.No.43303 of 2016; Mr. K. Lakshmi Narasimha, learned counsel for the 1st respondent in W.P.No.8024 of 2014, and for the petitioner in W.P.No.43303 of 2016.

4. For the sake of convenience, the facts in W.P.No.8024 of 2014 are discussed herein.

5. Learned Government Pleader for Services-III, appearing for the petitioners, contended that the 1st respondent, during the course of employment, had misappropriated certain amounts; in those circumstances, the petitioners have issued Memos dated 27.01.2007 and 24.02.2007 to the 1st respondent directing him to pay an amount of Rs.15.60 lakhs; aggrieved by the said Memos, the 1st respondent approached the Tribunal by filing O.A.No.9118 of 2011; during pendency of the said O.A., the

petitioners issued another Charge-Memo vide G.O.Rt.No.604 Agriculture and Cooperation (Vig.I) Department, dated 02.06.2012; but, as on the date of issuance of the said Charge-Memo, the 1st respondent has already retired from service, and since disciplinary proceedings were pending against the 1st respondent while he was in service, the petitioners have issued the said Charge-Memo in view of Rule 9 of the Revised Pension Rules, 1980; thereafter, the 1st respondent has filed M.A.No.2661 of 2012 in O.A.No.9118 of 2012 praying the Tribunal to amend the prayer so as to enable him to challenge the G.O.Rt.No.604 Agriculture and Cooperation (Vig.I) Department, dated 02.06.2012; the said application was accordingly ordered by the Tribunal vide order dated 03.09.2012; the Tribunal, vide order dated 27.02.2013 passed in O.A.No.9118 of 2011, was pleased to allow the O.A. by setting aside the impugned Memos dated 27.01.2007 and 24.02.2007 for recovery of amounts, as well as the Charge-Memo vide G.O.Rt.No.604 Agriculture and Cooperation (Vig.I) Department, dated 02.06.2012, without appreciating any of the contentions raised by the petitioners.

6. Learned Government Pleader for Services-III, appearing for the petitioners, further contended that aggrieved by the order

passed by the Tribunal in the said O.A., the petitioners have approached this Court by filing W.P.No.8024 of 2014, and also filed WPMP.No.9999 of 2014 seeking interim suspension of the order passed by the Tribunal in O.A.No.9118 of 2011; a learned Division Bench of this Court, vide order dated 19.03.2014, in WPMP.No.9999 of 2014, was pleased to grant *interim suspension* of the order passed by the Tribunal in O.A.No.9118 of 2011; therefore, the Tribunal was not justified in allowing the O.A. in favour of the 1st respondent; and therefore, prayed this Court to pass appropriate orders in the Writ Petition by setting aside the order passed by the Tribunal in O.A.No.9118 of 2011, dated 27.02.2013, and allow the Writ Petition.

7. On the other hand, learned counsel for the 1st respondent contended that the Tribunal had rightly set aside the impugned Memos dated 27.01.2007 and 24.02.2007 for recovery of amounts, as well as the Charge-Memo vide G.O.Rt.No.604 Agriculture and Cooperation (Vig.I) Department, dated 02.06.2012, wherein the petitioners were trying to recover an amount of Rs.15.60 lakhs from the 1st respondent without conducting enquiry; even after the 1st respondent had retired from service, the petitioners have issued the Charge-Memo vide G.O.Rt.No.604 Agriculture and Cooperation (Vig.I) Department,

dated 02.06.2012; petitioners herein have also approached this Court and got suspended the order passed by the Tribunal in the said O.A., which would mean that the Charge-memo dated 02.06.2012 would get revived; in spite of the charge-memo being revived, the petitioners have not chosen to go ahead with the Charge-memo, and in the interregnum, the 1st respondent had expired on 22.05.2021; subsequently, the legal representatives of the 1st respondent were also brought on record by order dated 04.07.2022 in I.A.No.1 of 2021 in W.P.No.8024 of 2014; at this point of time, conducting enquiry against a dead person may not be feasible; the 1st respondent herein had also filed W.P.No.43303 of 2016 before this Court seeking a direction to the official respondents therein to release all pensionary benefits since the impugned charge memos were set aside by the Tribunal; and therefore, prayed this Court that there are no merits in the Writ Petition and the same is liable to be dismissed.

8. This Court, having considered the rival submissions made by the parties, is of the considered view that the respondents have issued the impugned Charge-Memo vide G.O.Rt.No.604 Agriculture and Cooperation (Vig.I) Department, dated 02.06.2012; though the Tribunal had set aside the said Charge-

memo, the petitioners have approached this Court and got suspended the operation of the order passed by the Tribunal in O.A.No.9118 of 2011, dated 27.02.2013, *vide* order dated 19.03.2014, in WPMP.No.9999 of 2014 in W.P.No.8024 of 2014, which would mean that the impugned Charge-memo would get revived; but the petitioners have not chosen to conclude the said Charge-memo without taking the same into logical conclusion. Further, as of now the 1st respondent had expired during pendency of the writ petitions, this Court is of the considered view that the impugned Charge-Memo, issued against a dead person, i.e., the 1st respondent, cannot be taken to its logical conclusion. Therefore, the W.P.No.8024 of 2014, filed by the petitioners, is liable to be dismissed. Accordingly, the same is dismissed. No costs.

9. It is needless to say that in view of the order passed by this Court in W.P.No.8024 of 2014 dismissing the same, the Writ Petition filed by the 1st respondent herein, i.e., W.P.No.43303 of 2016, during his lifetime, also does not survive for adjudication since the 1st respondent had already expired during pendency of the said writ petition. Accordingly, the same is dismissed as 'infructuous'.

10. In the result, Writ Petition No.8024 of 2014 is dismissed and Writ Petition No.43303 of 2016 is dismissed as 'infructuous'. No costs.

11. As a sequel, miscellaneous applications pending if any in these Writ Petitions, shall stand closed.

ABHINAND KUMAR SHAVILI, J

PULLA KARTHIK, J

Date : 07.02.2023
Ndr