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APHC010200372013

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3543]
(Special Original Jurisdiction)

WEDNES DAY, THE EIGHTEENTH DAY OF NOVEMBER 2026

PRESENT

THE HON'BLE SRI JUSTICE NINALA JAYASURYA

THE HON'BLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION No: 1465 of 2013

Between:

1. V. CHANDRASEKHARA RAO, S/o.BALARAJU, AGED 36 YEARS, R/o.DOOR.No.15-6-7, PANASATHOTA, NARASARAOPET, GUNTUR DISTRICT.

...PETITIONER

AND

1. THE HON'BLE HIGH COURT OF A P & ANR, HYDERABAD, REPRESENTED BY THE REGISTRAR (ADMINISTRATION).
2. THE DISTRICT JUDGE, GUNTUR DISTRICT, GUNTUR

...RESPONDENT(S):

Counsel for the Petitioner:

Mr. P DURGA PRASAD

Counsel for the Respondent(S):

Smt. A JAYANTHI

The Court made the following order: *(Per NJS, J)*

Petitioner herein was selected for the post of Attender, pursuant to Notification No.02 / 2008 dated 07.08.2008 issued by the 2nd respondent. On 20.05.2009, the 2nd respondent appointed the petitioner as Attender and posted him in the Court of I Additional Junior Civil Judge, Guntur.

2. While the petitioner was on probation, the 2nd respondent *vide* Proceedings dated 07.11.2009, discharged him from service invoking Rule 17 (ii) (a) of Andhra Pradesh State and Sub-ordinate Service Rules, 1996 (for short 'A.P.S. & S.S. Rules'). Aggrieved by the said proceedings, the petitioner availed the remedy of appeal and *vide* Order dated 20.09.2011, the 1st respondent dismissed the same. Petitioner preferred a review against the said order, but the same was rejected by an Order dated 14.12.2011. Under the said circumstances, the present writ petition came to be filed.

3. Heard Mr.Akula Bhargav, learned arguing counsel for the petitioner. Also heard Smt.A.Jayanthi, learned counsel representing the respondents. Perused the material on record.

4. Learned counsel for the petitioner while assailing the orders impugned in the writ petition, made elaborate submissions to impress upon the Court that the same are unsustainable and liable to be set aside. Drawing the attention of this Court to the Proceedings dated 07.11.2009 discharging the petitioner from service, the learned counsel mainly contended that the said order would not amount to a discharge simplicitor. Allegations made therein

against the petitioner and the action taken with reference to the same, attaches a stigma and in such circumstances, discharge of the petitioner from service without conducting any enquiry is violative of Article 311 (2) of the Constitution of India. Therefore, the Proceedings dated 07.11.2009 does not stand scrutiny of law. He also contended that the order of discharge dated 07.11.2009 is contrary to G.O.Ms.No.848, General Administration (SER-A) Department, dated 11.06.1960, wherein it is stipulated that grounds of discharge should not be specified in the order. Further, Proforma appended to the said Government Order was not adhered to and as such, the proceedings of the 2nd respondent dated 07.11.2009 are vitiated. He also submitted that impugned discharge proceedings without conducting any enquiry as contemplated under the A.P.Civil Services (Classification, Control and Appeal) Rules (for short 'C.C.A.Rules') is illegal, arbitrary and also violative of principles of natural justice. Further that the Appellate Authority simply confirmed the order of discharge without assigning specific reasons and even in the review, no cogent reasons were assigned for rejecting the same. Referring to the relevant Rules in the A.P.State and Sub-ordinate Service Rules, 1996, A.P.Last Grade Service Rules, 1992 etc., and relying on the following decisions, the learned counsel seeks to allow the writ petition by setting aside the order under challenge.

1. SBTS Devi v. The State of Andhra Pradesh and Others (W.P.No.6396 of 2024, dated 01.08.2024)

2. Radhey Shyam Gupta v. U.P.State Agro Industries Corporation Ltd., and Another[1]

3. The Manager, S.M.U.P.School & Ors., v. M.Noushad & Ors. (Orders of Hon'ble Supreme Court in Civil Appeal No.3788 of 2017 dated 27.02.2025)

4. Pavanendra Narayan Verma v. Sanjay Gandhi Pgi of Medical sciences & Another[2]

5. Sarita Choudhary v. High Court of Madhya Pradesh & Another[3]

5. On the other hand, learned counsel for the respondents made submissions to sustain the orders passed against the petitioner. It is *inter alia* contended that the writ petitioner was appointed temporarily as an Attender on 20.05.2009 and as mentioned in the proceedings of appointment, the same is purely on temporary basis, pending receipt of antecedents' verification report from police and it does not confer any right. Further, that services are liable to be terminated at any time without issuing any notice or assigning any reasons whatsoever. It is contended that admittedly, the writ petitioner was on probation, which is for a period of two years under Rule 10 of A.P.Last Grade Service Rules, 1992 and as there is no provision in the said Rules with regard to discharge of probationer for unsatisfactory performance or unsatisfactory conduct, the 2nd respondent rightly invoked Clause (a) (ii) of Rule 17 of A.P.S. & S.S.Rules, 1996, which is applicable in terms of Rule 3 (a) of the A.P.Last Grade Service Rules, 1992. It is submitted that in the light of the specific powers conferred under the said Rules i.e., Clause (a) (ii) of Rule 17 of A.P.S.

[1] 1998 INSC 481
[2] 2001 INSC 557
[3] 2025 INSC 289

& S.S. Rules, 1996, the discharge proceedings by recording specific reasons is in accordance with the statutory provision, does not suffer any illegality, much less on the premise that no enquiry was conducted.

6. It is further contended that the submission with reference to C.C.A. Rules is misconceived. It is also her contention that despite repeated warnings, the petitioner failed to mend his behavior and attending the residential office of a Judicial Officer in a drunken state, causing nuisance to the said officer's landlord. Taking the specific behavioral issues, the petitioner was discharged, in view of unsatisfactory performance of duties and unsatisfactory conduct as contemplated under Rule 17 (a) (ii) of A.P.S. & S.S. Rules, 1996. She further contended that the discharge of the petitioner from service cannot be treated as punitive action calling for an enquiry, nor the same casts stigma. Reference in this regard was also made to Clause (viii) of Explanation to Rule 9 of C.C.A.Rules. Distinguishing the judgments relied on behalf of the petitioner and referring to the decision of the Hon'ble Supreme Court in **Chaitanya Prakash & Anr. V. H.Omkarappa**[4]**,** learned counsel submitted that as Rule 17 (a) (ii) stipulates that reasons must be recorded in writing, the disclosure of facts is in compliance with the statutory requirement and the behavioral reports were taken only as a motive, therefore the impugned discharge proceedings are legally sustainable. Further as stated in the counter-affidavit, the appellate authority, after examining the matter with reference to the material on record, confirmed the discharge proceedings and

[4] (2010) 2 SCC 623

further the review was rejected by a reasoned order. Under the said circumstances and as scope of judicial review under Article 226 of the Constitution of India is limited, the writ petition is liable to be dismissed. Accordingly, she seeks dismissal of the writ petition.

7. On an appreciation of rival contentions, the following points arise for consideration:

1) Whether the impugned proceedings of discharge dated 07.11.2009 invoking Rule 17 (a) (ii) of A.P.State and Sub-ordinate Service Rules, 1996 is not sustainable?
2) Whether the proceedings of discharge dated 07.11.2009 are punitive in nature, stigmatic and not sustainable on the ground of non-conduct of enquiry as also violative of principles of natural justice?

8. Before answering the points formulated for determination, it may be appropriate to refer to the Rules, which are relevant to the present adjudication. A.P.Last Grade Service Rules, 1992, were framed *vide* G.O.Ms.No.565 GA (Service-B) Department dated 24.10.1992, in exercise of powers conferred by the Proviso to Article 309 of the Constitution of India. The said Rules are applicable to the Last Grade Services enumerated in the said Rules including Category No.(2) (a) Attenders [Office Subordinates] substituted by G.O.Ms.No.227, G.A.D.(Ser.B), dated 12.04.2008. As per Rule 3 (a) of the said Rules, the A.P.State and Sub-ordinate Service Rules shall apply to the services except to the extent, different provisions are made in A.P.Last Grade Service Rules, 1992.

9. Further, Rule 10 of 1992 Rules, *inter alia* stipulates two years probation period. The said Rules does not contain any specific rule / provision providing for termination / discharge of an employee, who is on probation. Rule 17 of A.P.State and Sub-ordinate Service Rules, 1996, therefore is applicable for taking action for termination of an employee discharging Last Grade Services. The said Rule which is relevant to the present context may be extracted hereunder:

> Rule 17. **Suspension, termination or extension of probation**: -
> (a) (i) The appointing authority may, at any time, before the expiry of the prescribed period of probation, suspend the probation of a probationer and discharge him from service for want of vacancy.
> (ii) The appointing authority may, at any time, before or after the expiry of the prescribed period of probation either extend by not more than one year, whether on duty or otherwise, the period of probation of a probationer, in case the probation has not been extended under sub-rule (b) of this rule or terminate his probation and discharge him from service after giving him one month's notice or one moth's pay in lieu of such notice, on account of unsatisfactory performance or progress during training or unsatisfactory performance of duties or unsatisfactory conduct or for any other sufficient reason to be recorded in writing.
> (iii) The appointing authority may, at any time, before the expiry of the prescribed period of probation, post the probationer under another officer in order to make sure that the previous report made on his performance or conduct by a superior officer is not a biased one.

<u>Point No.1</u>

10. A reading of the above statutory provision makes it clear that a probationer can be discharged from service after giving him one month's

notice or one month pay in lieu of such notice, on account of unsatisfactory performance / conduct or for any other sufficient reason to be recorded in writing. However, Rule 17 (a) (iii) contemplates that the appointing authority may post the probationer under another officer to make sure that the previous report made on the performance or conduct of the probationer by a superior officer is not a biased one.

11. In the case on hand, no doubt, the reasons for discharge of the writ petitioner / probationer as contemplated under Rule 17 (a) (ii) were recorded. A reading of proceedings of discharge dated 07.11.2009 would make it clear that the action was with reference to the letters of I Additional Junior Civil Judge, Guntur dated 28.10.2009 and 06.11.2009 reporting about the conduct of petitioner. In such a situation, in the considered opinion of this Court, the 2nd respondent / appointing authority was required to make sure that the reports / letters about the performance or conduct of the writ petitioner was not biased by posting the writ petitioner / probationer under another officer. No such action appears to have been taken. A plain reading of discharge order would give an impression without any doubt that the petitioner's conduct while discharging the duties coupled with other allegations was the motive for discharge. However, it is settled law that the Courts have to look into substance of the order and not the Form. Be that as it may. In so far as the present case is concerned, in view of specific Rules providing for confirmation of performance or conduct, it is a safe guard to check biased action and arbitrary discharge. Non-adherence of said Rule 17 (a) (iii) is fatal and

therefore, discharge of petitioner is not sustainable. Accordingly the point No.1 is answered.

Point No.2:

12. As noted earlier, it was contended that the discharge proceedings are punitive in nature and stigmatic. Whereas, it is contended contra, that basing on behavioral issues, unsuitability of the petitioner for continuation in service was determined. From the impugned discharge proceedings, it is discernible that reference to the conduct of the writ petitioner that he purportedly attending the residential office of the Officer in drunken state was made. Reference to other allegations was also made and it was recorded that the petitioner's "performance of duties as Attender is unsatisfactory and his conduct is also unsatisfactory." Had the discharge proceedings been issued without reference to any of such acts against the writ petitioner / probationer, perhaps it may not amount to stigmatic or punitive.

13. In **Pavanendra Narayan Verma's case** referred to supra, at Para No.21, the Hon'ble Supreme Court opined as follows:

> "21. One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full-scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld."

14. Further, it was opined that in order to amount to a stigma, the order must be in a language which imputes something over and above mere

unsuitability for the job. In the facts of the said case, the order of termination mentions that work and conduct of the employee has not been found to be satisfactory and it was held that the impugned order of termination is not exfacie, stigmatic and order of termination was not interfered with.

15. In **Samsher Singh v. State of Punjab**[5]**,** a Seven-Judge Bench of Hon'ble Supreme Court, *inter alia* held that:

> "*No abstract proposition can be laid down that where the services of a probationer are terminated without saying anything more in the order of termination than that the services are terminated it can never amount to a punishment in the facts and circumstances of the case. If a probationer is discharged on the ground of misconduct, or inefficiency or for similar reason without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge it may in a given case amount of removal from service within the meaning of Art.311 (2) of the Constitution."*

16. In **Sarita Choudhary's case** referred to supra, it is *inter alia* held as follows:

> "*12.2……*
> *……..an assessment of remarks pertaining to the discharge of duties during the probationary period even without a finding of misconduct and termination on the basis of such remarks or assessment will be by way of punishment because such remarks or assessment would be stigmatic. According to the dictionary meaning, stigma is indicative of blemish, disgrace indicating a deviation from a norm. Stigma might be inferred from the references quoted in the termination order although the order itself might not contain anything offensive…….*
>
> *12.3 Even though a probationer has no right to hold a post, it would not imply that the mandate of Articles 14 and 16 of the Constitution could be violated inasmuch as there cannot be any arbitrary or discriminatory discharge*

[5] AIR 1974 SC 2192 = 1974 (2) SCC 831

or an absence of application of mind in the matter of assessment of performance and consideration of relevant materials. Thus, in deciding whether, in a given case, a termination was by way of punishment or not, the courts have to look into the substance of the matter and not the form."

17. In the case on hand, the order of discharge of petitioner refers to certain incidents based on which he was discharged. No enquiry was undertaken, yet discharge with reference to the alleged conduct to the effect that the petitioner was attending duties in a drunken state have an effect on the future employment prospects of the writ petitioner. In such a situation, it is not discharge simplicitor, but stigmatic and the same without conducting any enquiry is violative of principles of natural justice. Point No.2 is answered accordingly.

18. Decision in **Chaitanya Prakash** referred to supra is not applicable to the facts of the case. The Hon'ble Supreme Court was examining the issue whether the order passed against the respondent / employee terminating his services during the period of probation was an order of termination simplicitor due to unsatisfactory service or stigmatic due to mis-conduct. In the said case, the respondent-employee was given ample opportunity to improve his performance and after examining his suitability for continuation or otherwise in service, was terminated *inter alia* on the basis of performance reports. Hon'ble Supreme Court by appreciating the matter in detail, opined that the said services of the respondent were terminated due to un-suitability and therefore not stigmatic. Accordingly set aside the order of the High Court under appeal. In the said case, no misconduct as such was alleged. Be that as it may.

19. As concluded by this Court in Point No.1, the impugned order of discharge without adherence to Rule 17 (a) (iii) is not sustainable. In fact, a specific ground was raised with reference to the said Rule before the Appellate Authority. At this stage, it may pertinent to observe that the said ground was not at all considered by the appellate authority, let alone reference to the same. Further, the order of the Appellate Authority is cryptic and does not reflect due consideration of the grounds raised in the appeal instituted by the petitioner for adjudication of his valuable rights. The Appellate Authority is expected to pass an order with cogent reasons, though not elaborately. Even, the order of review dated 14.12.2011 is not an exception.

20. On a due consideration of overall facts and circumstances, impugned orders, this Court is of the considered opinion, are not sustainable and accordingly the same are set aside. So far as the reliefs consequent to setting aside of the impugned orders, nothing is pleaded that the petitioner is not gainfully employed during the pendency of the writ petition. Therefore, applying the principle of *'no work, no pay'*, the petitioner is not granted any back wages.

21. In view of the setting aside of the impugned orders, the respondent No.2 shall reinstate the petitioner with in a period of eight (8) weeks from the date of receipt of a copy of this order. The petitioner shall be entitled to all service benefits only from the date of his reinstatement.

22. Accordingly, this Writ Petition is allowed to the extent indicated above. No costs. Miscellaneous petitions pending, if any, shall stand closed.

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JUSTICE NINALA JAYASURYA

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JUSTICE T.C.D.SEKHAR

Date: 18.11.2026
BLV

THE HON'BLE SRI JUSTICE NINALA JAYASURYA

THE HON'BLE SRI JUSTICE T.C.D.SEKHAR

W.P.No.1465 of 2013

Dt: 18.11.2026

BLV