
(2008) 06 AP CK 0052

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 12395 and 12396 of 2008

A.P. Public Service Commissioner

APPELLANT

Vs

B. Sambhi Reddy and Another

RESPONDENT

Date of Decision : 17-06-2008

Acts Referred:

Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 — Rule 20
Andhra Pradesh Civil Services (Conduct) Rules, 1964 — Rule 3(1), 3(2), 3(3)
Andhra Pradesh Revised Pension Rules, 1980 — Rule 9(2), 9(6)
Penal Code, 1860 (IPC) — Section 120B, 406, 409, 415, 419

Citation : (2008) 5 ALD 102 : (2008) 5 ALT 564

Hon'ble Judges : Ghulam Mohammed, J;C.V. Ramulu, J

Bench : Division Bench

Advocate : M. Vijay Kumar, for the Appellant; A. Rajasekar Reddy, Asst. Solicitor General in WP No. 12395 of 2008, for the Respondent

Final Decision : Dismissed

Judgement

Ghulam Mohammed, J.—These two writ petitions, filed by the A.P. State Public Service Commission (for brevity "the Commission") can be disposed of together as they arise out of a common order passed by the A.P. Administrative Tribunal in O.A. Nos. 4729 and 5411 of 2007, dated 26.2.2008.

2. While W.P. No. 12395 of 2008 is directed against the order in O.A. No. 4729 of 2007, W.P. No. 12396 of 2008 is directed against the order in O.A. No. 5411 of 2007.

3. The brief facts leading to the filing of the O.As, in nutshell, may be noted:

The respondent herein is a retired Assistant Secretary in the Commission. The respondent while functioning as Superintendent in the confidential wing of the Commission, during the year 1994, was directed to inspect Manjusree Printers, Bangalore, and to submit a report whether the said press was capable of taking confidential work of printing of question papers pertaining to the Commission in

large scale and about its reputation. The respondent is alleged to have submitted a report on 5.3.1994 after inspecting the said press.

4. Basing on the report of the respondent, work was assigned to the said press. Subsequently, there was leakage of question papers. The matter was investigated into by the C.I.D. During the investigation, it was revealed that the said press has no capability in the printing of lakhs of question papers.

5. The allegation against the respondent is that though the press has no capability of undertaking voluminous work required by the Commission, the respondent has suppressed the said fact and submitted a false report to the Commission, obviously, to help the party, to secure the work, which had ultimately led to leakage of question papers through a proof reader. A criminal case was registered against the respondent and others in Crime Nos. 45 and 55 of 1997 for the offences punishable under Sections 406, 409, 419 and 420 I.P.C read with Section 120B IPC of C.I.D.P.S., Hyderabad. Later by order dated 17.7.1997, he was placed under suspension. Pending the criminal cases, suspension of the respondent has been extended by G.O. Ms. No. 2920, dated 16.7.1998, for a period of six months. The suspension order reads as follows:

The Government have reviewed the case of Sri B. Sambi Reddy, Assistant Secretary, Office of A.P. Public criminal case Cr. No. 45/97 under Sections 406, 415, 420, 120B, IPC of CIDS and kept under suspension by the A.P. Public Service Commission decided that he shall continue to be under suspension for a further period of six months beyond 13.7.1998.

2. The individual is entitled to draw subsistence allowance under F.R. 53.

6. Thereafter, suspension order was revoked by the Commission, vide proceedings dated 21.2.1998 of the Chairman of the Commission. While things stood thus, the Government issued proceedings No. 99/ADA/3/2001, dated 30.10.2001, permitting the respondent to retire from the Government service on attaining age of superannuation with effect from 31.10.2001 pending trial against him in the Court of IX Munsif Magistrate, Hyderabad, in C.C. Nos. 359 and 360 of 1998. Subsequently, by judgment of the Criminal Court in C.C. No. 360 of 1998, dated 26.4.2005, he was acquitted of the charges.

7. Subsequent to the revocation of the suspension and consequent on the permission granted by the Government to retire from service, respondent filed O.A. No. 4729 of 2007 for regularization of the period of suspension from 17.7.1997 to 20.12.1998 as on duty and for notional promotion as Deputy Secretary. The prayer reads as follows:

(i) To declare the action of the 1st respondent in not regularising the suspension period from 14.7.1997 to 20.12.1998 as illegal and arbitrary.

(ii) To declare the action of the 1st respondent in not effecting the notional promotion as Deputy Secretary from the date of eligibility i.e. 1.3.1998 as illegal, arbitrary.

(iii) To declare the action of the 1st respondent in not fixing the pay on the basis of notional promotion and the latest revision of pay scales and release the full pension, DCRG and commutation of pension.

and consequently direct the 1st respondent to regularize the suspension period as service from 14.7.1997 to 20.12.1998 by effecting the notional promotion as Deputy Secretary from the date of eligibility i.e. 1.3.1998 and to revise the pay scales in the promoted post and to fix the pension and further direct the 1st respondent to send the pension proposals to the 2nd respondent and on such receiving the proposals the 2nd respondent may be directed to release the full pension, DCRG and commutation forthwith and pass such other order or further order as this Hon'ble Tribunal feels deem fit and proper.

8. It appears that after filing of the O.A. No. 4729 of 2007, the department has issued the following Charge Memo No. 2321/ADB/2/2007, dated, 31.8.2007, obviously in exercise of the power conferred under Sub-rule 6(a) of Rule 9 of A.P. Revised Pension Rules, 1980 (for short "the Rules, 1980") for conducting an enquiry as per the procedure prescribed in Rule 20 of A.P. Civil Services (CC & A) Rules, 1991:

Annexure-I

Sri B. Sambhi Reddy, Assistant Secretary (Retd.) will explain the following:

CHARGE: Gross misconduct in submitting a false report of inspection of a printing press of Bangalore, misguiding the Commission violating Sub-rules (1), (2), (3) of A.P.C.S. Conduct Rules, 1964.

Basis of the Charge:

Sri Sambhi Reddy while functioning as Superintendent in Confidential Wing of the Commissions Office during the year 1994 was directed to inspect the Manjusree Printers, Bangalore and to submit a report whether the said press was capable of tacking of confidential work of printing of question papers pertaining A.P.P.S.C. and about its reputation. He had submitted a report on 5.3.1994 stating that he inspected the Printing Press M/s. Manjusree, Bangalore of Rajajinagar in Bangalore owned by Sri S.K. Shah. As per his report the press was carrying out both confidential and non-confidential printing work and there were two separate Units; of press - one for printing and another for packing and binding work. Subsequently, it was found out and that the press had undertaken printing work of 1 1/2 lakhs question papers during investigation by CID that it was a small press located in 20" X 30" six room having it's office in the same room. The said press was having Two Printing Machine. The said press was incapable of taking large work of printing question papers, that it's capacity was only to print loose leaf on job work basis. Even though, the condition of press was apparently not worthy, he had submitted a false report with an intention to help the party to secure the work. On this report, the work was continued to be let out to the said press. Thus, he violated Sub-rules (1), (2) and (3) of Rule 3 of A.P.C.S.

(Conduct) Rules, 1964. Hence the charge.

and directed the applicant to submit his written statement of defence within ten days.

9. Challenging the aforesaid memo, the respondent filed the other O.A. No. 5411 of 2007, mainly challenging on the ground that as per Rule 9(2)(b) of the Rules, 1980, the departmental proceedings cannot be initiated in respect of any event which had taken place more than four years before such initiation.

10. The Tribunal, after considering the evidence on record, found that in view of the revocation of the suspension of the applicant and in view of the acquittal in the criminal case, and, as there was no disciplinary proceeding pending against him as on the date of his retirement, the impugned order cannot be issued under Rule 9(6)(a) of the A.P. Revised Pension Rules, as it is hit by Rule 9(2)(b) of the A.P. Revised Pension Rules, 1980. Further, incident referred to in the charge memo dated 31.8.2007 relates to the year 1994 and in view of this, there is inordinate delay of 13 years. In similar circumstances, the Apex Court in *P.V. Mahadevan v. M.D.T.N. Housing Board* 2005 (5) Supreme 611 : 2006 AILD 28 (SC), held that the inordinate delay of 13 years in issuing the charge memo cause prejudice to the employee to defend his case. Holding so, the Tribunal allowed both the O.As. The operative portion of the order of the Tribunal reads as under:

In view of such circumstances of the case, the Charge Memo No. 2321/ADB/2/2007, dated 31.8.2007 is liable to be set aside and accordingly it is set aside, with a declaration that the period of suspension from 14.7.1997 to 20.12.1998 is to be treated as on duty as the suspension of the applicant was revoked (recalled, call back or withheld) and in view of the applicant being acquitted in the criminal case by the IX Metropolitan Magistrate, Hyderabad, vide its judgment dated 26.4.2005. Accordingly, the respondents are directed to release all consequential benefits by regularizing the suspension period as on duty and giving notional promotion to the applicant on par with his juniors and revise the pay and pension accordingly. This exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

11. Aggrieved by the same, the Commission has filed the present writ petitions.

12. Heard both sides and perused the material on record.

13. There is no dispute that the incident took place on 5.3.1994 when the respondent submitted a report about the capability of the printing press. It is also not in dispute that the petitioner has been permitted to retire from service with effect from 31.10.2001 vide proceedings dated 30.10.2001. The memo reads thus:

Sri B. Sambhi Reddy, Assistant Secretary, Office of the Andhra Pradesh Public Service Commission, Hyderabad, is permitted to retire from Government Service on attaining the age of superannuation with effect from 31.10.2001 A.N. The

pensionary benefits due to him are subject to conclusion of Court proceedings in Cr. No. 45/97 under Sections 406, 415, 420, 120B IPC of CID P.S. pending trial against him in the Court of DC Munsif Magistrate, Hyderabad vide C.C. No. 359/98 and 360/98.

14. From the above, it is clear that no right is reserved by the Government to initiate the disciplinary proceedings after the conclusion of the criminal proceedings, against the respondent except stating that the pensionary benefits due to him are subject to the conclusion of Court proceedings in C.C. Nos. 359 and 360 of 1998.

15. Rule 9(2)(b) of the Rules, 1980, on which reliance has been placed by the respondent, reads as follows:

(b) The departmental proceedings, if not instituted while the Government Servant was in service, whether before his retirement or during his retirement:

(i) shall not be instituted save with the sanction of the Government;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the State Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government Servant during his service.

16. The said Rule clearly states that departmental proceedings if not instituted while the Government Servant was in service, whether before his retirement or during his retirement, the same shall not be instituted except with the sanction of the Government. It is also clear that the same shall not be initiated in respect of any event, which had taken place more than four years before such institution. In the instant case, there is no sanction of the Government permitting the disciplinary authority to initiate proceedings as per the provisions contained in Rule 9(6)(a) of Rules, 1980.

17. As already noticed, in the memo dated 30.10.2001, issued by the Commissioner, no right is reserved to initiate disciplinary proceedings after the conclusion of the criminal proceedings, except stating that the permission to retire from service is subject to the conclusion of criminal proceedings. The alleged incident had taken place on 5.3.1994, whereas the impugned charge memo has been issued on 31.8.2008 i.e. nearly after a lapse of thirteen years. Therefore, in view of the bar contained in Rule 9(2)(b)(ii) of the Rules, 1980, initiation of the disciplinary proceedings in respect of an incident which had taken place more than four years before such institution is without jurisdiction and thus cannot be sustained. Even the Supreme Court in P.V. Mahadevan's case (supra) held that the inordinate delay in initiating the proceedings would cause prejudice to the delinquent servant. In the instant case, as stated above, the proceedings were initiated against the respondent after lapse of nearly 13 years. This will

certainly cause prejudice to the respondent in defending his case.

Apart from this, no sanction has been ordered by the Government permitting the disciplinary authority for initiation of the disciplinary proceedings against the respondent as required under Rule 9(2)(b)(i) of the Rules, 1980. We are of the view that for this reason also, the charge memo dated 31.8.2007 cannot be sustained under law. Therefore, the Tribunal after examining the matter in detail and in proper perspective, rightly set aside the Memo dated 31.8.2007.

18. For all the above, reasons, we find no ground to interfere with the impugned order passed by the Tribunal. Both the writ petitions are liable to be dismissed.

19. In the result, both the writ petitions are dismissed. There shall, however, be no order as to costs.