

(2011) 09 AP CK 0030
In the Andhra Pradesh High Court
Case No : Writ Petition No. 11928 of 1999

Beta Varahalu

APPELLANT

Vs

Simhachalam Devasthanam, Simhachalam

RESPONDENT

Date of Decision : 05-09-2011

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 — Section 153, 37, 38
Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1963 — Rule 19
Constitution of India, 1950 — Article 226
Office Holders and Servants Punishment Rules, 1987 — Rule 4

Citation : (2011) 09 AP CK 0030

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : P. Anjana Devi, for the Appellant; M. Adinarayana Raju for Devasthanam Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Ms. Justice G. Rohini

1. The petitioner herein joined the service of Simhachalam Devasthanam-the sole respondent herein in the year 1967 as Dushakari (Mali). By proceedings dated 17.06.1996, his services were terminated and aggrieved by the same, the present writ petition is filed.

2. I have heard the learned counsel for both the parties. The material available on record shows that a show cause notice dated 26.03.1996 was issued to the petitioner calling upon him to show cause as to why he should not be terminated from service on the grounds specified therein which included unauthorized absence from 20.06.1995. The petitioner submitted his explanation dated 08.03.1996. Having found that the explanation was not satisfactory, the respondent passed the impugned order terminating the services of the petitioner.

3. The learned counsel for the petitioner while submitting that the impugned order of termination being a major penalty, it is mandatory to conduct an enquiry as provided under A.P.Civil Services (Classification, control and Appeal) Rules, 1963 (for short "CCA Rules") vehemently contended that since no such enquiry was held, the impugned order is liable to be set aside on that ground alone.

4. In the counter affidavit filed on behalf of the respondent, it is stated that the petitioner was a habitual absentee and he had absented himself un-authorizedly for a total period of five years, ten months, eleven days during his entire service. It is also stated that in spite of giving several opportunities, the petitioner did not change his attitude and therefore, the impugned order of termination was rightly passed to maintain discipline and to avoid misconduct among the remaining employees working in the establishment of Devasthanam. It is also contended that as alternative remedies are available under the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (for short "the Act"), against the impugned order of termination, the petitioner straightaway cannot maintain this writ petition under Article 226 of the Constitution of India.

5. In exercise of the powers conferred under sections 37 and 38 read with Section 153 of the Act, the Office Holders and Servants Punishment Rules, 1987 were issued vide G.O.Ms. No. 830, dated 18.08.1989. As per Rule 4 of the said Rules, before imposing the penalty of removal or dismissal of an office holder or servant attached to a Charitable or Religious Institution or Endowment, it is necessary to follow the procedure laid down in Rule 19 of the CCA Rules, 1963.

6. Rule 19 of the CCA Rules, 1963 provided that in every case where it is proposed to impose the penalty of removal or dismissal from service, an enquiry shall be held after communicating to the person charged the grounds on which it is proposed to take action and on completion of such enquiry, the Enquiry Officer shall forward the proceedings of the enquiry to the authority competent to impose the penalty and then it is for the competent authority to pass appropriate orders.

7. In the light of the above said Rules, the learned counsel for the petitioner vehemently contended that the impugned order of termination, which was passed without holding an enquiry, is illegal.

8. On the other hand, the learned counsel for the respondent while pointing out that the writ petition was filed after a long lapse of three years from the date of impugned order of termination, vehemently contended that the writ petition is liable to be dismissed on the ground of laches alone. In support of the said submission, the learned counsel relied upon the decision in State of Punjab and Others Vs. Gurdev Singh, It is also pointed out by the learned counsel for the respondent that as per Rule 19 of the Rules made under G.O.Ms. No. 830 (Revenue) Endowments (1) Department dated 18.08.1989, an alternative remedy of appeal is available against the impugned order of termination.

9. It is true that Rule 4 of the Rules made under G.O. Ms. No. 830, dated

18.08.1989 read with Rule 19 of the CCA Rules, requires an enquiry and the said requirement has not been complied with by the respondent before passing the impugned order.

10. However, as held in *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc.*, etc., the order imposing penalty has to be set aside only where the Court finds that the non-compliance with procedural requirement caused prejudice to the delinquent employee. It is also well settled principle of law that whether prejudice has been caused to the delinquent employee or not depends upon the facts and circumstances of each case and there cannot be a presumption to that effect.

11. In the instant case, the material placed before this Court shows that the petitioner was a habitual absentee and as many as 15 instances have been mentioned in the counter affidavit where the petitioner remained unauthorizedly absent. It is also stated in the counter affidavit that because of the unauthorized absence of the petitioner, lot of inconvenience was caused to the administration of the temple as the petitioner was posted to the duty of sweeping of the premises of the temple every day.

12. The petitioner did not choose to file any reply affidavit and the allegations of the unauthorized absence in the counter affidavit remained un-rebutted. The petitioner neither pleaded nor placed before this Court any material to show that any prejudice has been caused to him on account of failure of the respondent to hold an enquiry as provided under Rule 19 of CCA Rules. Therefore, as held in *Haryana Financial Corporation and Another Vs. Kailash Chandra Ahuja*, the impugned order of termination cannot be automatically set aside.

13. It is also relevant to note that the petitioner had retired from service long back. Moreover, whereas the impugned order of termination was passed in the year 1996, the writ petition came to be filed in the year 1999 after a long lapse of three years. There is absolutely no explanation for the said delay. In the absence of any such reasons, the laches on the part of the petitioner is undoubtedly a ground for refusing to grant the relief under Article 226 of the Constitution of India.

14. Viewed from any angle, the writ petition is devoid of merit and the interference by this Court is not warranted on any ground whatsoever.

15. Accordingly, the writ petition is dismissed. No costs.