
(2002) 03 AP CK 0022

In the Andhra Pradesh High Court

Case No : Writ Petition No. 19159 of 1993

Ch. Jagan Mohan Rao

APPELLANT

Vs

Government of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 26-03-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 3 ALT 318

Hon'ble Judges : Ar. Lakshmanan, C.J;I. Venkatanarayana, J

Bench : Division Bench

**Advocate : M.S.K. Sastry, for I. Nagesh and M.V. Suresh, for the Appellant;
Govt. Pleader for Home and C.V. Nagarjuna Reddy, for the Respondent**

Final Decision : Dismissed

Judgement

I. Venkatanarayana

1. Sri Ch.Jagan Mohan Rao, Munsif-Magistrate, Bhainsa of Adilabad District is the petitioner. He has invoked the jurisdiction of this court under Article 226 of the Constitution of India questioning G.O. Ms. No.429 Home (Courts-C) Department, dated 7-10-1993, issued by the 1st respondent-Government of Andhra Pradesh, dismissing the petitioner from service with immediate effect, as illegal, null and void.

2. The factual matrix leading to the filing of this Writ Petition may briefly be stated thus:- The petitioner worked as Munsif-Magistrate (presently re-designated as Junior Civil Judge) at Bhainsa in Adilabad District from July 1991 till his dismissal from service. While the petitioner was working as Munsif-Magistrate at Bhainsa, a departmental enquiry was initiated against him on a complaint given by the advocates of the Bar Association, Bhainsa. On receipt of the said complaint, the District and Sessions Judge, Adilabad has conducted a suo motu enquiry against the petitioner and sent a report to the High Court in D.O. Lr. Dis. No.11010/91 dated 20-11-1991 along with the statements of the

witnesses recorded by him. On the basis of the report submitted by the District Judge, Adilabad, the High Court appointed the District and Sessions Judge, Nizamabad as the Enquiry Officer to conduct a regular enquiry against the petitioner. Accordingly the District and Sessions Judge, Nizamabad conducted departmental enquiry against the petitioner. During the course of enquiry he framed three charges against the petitioner and examined eight witnesses and also marked 21 documents. After completing the enquiry the Enquiry Officer has sent his report dated 30-6-1992 to the High Court holding that the first charge framed against the petitioner is proved and that charges 2 and 3 are not proved. Thereafter, the High Court issued a show cause notice dated 28-8-1992 to the petitioner calling upon the petitioner to show cause, within a period of one month from the date of receipt of the notice, as to why the findings of the Enquiry Officer on charger No.1 should not be accepted and why recommendation should not be made to the Government to impose upon him the punishment of "Dismissal from service". The petitioner submitted his explanation to the show cause notice on 1-10-1992. Thereafter, considering the entire material available on record and the facts and circumstances of the case, the 2nd respondent-High Court recommended to the 1st respondent-Government of Andhra Pradesh that the petitioner be dismissed from service. The 1st respondent-Government of Andhra Pradesh, accepting the recommendations made by the 2nd respondent-High Court, have issued the impugned G.O. Ms. No.429 Home (Courts-C) Department, dated 7-10-1993 dismissing the petitioner from service with immediate effect. Questioning the said G.O Ms. No.429 Home (Courts-C) Department dated 7-10-1993 the present Writ Petition has been filed by the petitioner.

3. A detailed counter-affidavit was filed by the 2nd respondent-Registrar (Administration), High Court of Andhra Pradesh. It is stated in the counter-affidavit that the High Court found prima facie case against the petitioner in the preliminary enquiry conducted into certain allegations of corruption. Therefore, in exercise of powers conferred under Article 235 of the Constitution of India the High Court has ordered a regular departmental enquiry against the petitioner and appointed Sri P.Masthan Rao, the then District Judge, Nizamabad as Enquiry Officer to conduct regular departmental enquiry against the charged officer. The petitioner was also placed under suspension pending enquiry into the allegations of corruption. The Enquiry Officer has framed three charges against the petitioner and now we are concerned with Charge No.1 only in this Writ Petition, which reads thus:

"That while he was working as Munsif-Magistrate, Bhainsa, in Crime No.56/91 of Bhainsa Police Station, Smt. Gangubai, w/o Bhojanna, and Gangadhar, D/o Gangubai were arrested and remanded to custody, that on behalf of the said accused, Crl.M.P. No.700/91 on the file of the Munsif/Magistrate, Bhainsa, was filed on 10-10-1991, that he demanded and took Rs.10,000-00 and granted bail to Gangubai, w/o Bhojanna who is second accused in Cr. No.56/91 of Bhainsa Police Station and thus he indulged in corrupt practice of accepting bribe for

granting bail."

4. It is further stated in the counter-affidavit that the Enquiry Officer has conducted the enquiry in accordance with the A.P. Civil Services (Classification, Control and Appeal) Rules 1963 (hereinafter referred to as the "Rules") and found the petitioner guilty of the first charge. The findings recorded by the Enquiry Officer are based on evidence. With regard to the first charge, the Enquiry Officer has, inter alia, held that so far as the first charge is concerned the evidence of P.W.6-Bhojanna is the most important one and to reject it there is no adequate reason and believing his evidence the Enquiry Officer has categorically held that the charged officer was guilty of demanding and receiving a bribe of Rs.10,000-00 from P.W.6 Bhojanna for releasing Accused No.2 on bail. The 2nd respondent-High Court on considering the enquiry report provisionally accepted the findings of the Enquiry Officer and issued show cause notice to the charged officer to show cause as to why the findings of the Enquiry Officer should not be accepted and why the punishment of dismissal from service should not be imposed on him. In response to the show cause notice the petitioner submitted his explanation on 1-10-1992. The High Court, after examining the explanation submitted by the Charged Officer to the show cause notice, the various contentions raised by him and the material evidence available on record, recommended to the Government of Andhra Pradesh for dismissal of the petitioner from service.

5. Accepting the recommendations of the High Court, the Government have issued the impugned G.O dismissing the petitioner from service with immediate effect. It is further stated in the counter-affidavit that the enquiry was conducted in accordance with the rules and that the petitioner has been given ample opportunity at every stage of the enquiry and hence there is no justification for this court to interfere with the impugned proceedings exercising jurisdiction under Article 226 of the Constitution of India.

6. Sri M.S.K.Sastry, learned Senior Counsel appearing for the petitioner submitted that the evidence of the witnesses is full of discrepancies and contended that it is a case of no evidence at all. Learned Senior Counsel submitted that there was a dispute between the Charged Officer and some members of the Bar Association, particularly with P.W.1 against whom a complaint was made to the Bar Council by the predecessor of the petitioner. It is also submitted that P.W.1 is in the habit of giving complaints against Judicial Officers who did not yield to his commands and that the evidence of P.W.1 is false and motivated.

7. We have gone through the evidence of P.W.1 to P.W.6, particularly the evidence of P.W.1 and P.W.6, and we find that the veracity of their evidence has not been shaken during their cross-examination. The evidence of P.W.6, who is the material witness in this case, is consistent convincing and most reliable. It is also relevant to state that there is not even a suggestion made to this witness in his cross-examination that he was set up by P.W.1 and that his evidence is

motivated. Learned Senior counsel appearing for the petitioner was at pains to submit that the enquiry is a quasi-criminal in nature, therefore, there should be proof beyond doubt that the charged officer has accepted illegal gratification. As discussed earlier, the evidence of P.W.1 to P.w.6 clearly establishes that charge No.1 is proved beyond doubt. Even otherwise, this court in exercise of its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent finding on the evidence. The disciplinary proceedings are certainly not criminal trial. The scope of enquiry is entirely different from that of criminal trial in which the charge is required to be proved beyond doubt but in the case of disciplinary enquiry the technical rules of evidence have no application. The doctrine "proof beyond doubt" has no application. Preponderance of probabilities and some material on record would be necessary to reach a conclusion whether or not the delinquent has committed misconduct. The test laid down by various judgments of the Supreme Court is to see whether there is evidence on record to reach the conclusion that the delinquent officer has committed the misconduct alleged against him and whether a reasonable man, in the circumstances, would be justified in reaching that conclusion. The question, therefore, is whether on the basis of evidence on record the charge of misconduct of demanding illegal gratification for releasing the accused on bail has been proved or not. The evidence on record would clearly show that charge No.1 has been proved. The Apex Court in a recent judgment reported in HIGH COURT OF JUDICATURE AT BOMBAY Vs. SHASHIKANT S.PATIL¹ has held that judicial interference in the matter of disciplinary enquiry is permissible if there is violation of natural justice and statutory regulations. It is also held that it cannot be overlooked that the disciplinary authority is the sole judge of facts and if the enquiry is properly held, the High Court cannot interfere under Article 226 of the Constitution of India. We wish to quote the observations made by the Supreme Court in the above cited decision as hereunder:-

"The Division Bench of the High Court seems to have approached the case as though it was an appeal against the order of the administrative/disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution, if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But it cannot be overlooked that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole Judge of the facts, if the enquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a Writ Petition filed under Article 226 of the

Constitution."

8. The Apex Court in another judgment reported in B.C.CHATURVEDI Vs. UNION OF INDIA² dealing with the scope of judicial review has held as follows:-

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts the evidence and the conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding and mould the relief so as to make it appropriate to the facts of that case."

9. Taking into consideration the totality of the facts and circumstances of the case, the necessary conclusion reached by us is that the misconduct alleged against the petitioner stands proved. Since the Writ Petitioner is a Judicial Officer and the maintenance of discipline in the judicial service is the paramount matter and since the acceptability of the judgment depends upon the credibility of the conduct, honesty, integrity and character of the officer since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the Judicial Officer, we feel that imposition of penalty of dismissal from service is well justified and we do not see any ground to interfere with the impugned order. The Writ Petition fails and is accordingly dismissed. There will be no order as to costs.