

(2002) 12 AP CK 0020

In the Andhra Pradesh High Court

Case No : Writ Petition No. 18912 of 2002

Commissioner of Sericulture and Another

APPELLANT

Vs

A. Narasimha Reddy

RESPONDENT

Date of Decision : 03-12-2002

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2003) 2 ALT 178 : (2003) 2 LLJ 444

Hon'ble Judges : S.R. Nayak, J;B. Seshasayana Reddy, J

Bench : Division Bench

Advocate : Government Pleader for Services I, for the Appellant; Ganesh, for the Respondent

Judgement

S.R. Nayak, J.—With the consent of the learned Counsel, the main writ petition itself was heard finally and the same is being disposed of by this order.

2. This writ petition is preferred by the Commissioner of Sericulture, Andhra Pradesh and the Government of Andhra Pradesh represented by its Secretary, Agriculture and Co-operation (Sericulture) Department calling in question the legality and validity of the order of the Andhra Pradesh Administrative Tribunal at Hyderabad (for short "the Tribunal") dated 12.9.2002 in OA No. 7913 of 2002. The above O.A was preferred by the 1st respondent herein. After holding a regular departmental enquiry against the 1st respondent, penalty of compulsory retirement was imposed upon him on the basis of a proved misconduct, as a disciplinary measure. In the circumstances, the 1st respondent preferred the above OA before the Tribunal questioning the validity of the disciplinary proceeding and the resultant disciplinary action taken against him. By the impugned order which is styled as interim order, the learned Tribunal directed the 1st respondent to exhaust alternative remedy of appeal granting him a week's time to do so. The learned Tribunal further directed the 1st respondent in the OA namely the Commissioner of Sericulture to pass appropriate orders on such appeal within a period of two months from the date of receipt of the appeal. It is

stated by the learned Counsel for the 1st respondent that under the CCA Rules, the appellate authority is not the 1st appellant but the 2nd appellant herein and, the mistake thus crept in the impugned order was subsequently rectified at the instance of the 1st respondent. It is also stated by the learned Counsel for the 1st respondent that accordingly the 1st respondent preferred an appeal to the Government and the same is pending.

3. It is quite curious and surprising that the learned Tribunal while directing the 1st respondent-delinquent to avail of appeal remedy under the CCA Rules, directed that the impugned order thereby meaning the order passed by the disciplinary authority against the 1st respondent-delinquent imposing the penalty of compulsory retirement should be suspended pending disposal of the O.A. With respect, we are constrained to observe that this kind of order made by the learned Tribunal was totally unwarranted and unjustified. It is totally improper on the part of the Tribunal or the Court without examining the merits of the allegations and contentions raised in the application casually to pass the interim order suspending the disciplinary action taken against a delinquent employee on the proved misconduct. Added to this, in the present case, the learned Tribunal having opined that in the first instance the delinquent should avail of the remedy of appeal ought to have disposed of the main OA itself. But, for the reasons unknown to us and not disclosed in the impugned order, the OA is kept pending and the impugned order styled as interim order is passed. Such procedure is unknown to law. If a reviewing Court or Tribunal is not inclined to entertain an application or a petition instituted before it on the ground of non-exhaustion of an alternative remedy/ remedies, the Court should decline to entertain the application and direct the applicant to avail of statutory or other alternative remedies in the first instance. Such a healthy and appropriate procedure which is normally followed by the constitutional Courts was given a go-by by the learned Tribunal.

4. This is a fit case where we should suo motu invoke jurisdiction vested in this Court under Article 227 of the Constitution of India to dismiss the original application itself inasmuch as the 1st respondent-delinquent has already preferred an appeal to the Government and the same is pending. There is no point in keeping the original application on the file of the learned Tribunal. If the appellate order goes against the 1st respondent, he can pursue further legal remedies before the learned Tribunal and subsequently before the constitutional Courts. Looking from any angle, we do not find any need or necessity or propriety to keep the original application pending before the learned Tribunal.

5. In the result, we allow the writ petition and set aside the impugned order of the learned Tribunal and dismiss OA No. 7913 of 2002 by invoking our power under Article 227 of the Constitution of India. The 1st respondent is liable to pay the cost of the appellants quantified at Rs. 3,000/-payable within one week from today.