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**(2010) 02 AP CK 0065**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 21800 of 2009**

Government of Andhra Pradesh and Another

APPELLANT

Vs

M.M. Krishna Kumar

RESPONDENT

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**Date of Decision : 22-02-2010**

**Acts Referred:**

Andhra Pradesh Revised Pension Rules, 1980 — Rule 9  
Constitution of India, 1950 — Article 226

**Citation : (2010) 3 ALT 728**

**Hon'ble Judges : P.V. Sanjay Kumar, J; Ghulam Mohammed, J**

**Bench : Division Bench**

**Advocate : Government Pleader for Services-I, for the Appellant; K. Ram Reddy, for the Respondent**

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## **Judgement**

Ghulam Mohammed, J.—This writ petition is filed seeking a writ of certiorari calling for the records relating to the order dated 24.07.2009 passed in O.A. No. 3408 of 2008 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad and for quashing the same.

2. The brief facts of the case are as follows:

The respondent, who retired as Manager at District Hospital, Rajahmundry, was served with a charge memo dated 24.12.2003 on the ground of irresponsibility, negligence, carelessness, irregularity and lack of duty mind, which resulted in theft of Rs. 16,17,058/-, kept in cash chest in District Hospital, Rajahmundry, East Godavari District, on the night of 03.12.2003. A complaint was lodged with the Station House Officer, III Town Central Crime Station, Rajahmundry, disciplinary action was initiated and charges were framed against the respondent and 4 other employees. In the enquiry, charge framed against the respondent was proved beyond reasonable doubt and therefore, the petitioners vide G.O.Ms. No. 70 dated 10.03.2008 imposed on him the punishment of 100% cut in pension besides withholding of gratuity in full under Rule 9 of the Andhra Pradesh Revised Pension Rules, 1980. Challenging the said G.O., the respondent filed O.A.

No. 3408 of 2008, in which, the Tribunal having observed that the above said punishment is too harsh which pricks the judicial conscious for the irresponsibility, negligence and careless of the respondent, allowed the O.A. by setting aside G.O.Ms. No. 70 dated 10.03.2008 and remanded the matter to the first petitioner to impose punishment of cut in a part of pension and to release the gratuity. Aggrieved by the same, the petitioners filed this writ petition.

3. The respondent filed counter stating that as per the statutory instructions, he was not responsible for the alleged offence as on that date he discharged his duties as in charge Administrative Officer and not as in charge of the cash in the District Hospital and that the cashier was having two keys of the cash chest. He further stated that the punishment imposed on him is too harsh and disproportionate to the charge and thus, he prays to dismiss the writ petition.

4. Heard the learned Government Pleader for Services-I and the learned Counsel for the respondent.

5. Learned Government Pleader for Services-I vehemently contended that though the respondent was on duty as in charge Administrative Officer, he had not personally ensured about the un-disbursed pay and cash book on 03.12.2003 and that he had violated his legitimate duties and depended on his subordinate, which resulted in loss of huge government amount. He contended that on 03.12.2003, after withdrawal of huge amount from the Bank, the respondent got down from the vehicle for taking lunch leaving huge cash with his subordinate that itself indicates his irresponsibility on his official duties. He further contended that without considering the fact that the first petitioner after carefully examining the enquiry report had imposed the alleged punishment on the respondent, the Tribunal remanded the matter to the first petitioner to impose on the respondent the punishment of cut in a part of pension and for release of gratuity and this Court can interdict these findings under Article 226 of the Constitution of India. He has drawn the attention of this Court to the judgment of the Apex Court in *Chairman and MD V.S.P. and Others Vs. Goparaju Sri Prabhakara Hari Babu*, wherein it was held as under:

The jurisdiction of the High Court in this regard is rather limited. Its power to interfere with disciplinary matters is circumscribed by well-known factors. It cannot set aside a well-reasoned order only on sympathy or sentiments.

Once it is found that all the procedural requirements have been complied with, the Courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. The superior Courts only in some cases may invoke the doctrine of proportionality. If the decision of an employer is found to be within the legal parameters, the jurisdiction would ordinarily not be invoked when the misconduct stands proved.

He has also drawn the attention of this Court to the judgment of the Apex Court in *State of Meghalaya and Others Vs. Mecken Singh N. Marak*, : *Ayireddy Lakshmi and Ayireddy Kamarajugadda Subba Lakshmi Vs. Pydah Subrahmanya*

Jagannadha Satya Prasad and Others, wherein it was held as under:

In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. The jurisdiction of the High Court, to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefor. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the Court, cannot be subjected to judicial review. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice.

He has further drawn the attention of this Court to the judgment of the Apex Court in *Surender Kumar Vs. Union of India (UOI) and Others*, wherein it was held as under:

We are fully convinced that the departmental enquiry was conducted keeping in view the norms of natural justice and fair play. There is nothing on record to suggest that the appellant herein was refused any opportunity to represent himself effectively before the inquiry officer or the appellate authority. In fact the only scope in such cases is to examine the manner in which the departmental enquiry is conducted. We are satisfied with the enquiry in this case.

6. Learned Counsel for the respondent contended that on the date of the alleged incident, the respondent worked as in charge Administrative Officer and not connected to financial matters except accompanying with the cashier to the Bank for the purpose of drawing amounts and that the cashier, who was having two keys of the cash chest, handled the entire transaction of drawing and disbursing the amount to the individual staff members. He further contended that as regards this incident, the other charged officers, who were directly responsible in the matter and charges against them were proved, were imposed lesser punishment than that of the respondent. He further contended that the punishment imposed on the respondent is too harsh and disproportionate to the charge framed against him. He also contended that since the respondent retired from service on 31.12.2005 and he was denied his justifiable due pension and other benefits, he is subjected to lot of mental agony. He has drawn the attention of this Court to the judgment of the Apex Court in *Ms. G. Vallikumari v. Andhra Education Society* (2010) 1 DT 40 SC wherein it was held as under:

Since the order of punishment passed by the Chairman of the Managing Committee is vitiated due to violation of the statutory rules and the principles of natural justice, we may have remitted the matter to the Tribunal with a direction

to consider whether or not the penalty or removal from service imposed upon the appellant was disproportionate to the misconduct found against her or the action taken by the management was wholly arbitrary or unjust but keeping in view the fact that the appellant was removed from service more than 13 years ago, we do not consider it proper to adopt that course. In *Superintendent (Tech. I) Central Excise, I.D.D. Jabalpur and Others Vs. Pratap Rai*, this Court held that if an order passed by the disciplinary authority is annulled on a technical ground, the concerned authority is free to pass fresh order but, at the same time, the Court declined to give such liberty to the administration on the ground that a period of 15 years had elapsed since the framing of charge. In *Shri Bhagwan Lal Arya's* case, a somewhat similar approach was adopted by this Court by recording the following observations:

Thus, the present one is a case wherein we are satisfied that the punishment of removal from service imposed on the appellant is not only highly excessive and disproportionate but is also one which was not permissible to be imposed as per the Service Rules. Ordinarily, we would have set aside the punishment and sent the matter back to the disciplinary authority for passing the order of punishment afresh in accordance with law and consistently with the principles laid down in the judgment. However, that would further lengthen the life of litigation. In view of the time already lost, we deem it proper to set aside the punishment of removal from service and instead direct the appellant to be reinstated in service subject to the condition that the period during which the appellant remained absent from duty and the period calculated up to the date on which the appellant reports back to duty pursuant to this judgment shall not be counted as a period spent on duty. The appellant shall not be entitled to any service benefits for this period. Looking at the nature of partial relief allowed hereby to the appellant, it is now not necessary to pass any order of punishment in the departmental proceedings in lieu of the punishment of removal from service which has been set aside. The appellant must report on duty within a period of six weeks from today to take benefit of this judgment.

7. Now, the point for consideration is whether the Tribunal has rightly exercised its jurisdiction while passing the order impugned.

8. A perusal of G.O.Ms. No. 70 dated 10.03.2008 issued by the petitioners shows that the disciplinary authority has not given adequate reasons so as to impose the alleged punishment on the respondent with regard to the alleged irresponsibility. Taking into account the judgments of the Apex Court cited *supra*, we are of the view that the jurisdiction of this Court is rather limited and its power to interfere with the disciplinary matters is circumscribed by well-known factors. It cannot set aside a well-reasoned order only on sympathy or sentiments. The other ground is that if procedural requirements have been complied with, the Courts would not ordinarily interfere with the quantum of punishment imposed upon the delinquent employees. The disciplinary proceedings are quasi judicial in nature and therefore, the Enquiry Officer is

bound to follow the principles of natural justice by giving an opportunity of being heard to both the parties. In the instant case, the question to be considered is whether the proposed punishment imposed by the disciplinary authority on the respondent on the ground of alleged irresponsibility, carelessness etc., is proportionate or disproportionate or highly excessive and it is a fit case for remanding the matter to the disciplinary authority for fresh consideration. This Court I cannot empower to sit as an appellate authority and examine the adequacy or inadequacy of the evidence and the same is to be exercised by the disciplinary authority. This Court, in case where the punishment imposed is highly excessive and there are procedural irregularities while conducting the enquiry and the principles of natural justice have not been followed, may invoke the doctrine of proportionality.

9. There is no dispute that the theft of government money to the tune of Rs. 16,17,058/- in the cash chest of District Hospital, Rajahmundry, had taken place on the night of 03.12.2003, on which date, the respondent worked as in charge Administrative Officer of the said Hospital. It is also not in dispute that the respondent was not on duty as in charge of cash in the Hospital and that the cashier, who was having two keys of the cash chest on that day, being responsible for the cash, had to take care of the money and inform his immediate officer concerned. The charge sheet filed against the cashier, by name, Gidla Syam Sundra Rao @ Syama, in C.C. No. 248 of 2008 on the file of the III Additional Judicial First Class Magistrate, Rajahmundry, reveals that the cashier, who was having two keys of cash chest, has taken away an amount of Rs. 16,17,000/- from the cash chest. Based on the Enquiry report, the first petitioner imposed on the said cashier the punishment of dismissal from service. Further, Dr. K. Ramesh, former Medical Superintendent of District Hospital, Rajahmundry, who was involved in this incident, imposed the punishment of compulsory retirement from service.

10. Insofar as the punishment imposed on the respondent is concerned, the investigation done by the police pursuant to the registration of crime did not reveal his involvement in the said incident. Further, the theft occurred in the District Hospital, but not in the mid way i.e., from the Bank to the Hospital. Therefore, the petitioner, who was not in charge of the cash, is not responsible for the said incident occurred in the Hospital, but nonetheless, he has to be vigilant and careful in exercising his functions as Administrative Officer. Though there was a little bit irresponsibility on the part of the respondent, there was no connivance with the cashier in regard to the alleged misappropriation. For irresponsibility, negligence and carelessness, the punishment imposed by the disciplinary authority is too harsh which pricks the conscious of the Courts, as rightly observed by the Tribunal. Hence, the impugned order needs no interference by this Court.

11. Since the petitioner has rendered 35 years of service without any remarks and now retired from service without pensionary benefits, we are of the opinion

that the punishment of 100% cut in pension besides withholding of gratuity in full on the ground of irresponsibility, negligence and carelessness without any ulterior motive is too harsh and totally disproportionate to the misconduct alleged and it certainly shocks the judicial conscience and therefore, the said punishment is liable to be set aside.

12. In the facts and circumstances of the case, we deem it appropriate to remand the matter to the Disciplinary Authority to pass appropriate orders by imposing suitable punishment on the respondent for the charge framed against him, within a period of four months from the date of receipt of a copy of this order.

13. Accordingly, the Writ Petition is disposed of. No order as to costs.