

(2008) 09 AP CK 0054

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 24187 and 24447 of 2006

Government of A.P.

APPELLANT

Vs

T.V. Rama Rao

RESPONDENT

Date of Decision : 19-09-2008

Acts Referred:

Citation : (2009) 1 ALD 147 : (2009) 1 ALT 137

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

Bench : Division Bench

Advocate : G.P. for Services I, for the Appellant; P.V. Ramana, for the Respondent

Final Decision : Dismissed

Judgement

Ghulam Mohammed, J.—Since these two writ petitions arise out of a common order dated 27.03.2006 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad, in O.A. Nos. 7821 of 2003 and batch, they are heard together and are being disposed of by this common order.

2. These writ petitions are filed by the State of Andhra Pradesh, represented by its Principal Secretary, Agriculture and Cooperation, for Writ of Certiorari so far as it relates to the common order dated 27.03.2006 passed in O.A. Nos. 7821 and 1273 of 2003 by the Andhra Pradesh Administrative Tribunal, Hyderabad, and to quash the same holding as erroneous and contrary to law.

3. Brief facts are that the respondent worked as Co-operative Sub-Registrar in the office of Commissioner for Co-operation and Registrar of Co-operative Societies Hyderabad from 1989 till September 1992. During the said period, he also acted as Secretary of Sri Bhavana Rushi Co-operative Housing Society Limited (for short "Society"). On the allegation of misappropriation of the funds of the Society, disciplinary proceedings were initiated against the respondent and ultimately, the Additional Registrar of Cooperative Societies/disciplinary authority, by proceedings dated 25.06.1993, dismissed the respondent from service. It may

be noted here that the respondent has to actually retire from service on 30.06.1994. Aggrieved by the order of dismissal, respondent filed O.A. No. 3841 of 1994 before the Tribunal, which was dismissed by the Tribunal by order dated 28.07.1999. Challenging the same, the respondent filed Review M.A. No. 2243 of 1999 before the Tribunal, which was also dismissed by the Tribunal by order dated 11.09.2000. Questioning the same, he filed W.P. No. 20854 of 1999 before this Court, which was remanded to the Tribunal. Pursuant thereto, the Review M.A., was reopened and after hearing both the parties, the Tribunal, by order dated 11.09.2001, set aside the order of dismissal of the respondent from service, granting liberty to the petitioner to refer the matter to the Tribunal for Disciplinary proceedings (DPT) for taking appropriate action. However, DPT refused to accept the file referred by the petitioner on the ground that it has no jurisdiction to entertain the case of a retired Government Servant under Rule 3 of the A.P.C.S.(DPT) Rules 1989 read with Section 4 of the A.P.C.S (DPT) Act 1960. Subsequently, the Government issued G.O.Rt. No. 1225 dated 22.11.2002 stating that as the Tribunal has set aside only the order of dismissal, but not the charge memo issued to the respondent, it is deemed that the disciplinary action against the respondent was initiated while he was in service and therefore, he is deemed to have been placed under suspension from the date of dismissal to the date of retirement i.e., from 25.06.1993 to 30.06.1994 pending further disciplinary action against him. Challenging the said G.O.Rt. No. 1225, the respondent filed O.A. No. 1273 of 2003.

4. Pursuant to G.O.Rt. No. 1225, dated 22.11.2002, the petitioner appointed an enquiry officer to enquire into the charges framed against the respondent, vide Memo No. 3283 dated 07.10.2003. Assailing the said Memo, the respondent filed O.A. No. 7821 of 2003.

5. Before the Tribunal, petitioner filed counter affidavit contending, inter alia, that as DPT refused to entertain the case of the respondent, Government ordered that the respondent shall be deemed to have been placed under suspension from the date of his dismissal till the date of his retirement. The petitioner also contended that since the Tribunal, in the earlier round of litigation, has only set aside the order of dismissal, but not the charge memo, the respondent remained unpunished for the misappropriation committed by him, and therefore, the Government was justified in issuing G.O.Rt. No. 1225 and Memo No. 3283 dated 07.10.2003.

6. Considering the rival contentions, the Tribunal allowed both the O.As., and ordered release of all the pensionary benefits payable to the respondent, by order dated 27.03.2006. Questioning the same, these writ petitions are filed.

7. The respondent filed a counter affidavit opposing the writ petitions. He contended that the allegations levelled against him pertain to the year 1982-83 and they are in respect of a private Society, which is no way connected with his official duties and therefore, the petitioner cannot resort to take any action against him, that too after lapse of 25 years.

8. Heard the learned Government Pleader for Services-I, appearing for the petitioner, and the learned Counsel for the respondent, and perused the record.

9. The learned Government Pleader for Services-I appearing for the petitioner submitted that since the respondent was deemed to have been placed under suspension from the date of his retirement, the Government has power to proceed with the disciplinary proceedings on its own, notwithstanding the fact that the DPT had declined to entertain the matter for the reason that it cannot go into the matter in respect of a retired Government servant and, as such, the disciplinary proceedings initiated against the respondent are justified.

10. The learned Counsel appearing for the respondent, on the other hand, submitted that when DPT, which has alone jurisdiction to conduct the proceedings cannot proceed with the matter; the Government cannot confer upon itself the jurisdiction and order

for continuation of the disciplinary proceedings against the respondent, therefore, the proceedings initiated by the Government are without jurisdiction.

11. The only question that arises for consideration in these writ petitions is, when DPT, which has alone jurisdiction to conduct disciplinary proceedings, in respect of an incident which had occurred prior to 1.2.1993, has no jurisdiction to proceed with the proceedings, on account of a statutory bar, whether the Government on its own, can proceed with the disciplinary proceedings?

12. In our considered opinion, the answer to the question must be in the negative. Admittedly, the Tribunal passed orders on 11.9.2001 in Rev. M.A. No. 2243 of 1999 setting aside the order of dismissal dated 25.6.1993 dismissing the respondent from service with liberty to the Government to refer the matter to DPT and by that time the respondent had already retired from service i.e. on 30.6.1993. The government after a lapse of ten months i.e. on 26.7.2002 referred the matter to DPT for conduct of disciplinary proceedings against the respondent, but the DPT returned the case on the ground that it has no jurisdiction to proceed in respect of a retired Government servant under Rule 3 of A.P.C.S. (DPT) Rules, 1989 read with Section 4 of A.P.C.S. (DPT) Act, 1960. It was thereafter the government ordered that the respondent shall be deemed to have been placed under suspension from the date of his dismissal till the date of his retirement, vide G.O.Rt.No.1225 dated 22.11.2002, as per the provisions of Sub-rule 4 of Rule 8 of A.P.C.S. (C.C. & A) Rules, 1981, which was impugned before the Tribunal in O.A. No. 1273 of 2003.

13. There is no dispute about the power of the government under Rule 8(4) of A.P.C.S. (C.C. & A) Rules to continue the disciplinary proceedings against a Government servant even after retirement from service. But, as already noted, the question is, when the DPT, which has alone jurisdiction to conduct the proceedings, itself cannot go into the matter, whether the Government can do so.

14. It may be noted that even after issuance of G.O.Rt. No. 1225 dated

22.11.2002, there was delay in appointing the enquiry officer and it was only after a lapse of nearly one year i.e. on 7.10.2003 Government issued Memo. No. 3283/Vig.11(3)2002/7 dated 7.10.2003 appointing one Sri D. Bhaskar Rao as enquiry officer. There is no dispute that the enquiry relates to an incident which had occurred during the period 1983 and 1988 when the respondent acted as Secretary of Sri Bhavana Rushi Cooperative Housing Society Limited. As rightly observed by the Tribunal that the Government has no power to issue the charge memo as laid down by the Supreme Court in State of Andhra Pradesh Vs. Dr. K. Ramachandran, and it is the Tribunal for Disciplinary Proceedings which has alone jurisdiction to proceed in the matter in respect of incidents which had occurred prior to 1.2.1993. There is no dispute that the DPT cannot proceed with the enquiry in respect of retired government servants, in view of the bar created under Rule 3 of A.P.C.S. (DPT) Rules, 1989 read with Section 4 of A.P.C.S. (DPT) Act, 1960. Therefore, when the DPT cannot proceed with the disciplinary enquiry, which has alone jurisdiction to proceed with the matter, on account of a legal bar, we do not think that the Government, which has no jurisdiction at all to enquire into the matter in respect of an incident which had occurred prior to 1.2.1993, cannot reopen it and confer upon itself the jurisdiction to proceed with the enquiry as the same would be contrary to the DPT Act and the Rules framed thereunder and the law laid down by the Supreme Court. It appears that it is only in order to see that the proceedings against the respondent are validated, after the order of dismissal of the respondent from service was set aside by the Tribunal, the Government thought it fit to issue G.O.Rt. No. 1225 dated 22.11.2002 conferring upon itself the jurisdiction to proceed with the disciplinary proceedings in respect of which the DPT alone has jurisdiction. In our view, the Government cannot confer upon itself jurisdiction, which the law has not conferred upon it. It is only the DPT, which has alone jurisdiction to proceed with the matter, but it cannot do so because of the legal bar. We are of the view if the DPT cannot proceed with the disciplinary proceedings, for the very same reason, the Government cannot also go into the same and consequently the proceedings initiated against the respondent shall be deemed to have been stand terminated consequent on his retirement from service. A vacuum is created in the DPT Act and the rules framed thereunder as to what will happen if the employees retire from service in the peculiar circumstances obtaining in the present case.

15. The contention of the Government that in the earlier round of litigation, the Tribunal has only set aside the order of dismissal but not the charge memo has also no merit. When the Government itself is lacking jurisdiction to proceed with the matter, it is immaterial whether the charge memo is set aside by the Tribunal or not. Further, when the order of dismissal has been set aside by the Tribunal, the proceedings have to be initiated afresh, but neither the DPT nor the Government can initiate proceedings afresh - because, the DPT cannot entertain the case in view of the statutory prohibition contained under the DPT Act and the Rules framed thereunder and the Government cannot also proceed in view of its inherent lack of jurisdiction. Therefore, the Tribunal is right in observing that the

government had no power to frame charges as per Section 4 of DPT Act, 1961 and the rules framed thereunder. The Government could not get such power at this stage. Further, if the government is aggrieved by the order passed by the Tribunal in Rev. M.A. No. 2243 of 1999 it should have taken appropriate remedies but it allowed the matter to become final. Therefore, in our considered view, at this stage, in view of the legal bar for the Tribunal to proceed with the matter, the Government also cannot proceed further in the matter as the order of the Tribunal in Rev. M.A. No. 2243 of 1999 had become final. Since the DPT cannot proceed in the matter, the Government has also no jurisdiction to proceed in the matter as the Government has no power to frame charges against the respondent.

16. Further, the charges against the respondent relate to an incident, which had occurred between 1983 and 1988. Nearly more than twenty years have elapsed since the incident had occurred. The charges relate to certain omissions and commissions committed by the respondent when he acted as office bearer of a private society. Admittedly, they do not relate to misappropriation of Government funds. As rightly pointed out by the Tribunal, the Government has also the power to proceed as per the provisions of the A.P. Co-operative Societies Act, but it has not opted to do so.

17. In view of the foregoing discussion, we find no merit in the writ petitions. The Tribunal rightly declared that GO.Ms. No. 1225 dated 22.11.2002 is illegal and arbitrary and cannot be sustained in law and consequently, the memo dated 7.10.2003 also cannot be sustained. We are of the view that the Tribunal is justified in granting the prayers sought by the respondent. Hence, no interference is called for with the said order of the Tribunal.

18. In the result, both the writ petitions must fail and they are accordingly dismissed. There shall be no order as to costs.