
(2001) 04 AP CK 0095
In the Andhra Pradesh High Court
Case No : Writ Petition No. 5766 of 1999

K. Abdul Gafoor

APPELLANT

Vs

District and Sessions Judge, Kurnool and another

RESPONDENT

Date of Decision : 09-04-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 311
Fundamental Rules — Rule 54

Citation : (2001) 3 ALD 535

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

Bench : Division Bench

Advocate : Mr. Philkhana Rama Rao, for the Appellant; Mrs. M. Bhaskara Lakshmi, for the Respondent

Judgement

S.R Nayak, J

1. The short question that falls for consideration in this writ petition is whether the petitioner-employee is entitled to grant of pay and allowances for the period during which he was kept under suspension and/or removal from service.
2. This writ petition is directed against the order of the learned District and Sessions Judge, Kurnool in Dis. No.7250/Estt/96, dated 11-9-1996 and the order in Roc No.98/ 1998 C II/1, dated 8-2-1999 by the High Court on the administrative side.
3. The relevant background facts leading to the filing of this writ petition be noted briefly as under:

When the petitioner was working as Junior Assistant in the Junior Civil Judge's Court, Einmiganur from 7-12-1983 to 7-12-1996, departmental enquiry was initiated against him on the alleged ground of misappropriation of the Government funds. After holding the departmental enquiry and on the basis of the findings recorded by the Enquiry Officer, the learned District Judge, who is the competent authority, dismissed the petitioner from service. The order made

by the learned District Judge was affirmed by the High Court. The petitioner being aggrieved by the orders of the learned District Judge and the High Court filed WPN0.9893 of 1992 in this Court. A learned single Judge of this court disposed of that writ petition on 2-4-1996 partly allowing the writ petition and quashing the impugned orders passed by the learned District Judge and the High Court. The relevant portion of the order reads:

"19. Therefore, the only issue that falls for consideration is whether the charge No.1 to the extent it is established would warrant dismissal from service. As already held by me the petitioner is guilty of committing dereliction of his duties inasmuch as he received the amount, though it is not a fine amount, and failed to intimate the Magistrate. The amount could not have been accounted on 18-5-1985 as the served summons were not available, and the fines were collected as per the records on different dates subsequent to 18-5-1985. Therefore, the gravamen of the charge that the petitioner had temporarily misappropriated the amounts is emasculated and only the misconduct of negligent performance of duties is sustained. Under these circumstances, I am of the view that imposing the punishment of dismissal from service and that too on a employee who had rendered 19 years of service without any remarks, appears to be highly unconscionable. The appellate authority also failed to consider the aspects in proper perspective.

20. In view of the foregoing discussion, I am inclined to set aside the order of punishment and remit the matter to the 2nd respondent for passing appropriate order of punishment.

21. It is now well settled that this Court has no jurisdiction to substitute the punishment under Article 226 of the Constitution of India even if it finds that the punishment is grossly disproportionate to the gravity of the misconduct and the matter should go either to the disciplinary authority or the appellate authority for passing suitable orders of punishment. (see EMC Steel Limited, Calcutta Vs. Union of India (UOI) and Another, , State Bank of Hyderabad, Gunfoundry, Hyderabad and Others Vs. V.K. Gadgil, and District and Sessions Judge, The District and Sessions Judge and Another Vs. T. Madhava Rao, .

22. Accordingly, the writ petition is allowed and order of punishment dated 3-6-1988 passed by the 2nd respondent as confirmed by the 1st respondent dated 7-2-1992 are quashed. The 2nd respondent shall now consider the matter relating to the punishment keeping in view the nature of charges proved and pass the orders of punishment within a period of six weeks from the date of receipt of the copy of this order. No costs."

4. This order of the learned single Judge, we are told, had become final. In pursuance of the above judgment of this Court, the learned District Judge passed the order PR No. 102-A/Estt/96, dated 18-6-1996 reinstating the petitioner into service and posting him to act as Junior Assistant, Munsif Magistrate Court, Atmakur vice one Haribabu, Junior Assistant, transferred. Thereafter, the learned

District Judge issued proceedings Dis No...A/Estt/ 96, dated 3-7-1996. It reads-

"...The charges of misappropriation of fine amount by you on two different dates that is on 18-5-1985 and 29-11-1985 is proved on enquiry and confirmed by the appointing authority and by the Honourable High Court of Andhra Pradesh in its order in WP No.9893 of 1992 dated 24-4-1996.

Hence, you are called upon to explain why "punishment of stoppage of four annual increments with cumulative effect should not be awarded within seven days of receipt of this final notice."

5. To this the petitioner submitted his reply on 15-7-1996. It reads-

"In obedience to the District Court proceedings cited above. I submit the following few lines for favour of consideration.

I humbly submit that my daughter aged about 12 years was suddenly collapsed while getting down from bus stand at Kurnool. Added to this my brother has created much trouble with regard to the family affairs and. also partition of our house at Banaganapalli. There are two affairs and in that confusion of mind I was not able to bring to the notice of the officer about the fine amount and also failed to struck off the entry made by me in the received to the police.

The Enquiry Officer (Subordinate Judge, Adoni) in this order dated 30-11-1987 held that only charge No.1 is proved against me and held that the charge is minor and a lenient view may be taken. Even in the High Court order dated 24-4-1996 in WP No. 9893 of 1992 also held the dereliction of duty is proved. On the act of this no loss is caused to the Government and a lenient view has to be taken as the circumstances lead to such situation as explained by me in the above para.

I also submit that the Enquiry Officer observed that the charge No. 2 is not proved against me, but the District Judge, Kurnool deferred the Enquiry Officer report and held that charge also held proved against me. The Honourable High Court in its order in WP No.9893 of 1992 agreed with the Enquiry Officer and held that the charge is not proved against me.

I humbly submit that I was thrown out of employment for 8 years and struggled much for my existence and my family Stoppage of four increments with cumulative effect will be very big punishment on me and it will also effect my future service and also to clear of all loans incurred by me during the period of unemployment.

I also humbly submit that I am having three children one son and 2 daughters to whom I will have to give proper education also perform the marriage of my daughters. I also submit that my old aged mother is also depending on me and I will have to see welfare in her old age.

Under these circumstances I submitted above, I request the Honourable District Judge, Kurnool to kindly take lenient view and drop further action in the matter.

I regret very much for the lapse done by in this regard and I will be more careful in future and see that such mistakes will not occur in future."

6. On consideration of the reply of the petitioner, the learned District Judge passed the order in D.Dis. No../Estt/96, dated 19-7-1996. It reads-

".....Perused the explanation of the individual, order of the High Court. As the individual is out of employment for 8 years and said to have incurred debts for maintaining the family and having regard to the nature of charge proved, I feel that a lenient view can be taken and ends of justice will met by ordering stoppage of one increment with cumulative effect.

Accordingly the punishment of stoppage of one annual increment of Sri K. Abdul Gafoor is ordered to be stopped with cumulative effect.

The Munsif Magistrate, Atmakur is directed to cause necessary entry of the punishment imposed in the service register of the individual and intimate the fact to the District Court."

7. After this event, the petitioner submitted a representation to the learned District Judge on 30-7-1996 wherein he requested the learned District Judge that the period of suspension i.e., from 18-7-1987 to 2-6-1988 and the period during which he was out of employment i.e., from 3-6-1988 to 19-6-1996 be treated as on duty and the petitioner be permitted to draw the arrears of pay and allowance for the above period. In response to the said representation, the learned district Judge issued an endorsement dated 5-8-1996 (received by the petitioner on 6-8-1996) calling upon the petitioner to state how he is entitled to the relief sought in his representation dated 30-7-1996. Then came the reply of the petitioner dated 13-8-1996 received by the office on 20-8-1996. It reads-

"In obedience to the District reference cited above, I humbly submit that prayer in WP No.9893 of 1992 filed by me is "the High Court may pleased to call for records relating to the order Roc No.1201/ 91-C/SpI(Con), dated 7-2-1992 of the 1st respondent confirming the order of the 2nd respondent PR No.l24-A/Estt/87, dated 3-6-1988 of the 2nd respondent District Judge, Kumool and issue a writ of certiorari or any other appropriate writ or direction, quash the two orders, the petitioner reinstate into service from the date of suspension with all back wages and benefits.

The Honourable High Court was also pleased to allow my WP No.9893 of 1992 by its order dated 24-4-1996 and quashed the punishment awarded to me by the District Court. I have suffered a lot both financially and mentally and also forced to incur much expenditure in getting over the punishment awarded to me for simple mistake. I also submit that I have approached the High Court twice in filing the writ petition Nos.9934 of 1988 and 9893 of 1992. The delay in concluding the enquiry is not on my part.

Under circumstances submitted above, I request the Honourable District Judge to kindly consider for payment of my pay and allowances to which I am eligible

during my absence from 18-7-1987 to 19-6-1996 (18-7-1987 to 2-6-1998 suspension period) from 3-6-1988 to 19-6-1996 removal period).

I once again request the Honourable District Judge to kindly consider my sufferings and also expenditure incurred in getting over the litigation and order my pay and allowance sympathetically to which I am eligible.

I am resubmitting my application dated 30-7-1996 for kind consideration."

8. Then came the impugned order dated 11-9-1996 rejecting the claim of the petitioner partly. The impugned order reads-

"... Sri K. Abdul Gafoor, Junior Assistant, Munsif Magistrate Court, Atmakur, who is removed from service is reinstated into service from 20-6-1996, in pursuance of the orders in WP No.9893/93, dated 24-4-1996. Under Rule 54.8 of the Fundamental Rules the period of three years precedent to reinstatement i.e., from 20-6-1993 to 19-6-1996 is treated as the individual is on duty with all benefits /e., pay, DA and HRA etc., as per rules i.e., the individual is hereby sanctioned earned leave at his credit i.e., 3 months 23 days and 2 months one day half pay leave converted into full pay and remaining period of 2 years 6 months 6 days is treated as duty. After sanctioning 3 years as duty period with pay, the individual will not have any leave to his credit as on the date of issue of these orders. The remaining period of removal and suspension i.e., from 18-5-1987 to 19-6-1993 i.e., 5 years 11 months 1 day period is treated as duty without pay on extraordinary circumstances of the case of the individual.

The Munsif Magistrate, Atmakur is directed to claim and pay the arrears of amount payable to the individual by claiming the salary for total 3 years by deducting the amount which has already been paid to the individual during the period of suspension.

The Munsif Magistrate, Atmakur is further directed to make relevant entries in the service register of the individual and intimate the same to the District Court immediately. The Service Register of the individual is returned herewith. The receipt of the same shall be acknowledged."

9. Hence this writ petition assailing the validity of the same.

10. Sri Rama Rao Philkhana, learned Counsel for the petitioner would firstly contend the FR 54-A should be applied to the facts of this case and if it is so applied, the impugned order cannot be sustained. The learned Counsel would also maintain that the impugned order is made by the learned District Judge in utter violation of the principles of natural justice and fair play in action.

11. On the other hand, Smt. M. Bhaskara Lakshmi, learned Standing Counsel for the respondents 1 and 2 would support the impugned order and contend that unless the disciplinary authority who is the competent authority within the meaning of that term under sub-rule (5) of FR 54 directs otherwise, the petitioner is not entitled to pay and allowances for the period of suspension and

the period during which he was out of employment as a matter of course or as a matter of right because the petitioner was reinstated into service by the learned District Judge in pursuance of the order made by this Court in WP No.9893 of 1992 dated 24-4-1996. The learned standing Counsel would also maintain that in the instant case, there is no violation of principles of natural justice inasmuch as the petitioner has had reasonable opportunity to put forth his case regarding his claim and the same was considered duly by the learned single Judge. She would also maintain that personal hearing as contended by the learned Counsel for the petitioner is not envisaged under the Fundamental Rules before passing any order under sub-rule (5) of FR 54 read with FR 54-A of the Fundamental Rules. FR 54-A reads-

"FR 54-A.(1) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by a Court of law and such Government servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularised and the Government servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the Court.

(2)(i) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by the Court solely on the ground of non-compliance with the requirements of clause (1) or clause (2) of Article 311 of the Constitution, and where he is not exonerated on merits, the Government servant shall subject to the provisions of sub-rule (7) of Rule 54, be paid such amount not being the whole of the pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired, or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government servant of the question proposed and after considering the representation, if any, submitted by him, in that connection within such period which in no case shall exceed sixty days from the date on which the notice has been served as may be specified in the notice.

(ii) The period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of judgment of the Court shall be regularized in accordance with the provisions contained in sub-rule (5) of Rule 54.

(3) If the dismissal, removal or compulsory retirement of a Government servant is set aside by the Court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or

compulsory retirement, as the case may be.

(4) The payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.

(5) Any payment made under this Rule to a Government servant on his reinstatement shall be subject to adjustment of the amount if any, earned by him through an employment during the period between the date of dismissal, removal or compulsory retirement and the date of reinstatement. Where the emoluments admissible under this rule are equal or less than those earned during the employment elsewhere, nothing shall be paid to the Government servant."

12. It is needless to state that sub-rule 2(i) of FR 54-A is not attracted to the facts of this case because the petitioner is not exonerated by the orders of this Court dated 24-4-1996. The learned single Judge only thought that the penalty of dismissal from service was disproportionate to the gravity of the misconduct committed by the petitioner and so opining directed the disciplinary authority to determine the quantum of punishment that may be imposed on the petitioner-delinquent as a disciplinary measure. The petitioner's case, therefore, squarely falls under sub-rule 2(ii) of FR 54-A. If that is so, sub-rule (2)(ii) confers power on the disciplinary-competent authority to regularise the services of the delinquent during the period of suspension and the period covered by dismissal/removal/ compulsory retirement. Sub-rule (5) of Fundamental Rule 54 reads-

"FR. 54. xx xxx

(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement as the case may be, shall not be treated as a period spent on duty, unless the competent authority, specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government servant so desires such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be shall be converted into leave of any kind due and admissible to the Government servant."

13, A combined reading of sub-rule (2)(ii) of FR 54-A and FR 54(5) makes it abundantly clear that the disciplinary authority which is also the competent authority within the meaning of Fundamental Rules is empowered to direct as to how the period covered by suspension/ dismissal/ removal/compulsory retirement of the employee should be treated for the purpose of payment of pay and allowances. Therefore, it cannot be said that the impugned order is one without authority of law.

14. Coming to the next contention of the learned Counsel for the petitioner, suffice it to state that neither Fundamental Rule 54-A nor FR. 54(5) envisage any

personal, hearing. It is true that any action irrespective of the nature of the action of the public administration, if it has the effect of affecting the civil rights of a citizen of a person the affected interest should be appraised. This requirement flows from Article 14 postulates. In the instant case, as pointed out supra, the impugned order is the culmination of the representation made by the petitioner himself setting out the details of his claim and the contention thereof. The learned District Judge again one more opportunity to the petitioner to explain as to how he is entitled to the pay and allowances after receipt of the representation of the petitioner by issuing the endorsement dated 5-8-1996. In response to that endorsement; the petitioner again submitted one more explanation/reply. All these representations/ explanations were considered by the District Judge by passing the impugned order.

15. Before concluding, another contention of the learned Counsel for the petitioner should be noticed only to be rejected. The learned Counsel would maintain that denial of pay and allowances partly during the period of suspension and dismissal tantamounts to imposition of another penalty in addition to the penalty of denial of one increment with cumulative effect. Should it be noticed that regularising the period of suspension or the period during which the petitioner was out of employment cannot be equated to imposition of a penalty on the delinquent employee. The petitioner is bound by the Fundamental Rules, by which his conditions of service are governed. The Fundamental Rules specifically provide as to how the period of suspension or the period of dismissal/removal/compulsory retirement should be treated and when the rules confer power on the disciplinary authority to regularise the service during those periods, it cannot be said that the outcome of the exercise of that power should be equated to imposition of a penalty.

16. In the result and for the foregoing reasons, we do not find any weighty reasons to interfere with the impugned orders. The writ petition fails and it is accordingly dismissed with no order as to costs.