

(1984) 02 AP CK 0016
In the Andhra Pradesh High Court
Case No : Writ Petition No. 1304 of 1979

K.S. Radhakrishna

APPELLANT

Vs

Vice-Chancellor, Andhra Pradesh Agricultural University and
Another

RESPONDENT

Date of Decision : 21-02-1984

Acts Referred:

Andhra Pradesh Agricultural University Act, 1963 — Section 19, 24, 43(6), 43(6A)
Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 — Rule 17(3)
Constitution of India, 1950 — Article 14

Citation : (1984) 2 AnWR 241 : (1985) 2 LLJ 83

Hon'ble Judges : K. Ramachandra Rao, J

Bench : Single Bench

Judgement

1. In this Writ Petition, the petitioner challenges the proceedings in Memo No. 675/DC/76-2 dated 5th July, 1978 of Sri Dr. C. Krishna Rao, Vice Chancellor of the Andhra Pradesh Agricultural University, Hyderabad, imposing the punishment of stoppage of increment without cumulative effect for a period of one year on the petitioner and also the order dated 24th November, 1978 of the Board of Management of the University dismissing the appeal preferred by the petitioner.

2. The petitioner was employed in the Department of Agriculture under the Government of Andhra Pradesh and in 1966 he went on deputation to the Andhra Pradesh Agricultural University. Under S. 43, sub-sections (6) and (6-A) of the Andhra Pradesh Agricultural University Act 24 of 1963 as amended by Andhra Pradesh Agricultural University Amendment Act 18 of 1974, the University shall employ all the employees of the Government, who, immediately before the date notified by the Government under sub-section (1), were serving on such foreign service conditions as may be determined by the Government in the case of a Government employee. But the Government employee is given the right to exercise his option to revert to the service under the Government, by exercising the option within the period prescribed by sub-section (6-A). It is not disputed

that the petitioner had exercised the option to revert to the Government service within the time prescribed.

3. It appears that one P. Seshagiri Rao, an Ex Mazdoor of the Rice Research Station, Masulipatnam, had filed a Writ Petition No. 4278 of 1975 in the High Court of Andhra Pradesh. In the said Writ Petition, a Miscellaneous Petition No. 6468 of 1975 was filed on 14 August, 1975 and the same was received at the petitioner's office on 20th August, 1975. On the very same date the petitioner sent the originals received by him along with his letter addressed to the Andhra Pradesh Agricultural University and requesting that the counsel for University should be advised to be present on 4th September, 1975 at the High Court as per Court directions and seek the earliest instructions. It appears that no instructions were received from the University up to 1st September, 1975 by the petitioner. The petitioner sent a reminder by telegram on 1st September, 1975 to the University, and stating that he was then laid up with temperature and lying in bed. On 5th September, 1975 the petitioner received a copy of the main Writ Petition No. 4279 of 1975 dated 30th July, 1975 calling upon the petitioner to be present with the relevant records on 10th September, 1975 at the High Court. On 6th September, 1975 the petitioner sent the communication along with the relevant records to the University to enable its counsel to go through the same and to be present in the High Court on 10th September, 1975. On the night of 6th September, 1975 the petitioner received an express telegram from the Entomologist, Agricultural Research Station, Maruteru, instructing the petitioner to go over to the Registrar's Office along with the records on 8th September, 1975. A special messenger was also sent to the Entomologist the petitioner. The petitioner sent his reply stating that the records were already dispatched on the same day in the afternoon itself to Hyderabad and that the records would be reaching Hyderabad on 8th September, 1975 at the Registrar's Office and further intimating that the petitioner was laid up with attack of severe "flu" and he was unable to make the journey immediately. On the night of 8th September, 1975 the petitioner received the following telegram from the University :

"Meet Babul Reddy. Legal Adviser, with relevant records pertaining to writ filed by Seshagiri Rao, Ex-Regular Mazdoor before 4 P.M. on 9th September, to sign affidavit. Nanda also sent to Machilipatnam."

The petitioner waited for Nanda's arrival upto 10.45 A.M. on 9th September, 1975 and when he was about to board the bus at 11 A.M. it appears that Sri Nanda arrived at the petitioner's residence with a blank Vakalat form which he signed and he was informed by Nanda that his presence was not required and the Vakalat form was required and he was taking back the Vakalat form duly signed the same day by night bus. The petitioner informed Sri Nanda that the records were already sent on 6th September, 1975 and that no records were available with him and he requested Sri Nanda to meet the Registrar and to wire immediately if the petitioner's presence was required. The petitioner also wrote a D.O. letter on 9th September, 1975 stating the aforesaid facts. On 10th

September, 1975 he received a telegram from Sri Nanda requesting him to go over to Hyderabad immediately and reached Hyderabad at 10-30 A.M. on 11th September, 1975 and met Sri Babul Reddy, the counsel for the University. He was told that all the records and the affidavit signed by him were received in time and he was asked to go to the counsel's residence in the evening of 11th September, 1975. Thereafter he met the Registrar in the afternoon and in the evening he met the Legal Adviser and he was asked to go over all 9 A.M. on 12th September, 1975 to brief the Junior Counsel of the University. On 12th September, 1975, the petitioner met Sri Ramulu, the Junior Counsel for the University at the Legal Adviser's residence and briefed him.

4. It appears that the affidavit was filed by the University in time in the aforesaid writ petition by Sri Seshagiri Rao and the said writ petition was disposed of on merits and that the case of the University did not suffer on account of any lapses on the part of the petitioner either in filing the counter affidavit or in production of the records or in the matter of giving instructions to the Legal Adviser of the University.

5. While so on 10th September, 1975 a memo was issued by the University to the petitioner stating that the petitioner had not complied with the instructions of the University given in its telegram dated 8th September, 1975 to meet the Legal Adviser of the University before 4 P.M. on 9th September, 1975 in connection with the writ petition filed by Sri Seshagiri Rao, as the Vakalat and Counter had to be signed by the petitioner for filing on 10th September, 1975 in the High Court and he was called upon to explain as to why suitable disciplinary action should not be taken against the petitioner for the above lapses.

6. The petitioner sent an explanation in his Rc. No. 383/75 dated 17th September, 1975 setting out all the facts mentioned earlier above and stating that he had taken action at different stages and acted in the best interests of the case and he did not fail to take prompt action and that his not coming in person on 9th September, 1975 should not be misconstrued as it was physically impossible for him to do so in view of the circumstances stated above and that the very fact that he met the counsel and the Registrar on 11th and 12th September, 1975 subsequently showed the seriousness with which he had viewed the whole matter and that the action should be dropped.

7. After more than 1 1/2 years" the petitioner received a Memo No. 675/DC/76-1 dated 14th April, 1977 from the Registrar of the University stating that the petitioner had applied for casual leave from 1st September, 1975 to 4th September, 1975 and that he was attending office from 5th September, 1975 onwards and when he was directed telegraphically on 8th September, 1975 to meet the legal adviser at Hyderabad with relevant records, he failed to obey the instructions of the University on the pretext that he could not secure a seat in the night bus due to holiday crowd and that he should have taken action to reserve a ticket to Hyderabad immediately after the receipt of the telegram, and that he failed to do so, clearly shows that he had no intention of going to

Hyderabad and the petitioner was called upon to show cause why his increment should not be stopped for a period of one year without cumulative effect and to submit his explanation within 15 days. The petitioner submitted a detailed explanation in his Roc. No-244/77 dated 5th May, 1977 reiterating the facts which he had earlier mentioned and stating that he had taken prompt action and that after meeting the Legal Adviser he proceeded to Rajendranagar and met the then Registrar in person, but the Registrar was not kind enough to permit him to speak and therefore he had to return to Machilipatnam after briefing the counsel and that the charges should be dropped against him.

8. The explanation offered by the petitioner was found to be not convincing and the Vice-Chancellor ordered that the punishment of stoppage of increment without cumulative effect for a period of one year should be imposed on the petitioner.

9. The University in its letter No. 675/- DC/76-3 dated 16th August, 1977 informed the Secretary to Government, Food and Agriculture Department, Government of Andhra Pradesh, Hyderabad, that the petitioner was a transferred employee from the Government who opted to Government service as per the provisions of the Andhra Pradesh Agricultural University Amendment Act, 1974, and the Government had not specified the terms of deputation of the said officers as required by Rule 17(3) of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules and that the Government was being informed of the action taken against the petitioner. The Government pointed out in their letter No. 3508/Agri. 1/77-1, dated 6th October, 1977 that according to the G.O.Ms. No. 130 GAD (Services-C) Department dated 28th February, 1977 whenever the borrowing authority initiates disciplinary proceedings against a member whose services are lent, the lending authority should be informed of the circumstances leading to the initiation of the proceedings and it might impose any penalty specified in Cls. (1) to (3) and (5), Sub-rule (1) of Rule 8 of the Rules after consulting a lending authority and that in the instant case the University ought to have acted in accordance with the procedure indicated above and called upon the University to intimate the circumstances under which action was taken by the University in contravention of the Rules.

10. In the meanwhile, the petitioner had preferred an appeal against the order imposing the punishment of stoppage of increment. A note was put up to the Appeals sub-committee by the Registrar of the University stating that there was no need to alter the penalty as there were no fresh grounds made out by the petitioner in the appeal. At the 8th meeting of the Appeals sub-Committee held on 27th December, 1977 only the Chairman and two members and Secretary were present and they directed that the case should be put up after the decision of the Government was received. Thereafter the Government intimated in their letter No. 3508/Agri. 1/77-4, dated 16th January, 1978 that in view of the circumstances stated by the University, further action in the matter at the Government level, was dropped.

11. After receipt of the said communication from the Government, the appeal preferred by the petitioner was put up before the Appeals sub-Committee on 1st April, 1978. One of the members of the Board of Management in her letter addressed to the Registrar that the appeal of the petitioner be placed before the Board of Management for security and consideration. The note put up before the Appeals sub-Committee was placed before the Board of Management for consideration. The appeal was disposed of by the proceedings of the Board of Management at its 21st Meeting held on 22nd June, 1978. The members present were Dr. C. Krishna Rao, the Vice-Chancellor, and seven others besides the Registrar who is Ex-Officio Secretary of the Board of Management. They resolved that the appeal of the officer is negatived. Sd/- Dr. C. Krishna Rao, Chairman and Vice Chancellor. The petitioner was not communicated the order on appeal but the result was intimated to the petitioner by the Registrar stating that his appeal was placed before the Board of Management as its meeting held on 22nd June, 1978, and that the Board of Management had negatived his appeal. The petitioner thereupon filed this writ petition challenging the aforesaid order of the Vice Chancellor and the order on appeal passed by the Board of Management imposing the penalty of stoppage of increment without cumulative effect for a period of one year

12. The learned counsel for the petitioner submitted that the petitioner is a Government employee, that he was on deputation to the University, that he had exercised the option to revert to his parent service under the Government and the circumstances do not warrant the imposition of this penalty, and that the imposition of the penalty is not in accordance with the relevant provisions of the Statutes, Regulations and Rules. The learned counsel for the University submitted that the University had obtained the approval of the Government for imposing of the penalty and therefore the imposition of the penalty is valid and proper and is in accordance with the provisions of the University Regulations.

13. It may be mentioned at the outset that rule 17(3) of the A.P. Civil Services (CCA) Rules, as it then stood, reads as follows :-

"Whenever the services of the person are lent to a company corporation, organisation or local authority an lending authority shall specify in the terms of deputation the extent to which such company, corporation, organisation or local authority may take disciplinary action under its own rules and the kinds of penalties it may impose against the person on deputation."

The Government issued instructions in G.O.Ms. No. 130, G.A.D. (Services-C) Dept., dated 28th February, 1977, stating that whenever the borrowing authority initiates disciplinary proceedings against a member whose services are lent, the lending authority shall be informed of the circumstances leading to initiation of the proceedings and it may impose any penalty specified in Cls. (1) to (3) and (5) of Sub-Rule (1) of Rule 8 of the A.P. Civil Services (CCA) Rules after consulting the lending authority. Admittedly in the case of the Government employees employed on deputation in the University, the Government have not

specified the terms of deputation the extent to which the University might take disciplinary action under its own rules and the kinds of penalties it might impose against the persons employed on such deputations as required by Rule 17(3) read with instructions contained in G.O.Ms. No. 130, G.A.D. (Services-C) Department, dated 28th February, 1977. Under the aforesaid Rules, the University should have informed the Government of the circumstances leading to the initiation of the disciplinary proceedings but admittedly the University did not give any such prior intimation to the Government about the initiation of the disciplinary proceedings against the petitioner. No doubt, after the imposition of penalty, the University informed the Government about the imposition of the penalty and the Government intimated the University that further action in the matter at the Government level was dropped. But this would not cure the defect in the procedure followed by the University in initiating the disciplinary proceedings against the petitioner. Further Rule 17(3) as it then stood clearly required the Government to specify in the terms of deputation the extent to which the University might take disciplinary action under its own rules and the kinds of penalty it might impose against the persons on such deputation. In the absence of any such specification as required by Rule 17(3), it is not open to the University to take action under its own Rules against the petitioner, who was a Government employee and who was on deputation in the University service. Therefore, clearly the initiation of the disciplinary proceedings and the imposition of the impugned penalty on the petitioner is illegal and beyond the powers of the University. The contention of the counsel for the University that the Government has accorded as approval for the penalty imposed, is not substantiated by production of any material before me. What all the Government did was only to drop action at the Government level. Therefore, the contention that the Government has accorded approval for imposition of penalty by the University against the petitioner, is not tenable.

14. The petitioner preferred an appeal against the order imposing the penalty. The penalty was imposed by the then Vice Chancellor, Dr. C. Krishna Rao. Under regulation 15 of the University, the Board of Management may constitute a standing committee every year consisting of such of its members and others if they consider necessary to hear and process all appeals which will come up before it. In the instant case, according to the note put up by the Registrar, some of the members of the committee including the Chairman ceased to be members of the Board of Management and the Appeals Committee was not constituted and hence the appeal was placed before the Board of Management for consideration. But under S. 19 of the University Act, the Board should consist of 16 members including the Vice Chancellor and the Vice Chancellor shall be the ex-officio Chairman of the Board. Therefore the Board of Management which consisted of 9 members including the Vice-Chancellor, who was the Chairman considered the appeal of the petitioner against the order of the Vice-Chancellor imposing the punishment of penalty of withholding increment without cumulative effect for a period of one year against the petitioner. When the appeal was disposed of by

the Board of Management with the Vice-Chancellor as the Chairman of the Board against the very order of the Vice-Chancellor, the Appellate order will be violative of the principles of natural justice as the petitioner will be deprived of his right to have his appeal considered objectively by an impartial body. Under S. 19(3), the Vice Chancellor being the Ex-Officio Chairman of the Board has to conduct the meetings of the Board and therefore the Vice-Chancellor took active part in the disposal of the appeal preferred by the petitioner to the Board against his own order as Vice-Chancellor. Further, under S. 20, the powers of the Board of Management, are limited and it is doubtful whether it can entertain and dispose of appeals itself without constituting a Standing Committee for hearing appeals as required by Regulation 15. Therefore the proceedings of 21st meeting of the Board of Management held on 22nd June, 1978, in negating the appeal of the petitioner are clearly violative of the principles of natural justice.

15. Further, the narration of the facts mentioned above shows that the petitioner took very active and prompt steps in briefing the Legal Adviser of the University in the writ petition filed by Sri Seshagiri Rao and the case of the University was not prejudiced or adversely affected, as the petitioner had given the instructions and delivered the relevant records to the University Legal Adviser in time. On the other hand the facts disclose that the petitioner had intimated the University as early as on 20th August, 1975, by his letter and also later on 1st September, 1975, by telegram requesting the University to take prompt steps to brief the counsel and to appear in the High Court on the date fixed. It is only after a lapse of considerable time that the University sent the telegram on 8th September, 1975. Therefore, if there is any delay, it was more on the part of the University than on the part of the petitioner. Further the entire relevant records were received by the Legal Adviser along with the Vakalat duly signed by the petitioner, and the explanation given by the petitioner was not properly considered either by the Registrar or by the Vice-Chancellor or by the Board of Management. None of the facts referred to by the petitioner in his explanation were adverted to by any of the said authorities before imposing the penalty. Further, the imposition of the drastic penalty of withholding of the increment without cumulative effect of a period of one year appears to be wholly arbitrary, discriminatory and unwarranted in the circumstances of the case and is violative of the provisions of Art. 14 of the Constitution.

16. For all the foregoing reasons, the Writ petition is allowed and the impugned orders are quashed. The petitioner will have costs fixed at Rs. 500/-.