

(2014) 10 AP CK 0103
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 2516 of 2005

K.S. Sanjeeva Rao

APPELLANT

Vs

The District Tribal Welfare Officer

RESPONDENT

Date of Decision : 09-10-2014

Acts Referred:

Citation : (2015) 6 ALD 88 : (2015) 6 ALT 737

Hon'ble Judges : L.N. Reddy, J;Challa Kodanda Ram, J

Bench : Division Bench

Advocate : M. Rajamalla Reddy, Advocate for the Appellant

Judgement

L. Narasimha Reddy, J.—This writ appeal is filed against the order dated 03.11.2005 in W.P. No. 4185 of 1995. For the sake of convenience, the parties are referred to as arrayed in the writ petition.

2. The petitioner was working as a Head Master in a residential school established by the Integrated Tribal Development Agency in Khammam District. In the year 1987, he was working in the institute at Kalleru of Khammam District. His wife was also working as a teacher in that institution. On 31.03.1992, a charge sheet was issued to him alleging that he misbehaved and harassed the tribal girl students in the school and though he was admonished by the Mandal Praja President by name Madakam Venkaiah, he did not change his behaviour. The 2nd charge was that he used to consume alcohol day in and day out and neglected the education of the students.

3. The petitioner filed his explanation denying the charges. The proceedings under the Indian Penal code were also initiated against him before the Mandal Magistrate (since it is in schedule area). An enquiry officer was appointed and he submitted a report holding that the charges were proved. Taking the same into account, the first respondent passed an order dated 03.02.1995 dismissing the petitioner from service. Challenging the same, he filed W.P. No. 4185 of 1995. During the pendency of the writ petition, he died and his legal representatives

were brought on record.

4. It was pleaded that the enquiry report was based upon a deposition of a girl by name Lalamma and the Mandal Praja President by name Venkaiah and none of them were permitted to be cross-examined by the petitioner. Another contention was that the copy of the enquiry report was not furnished. Petitioner further pleaded that though the Mandal Magistrate imposed a fine of Rs. 300/- upon him, the same was set aside by the Sessions Court and the matter was remanded to the trial court.

5. The respondents filed a detailed counter-affidavit. According to them, the charges are serious in nature and to protect the personal dignity of the concerned victim she was not subjected to cross-examination. The other acts of misbehavior and misconduct said to have been resorted to by the petitioner were also mentioned.

6. The learned single Judge dismissed the writ petition through the order dated 03.11.2005.

7. Sri M. Raja Malla Reddy, learned counsel for the petitioner submits that it is fundamental that in a departmental enquiry, the delinquent employee must be provided the opportunity to cross-examine the witnesses examined by the employer and in the instant case, the same was denied to the petitioner. He submits that though a serious allegation was made and the statements of not only the alleged victim but also a public representative were recorded, the petitioner was not permitted to cross-examine them. He contends that howsoever grave, such one cited allegations may be, they cannot be acted upon, unless the witnesses are subjected to cross-examination. Learned counsel further submits that even the report of the enquiry officer was not furnished and the same is fatal to the order of dismissal.

8. The learned Government Pleader for the Social Welfare submits that the petitioner misused his position as a Head Master and misbehaved with the tribal girls. He contends that the very fact that criminal prosecution was instituted and a public representative deposed against him discloses the gravity of the matter. He contends that the incident was so horrifying that the girl stopped education, unable to bear the harassment and no interference is warranted with the order of the learned single Judge.

9. If one takes into account, the contents of the charges or for that matter, the counter-affidavit; it is indeed startling. The punishment of highest order deserves to be inflicted, if any one resorts to acts of such nature. However, the only safeguard which a person facing with such allegations is afforded, is the right to cross-examine the person who deposes about such incident. The entire report of the enquiry officer was based upon the depositions of a girl by name Lalamma who is said to be the victim of harassment by the petitioner and that of Sri Venkaiah, the Mandal Praja President. If the respondents were of the view that subjecting the girl to cross-examination would be prejudicial to her interest, at

least in a limited and restricted manner, the petitioner ought to have been permitted to cross-examine her. Howsoever grave a one sided version may be, in the ultimate analysis it would gain acceptability only on being subjected to cross-examination.

10. There would have been some possibility to accept the version of the girl as it is, in case there did not exist any other evidence, to cross verify it. The Mandal Praja President did not reel under any disability nor was he facing any delicate situation in the event of being cross-examined. It is not uncommon that the public representatives and politicians have their own grievance vis-a-vis the heads of institutions. It is not at all safe either to give clean chit to the persons who have resorted to any heinous acts, or to condemn them, unheard. A balancing act needs to be done.

11. The learned single Judge himself took note of the judgment in *Ajit Jain v. National Insurance Co. Ltd.*, (2002) 10 SCC 580 wherein it was held that if any serious infirmity has crept into the departmental proceedings it would certainly affect the order of infliction of punishment. The punishment of dismissal against the employee would not only deny him of the livelihood but also (a) make him to stand as a culprit before the society and (b) deny the family of the source of livelihood and reputation. The steps which bring about such serious consequences can be taken only when the charges proved.

12. Though an attempt is made by the respondents to impress this Court that the petitioner himself admitted his guilt, we find from the record that the fine, imposed by the Mandal Praja President, was set aside in appeal. Obviously because the petitioner died, the criminal case itself may have abated, without any trial. Had the petitioner been alive, we would have considered the feasibility of remanding the matter for fresh enquiry duly ensuring compliance with law. Since he is no more, that option is not available to us. We are of the view that ends of justice would be met if the petitioner i.e., the employee is treated as having retired from service on attaining the age of superannuation and the retirement benefits are extended to the family even while denying the benefit of back wages to the family, for the serious allegation faced by him.

13. Hence, the writ appeal is allowed in part setting aside the order passed in the writ petition and modifying the order of punishment to the effect that the petitioner shall be deemed to have retired from service, on attaining the age of superannuation, but denying to his legal representatives, the benefit of any back wages, including the difference of wages for the period, during which he was under suspension.

14. Miscellaneous Petitions, if any, pending in this appeal shall also stand disposed of. There shall be no order as to costs.