(2011) 05 AP CK 0001

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2125 of 2003

M. Venkata Sivarama Krishna Sarma APPELLANT

Vs

The State of A.P. RESPONDENT

Date of Decision : 22-05-2011

Acts Referred:

Citation : (2011) 05 AP CK 0001

Hon'ble Judges : K.G. Shankar, J;Ghulam Mohammed, J

Bench : Division Bench

Advocate : G. Laxmi, for the Appellant; GP for Services II, for the Respondent

Final Decision : Allowed

Judgement

K.G. Shankar, J.—The Petitioner seeks for a Writ of Certiorari to quash the order of the Andhra Pradesh Administrative Tribunal (for short ''the Tribunal''), Hyderabad in O.A. No. 7862 of 1999 dated 14.03.2002. The case has chequered career. The writ Petitioner was the Head Assistant in the office of the Mandal Revenue Officer, Chatrai Mandal, Krishna District from July, 1994. Alleging that the writ Petitioner was involved in the encashment of two cheques by unauthorized persons, the writ Petitioner was placed under suspension with effect from 26.09.1994. In the enquiry, the writ Petitioner was found guilty of the charges. The Disciplinary Authority thereafter dismissed the writ Petitioner from service through orders dated 10.11.1999. Aggrieved by the same, the writ Petitioner filed O.A. No. 7862 of 1999 before the Tribunal. Through the orders dated 17.11.2000, a Division Bench of the Tribunal allowed the application of the writ Petitioner. The Tribunal set aside the dismissal order dated 10.11.1999 and directed that the writ Petitioner be reinstated with all back wages and consequential service benefits.

2. Challenging the orders in O.A. No. 7862 of 1999, the State preferred writ petition No. 13842 of 2001 before a Division Bench of the Andhra Pradesh High Court. The Division Bench of A.P. High Court allowed the writ petition and set

aside the orders in O.A. No. 7862 of 1999. The case was remitted to the Tribunal for fresh consideration. Thereafter another Division Bench of the Tribunal passed the impugned order on 14.03.2002 holding that the order of dismissal of the writ Petitioner by the Collector did not suffer from any infirmity and that the application of the writ Petitioner had No. merits. The writ Petitioner preferred the present writ petition questioning the second order of the Tribunal dated 14.03.2002.

3. The Petitioner, as already stated, was the Head Assistant in the office of the Mandal Revenue Officer, Chatrai Mandal, Krishna District. On 08.09.1994, the Branch Manager, State Bank of India, Nuzvid telephonically informed the Revenue Divisional Officer, Nuzvid that the writ Petitioner had gone to the house of the Branch Manager and had admitted that during the tenure of the writ Petitioner as Senior Assistant in the Sub-Collectorate, Nuzvid he had encashed the bankers cheque relating to the awardees in land acquisition cases concerning to the acquisition of lands for the agricultural market yard, Nuzvid. The Revenue Divisional Officer promptly reported the matter to the District Collector, Krishna District. The writ Petitioner was consequently placed under suspension through proceedings dated 26.09.1994. An enquiry was initiated against the writ Petitioner for his alleged misconduct.

4. Three charges were framed against the writ Petitioner in the enquiry. The writ Petitioner contends that despite repeated requests, the Enquiry Officer failed to supply the documents relied upon by the Enquiry Officer. It is also his case that the Enquiry Officer did not accord reasonable opportunity to the writ Petitioner. The Enquiry Officer found the writ Petitioner guilty of the three charges.

5. The rigmarole of the issuing of show cause notice together with the copy of the enquiry report, receiving the written explanation from the charged employee and recording punishment by the Disciplinary Authority followed one after another in the case. Considering that the writ Petitioner was guilty of grave misconduct, punishment of dismissal was imposed by the District Collector, who was the Disciplinary Authority, through orders dated 10.11.1999. It is these orders that were challenged by the writ Petitioner in O.A. No. 7862 of 1999. The legal history of the case has already been noticed.

6. Smt. G. Lakshmi, learned Counsel for the writ Petitioner submitted that the very enquiry report has No. basis and that the guilt of the writ Petitioner was never established. Her case is that there was negligence on the part of the bank officials in honouring the cheques and that to save the skin of erring bank officials, the writ Petitioner has been made the scapegoat.

7. As already pointed out, three charges were levelled against the writ Petitioner by his employer. The first charge was that the writ Petitioner withdrew Rs. 2,30,103.80 fraudulently as the Senior Assistant of the Revenue Divisional Office, Nuzvid. The second charge is that the writ Petitioner misappropriated the said amount covered by charge No. 1. The third charge is that the writ Petitioner

withdrew Rs. 52,605.45 on 06.08.1990 which was payable to one M.S.R.K. Prasad towards compensation for acquisition of his lands and that the writ Petitioner forged the signature of the Revenue Divisional Officer on the cheque dated 04.08.1990 and failed to account for the said money. The Enquiry Officer found the writ Petitioner guilty of the three charges. The necessary procedure for imposing the penalty followed thereafter.

8. The writ Petitioner contended that the very charges have not been proved, that the report of the Enquiry Officer is bad and without reasons and that the punishment imposed against him on the basis of such enquiry report is illegal, arbitrary and is liable to be set aside.

9. It is the case of the Department that the writ Petitioner fraudulently withdrew more than Rs. 2,30,000/- and misappropriated the same covered by charges 1 and 2 and that the same was admitted by the writ Petitioner himself before the bank officials. The learned Counsel for the writ Petitioner contended that the Manager of the State Bank of India forcibly made the writ Petitioner appear before the Bank Manager at the residence of the manager of the bank at about 9:30 p.m. on 08.09.1994 and that an inculpatory statement was obtained from the writ Petitioner by force with the assistance of the employees of the bank. The learned Counsel for the writ Petitioner further contended that barring for the alleged confession of the writ Petitioner, there is No. evidence whatsoever linking the writ Petitioner to the withdrawal of Rs. 2,30,000/- by one in respect of the amount payable to the Satram Satyanarayana and Velagapudi Ramanaiah. The enquiry report does not disclose the examination of any witnesses by the Enquiry Officer. The enquiry report also does not show exhibition of any document either on behalf of the Presenting Officer or on behalf of the writ Petitioner as the charged-employee.

10. Admittedly, an award was passed under the Land Acquisition Act on 06.03.1991 awarding compensation at Rs. 63,459.00 in favour of Satram Satyanarayara and Rs. 1,66,400.80 in favour of Velagapudi Ramanaiah. Banker cheques were issued in favour of the awardees for the amounts mentioned above. It is the case of the employer that the amounts covered the banker cheques were withdrawn by the persons other than the awardees on account of the negligence and fraud on the part of the writ Petitioner. The Enquiry Officer considered that the writ Petitioner, as the Senior Assistant of the Revenue Divisional Office, Nuzvid and as the concerned clerk, was responsible to verify the signatures of the payees in the acquittance with the admitted signatures of the awardees and that on account of fraud played by the writ Petitioner in connivance with the bank officials, the amounts were paid to persons other than the awardees.

11. It may, however, be noticed that there was No. evidence before the Enquiry Officer that the amounts covered by the banker cheques were not received by the awardees and that the writ Petitioner was responsible for the same on account of fraud perpetrated by him. The two alleged bank officials who joined

with the writ Petitioner in committing fraud had committed suicide, so much so there was No. opportunity for the Enquiry Officer to examine those two officials. However, the Enquiry Officer would not appear to have examined even the bank officer before whom the writ Petitioner allegedly made a confession about the fraud committed by him.

12. More importantly, there is No. record to establish that the banker cheques were encashed by persons other than the awardees and that the signatures of the payees did not tally with the signatures of the awardees. Further, admittedly the bank paid the amount covered by the cheques to the payees or their legal representatives, as the case be. The learned Counsel for the writ Petitioner rightly contended that there would not have been occasion for the bank to pay the monies covered by the banker cheques to the payees or their legal representatives unless there was fraud on the part of the bank officials and unless the bank concluded that the payment was on account of misconduct of the officials of the bank.

13. The learned Government Pleader contended that merely because the bank paid the amount covered by the banker cheques, No. inference could be drawn that the fraud, if any, was committed by the bank officials and not by the writ Petitioner. At any rate, the important point is that the bank officials have not stated that the amounts covered by the banker cheques were withdrawn by the persons other than the payees/awardees. Thus, the very foundation for the enquiry has crumbled. Unless it is established that the banker cheques were encashed by the persons other than the payees, the question of either the writ Petitioner or someone else become liable would not arise.

14. Added to it is the factor of the absence of any criminal action. Indeed, it is alleged that an F.I.R. was lodged in connection with the alleged fraudulent transactions by the writ Petitioner in respect of charges 1 and 2. However, the learned Government Pleader admitted that No. case was registered against the writ Petitioner on the complaint against him. It would appear that prima facie, the police were satisfied that No. case was made out against the writ Petitioner for the alleged misappropriation of Rs. 2,30,103.80. The finding of the Enquiry Officer that the writ Petitioner was found to be guilty of the charges 1 and 2 is perverse, unreasonable and unjust.

15. Inasmuch as the case relates to charge No. 3, it is the case of the writ Petitioner that the writ Petitioner deposited the amount of Rs. 52,605.45 to the credit of the State Bank of India, Nuzvid and submitted a consolidated demand draft to the Sub. Court , Gudivada for a sum of nearly Rs. 12,00,000/- including the amount of Rs. 52,605.45. The learned Counsel for the writ Petitioner asserted that the writ Petitioner did not misappropriate the money covered by charge No. 3. Again, there was No. evidence before the Enquiry Officer to prove charge No. 3. Again, the Enquiry Officer held that the writ Petitioner was guilty of charge No. 3. The finding of the learned Enquiry Officer in respect of charge No. 3 is as much perverse as his finding in respect of other charges is. We agree with

the contention of the learned Counsel for the writ Petitioner that the enquiry report is perverse and is liable to be set aside and consequently, the order of the punishment imposed against the writ Petitioner by the appointing authority also deserves to be set aside.

16. The Division Bench of the Tribunal indeed came to the same conclusion and passed orders on 17.11.2000. Unfortunately, after remand, the Tribunal took a diagonally opposite stand and held that the enquiry report and the consequent punishment are just and proper and do not deserve to be interfered with. We do not wish to go into the circumstances in which the Division Bench passed orders in Writ Petition No. 13842 of 2001 remitting O.A. No. 7862 of 1999 for fresh consideration. We, however, make it clear that the enquiry report is perverse and consequently the award of punishment upon the writ Petitioner was illegal and is liable to be set aside. The Tribunal erred in appreciating the enquiry report. We, therefore, deem it appropriate to issue a Writ of Certiorari quashing the orders of the Tribunal in O.A. No. 7862 of 1999, dated 14.03.2002. We hold that the order of imposing punishment against the writ Petitioner is unjust and is accordingly set aside.

17. The Writ Petition is accordingly allowed. No costs.

