
(2015) 08 AP CK 0015

In the Andhra Pradesh High Court

Case No : Writ Petition No. 28539 of 2014

Mohammed Yakub Ali

APPELLANT

Vs

State of Telangana and Others

RESPONDENT

Date of Decision : 12-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2015) 08 AP CK 0015

Hon'ble Judges : Nooty Ramamohana Rao, J;Anis, J

Bench : Division Bench

Advocate : J.R. Manohar Rao, for the Appellant

Final Decision : Dismissed

Judgement

Nooty Ramamohana Rao, J—This writ petition is directed against the order passed by the Andhra Pradesh Administrative Tribunal on 22.08.2008 in O.A. No. 4829 of 2008, preferred by the petitioner herein.

2. The writ petitioner joined the services of the Revenue Department of the State Government as L.D. Clerk on 28.11.1969. He earned promotions as Senior Assistant and Office Superintendent on 05.10.1978 and 09.01.1998 respectively. At the relevant point of time, the writ petitioner was working as Office Superintendent in the office of the Mandal Revenue Office, Manuguru, Khammam District. It appears, one Mr. B. Mallaiah is reported to have fallen down in the Mandal Revenue Office premises on 16.03.1999 and received head injuries and he died of such an injury. The son of said Sri Mallaiah has lodged a complaint with the Anti Corruption Bureau on 05.04.1999 alleging that due to the demand of illegal gratification for issuing a local area residence certificate, Sri B. Mallaiah died. The complaint was registered by the Anti Corruption Bureau, but however, a report was submitted to the State Government that there was not sufficient evidence for prosecuting the staff of the Mandal Revenue Officers Office effectively. Consequently, the State Government decided to place the staff of the M.R. Os office Manuguru namely the M.R.O, the writ petitioner-the Office

Superintendent of the Office of the M.R.O, Smt. K. Venkata Lakshmi-Revenue Inspector and Sri A. Ramulu-Junior Assistant, on defence. The Tribunal for disciplinary proceedings concluded the enquiry and submitted its report to the State Government on 07.12.2001. It appears, the State Government solicited the advice of the Vigilance Commissioner. The Vigilance Commissioner, after objectively considering the report of the Tribunal for the disciplinary proceedings in T.E.C. No. 20/2000 recommended to the State Government on 09.07.2003 to reject the explanation submitted by the charged officers against the report of the Tribunal for disciplinary proceedings and advised the department may consider imposing the punishment of removal/dismissal on the two charged officers for the lapses held proved against them. However, there appears to be another recommendation by the Vigilance Commissioner on 16.06.2005 recommending to the State Government that the charged officers be removed, as advised earlier. Thereafter, the State Government passed orders on 08.09.2005 through their G.O. Ms. No. 1626 Revenue (Vig.II) Department dated 08.09.2005 imposing the punishment of removal from service on the writ petitioner. It appears, that the petitioner has submitted a review petition on 17.11.2005 requesting the State Government to reconsider the orders of punishment imposed through G.O. Ms. No. 1626 Revenue (Vig.II) Department dated 08.09.2005. That was rejected by the State Government on 11.06.2007 by their memo. Hence, calling in question the validity of the orders passed by the State Government contained in their G.O. Ms. No. 1626 Revenue (Vig.II) Department dated 08.09.2005 and the rejection of review petition through their memo dated 11.06.2007, the writ petitioner instituted O.A. No. 4829 of 2008 before the Andhra Pradesh Administrative Tribunal.

3. It appears, the State Government passed orders through their G.O. Ms. No. 1627 Revenue (Vig.II) Department dated 08.09.2005 imposing a similar punishment of removal from service on Smt. K. Venkata Lakshmi-Revenue Inspector. Smt. K. Venkata Lakshmi appears to have instituted O.A. No. 5994 of 2005 before the Andhra Pradesh Administrative Tribunal calling in question the validity of the orders passed by the State Government contained in their G.O. Ms. No. 1627 Revenue (Vig.II) Department dated 08.09.2005. The Andhra Pradesh Administrative Tribunal, appears to have passed orders allowing the said O.A. It has rejected various contentions canvassed before it, but however, allowed O.A. No. 5994 of 2005 placing reliance upon the judgment rendered by a Division Bench of this Court in Mubashir Hussain v. Commissioner of Central Excise-III, Hyderabad and others, wherein it was held that the advice of the Central Vigilance Commissioner is not binding on the disciplinary authority and the disciplinary authority has to apply its mind independently and arrive at an independent finding appreciating the facts and evidence on record. It was also further noted by the Division Bench of this Court that the disciplinary authority is not expected to pass an order of punishment at the dictation of the Central Vigilance Commissioner without independently applying its mind to the facts and circumstances of the case on the evidence on record and if any such order of

punishment is imposed mechanically, it amounts to the disciplinary authority abdicating its powers in favour of the Central Vigilance Commissioner. Based upon this ratio, the Andhra Pradesh Administrative Tribunal has arrived at a conclusion that the State Government while passing orders through their G.O. Ms. No. 1627 Revenue (Vig.II) Department dated 08.09.2005 imposing the punishment of removal from service of Smt. K. Venkata Lakshmi virtually abdicated its powers in favour of the Vigilance Commissioner and for arriving at this conclusion, the Andhra Pradesh Administrative Tribunal relied upon the advice tendered by the Vigilance Commissioner on a second occasion namely on 16.06.2005, wherein, it was recommended as under:

"..The charged officers in TEC Nos. 20 and 21 of 2000 may immediately be removed as advised earlier.."

4. However, since the Andhra Pradesh Administrative Tribunal has quashed the order of punishment dated 08.09.2005 imposed on Smt. K. Venkata Lakshmi and directed the State Government to consider the facts and circumstances independently, by applying its mind, the State Government passed orders through their G.O. Ms. No. 632 Revenue (Vig.II) Department dated 11.05.2008 reducing the punishment of removal from service to that of withholding of two increments with cumulative effect, besides reinstating her into service. Accordingly, Smt. K. Venkata Lakshmi-Revenue Inspector has since been reinstated and is posted as Senior Assistant in the office of the Special Deputy Collector (Land Acquisition) Khammam on 09.05.2008.

5. The State Tribunal took up O.A. No. 4829 of 2008 preferred by the writ petitioner herein and passed orders on 22.08.2008. Following its earlier judgment in O.A. No. 5994 of 2005 instituted by Smt. K. Venkata Lakshmi, the Tribunal, even on this occasion has set-aside the orders of punishment passed by the State Government contained in their G.O. Ms. No. 1626 Revenue (Vig.II) Department dated 08.09.2005 and remanded the matter for consideration afresh by the State Government as to the punishment which is liable to be imposed on the petitioner, duly keeping in mind the punishment imposed on Smt. K. Venkata Lakshmi. The Tribunal did not stop there. Since it was brought to the notice of the Tribunal that the applicant before it had retired from service, the respondents were directed to calculate the amounts equivalent to the punishment imposed on Smt. K. Venkata Lakshmi and an equivalent amount may be cut from the pensionary benefits of the applicant herein, if they so desire. It is this tail end portion of the order passed by the Andhra Pradesh Administrative Tribunal in O.A. No. 4824 of 2008 brought forth the present writ petition.

6. Heard Sri J.R. Manohar Rao, learned Senior Counsel for the petitioner and the learned Government Pleader for Services for the respondents.

7. Sri J.R. Manohar Rao has contended that the Tribunal having ordered the matter to go back for consideration afresh to the State Government for imposing an appropriate punishment on the writ petitioner, ought not have imposed the

punishment by itself by directing appropriate deduction and recovery from the pensionary benefits of the writ petitioner.

8. The criticism mounted by Sri J.R. Manohar Rao that the Andhra Pradesh Administrative Tribunal has no power to impose a punishment on a public servant on its own is liable to be appreciated. Imposing an appropriate punishment on a public servant for a proven misconduct/misdemeanor is the prerogative of the disciplinary authority. In case, if the Doctrine of Proportionality of punishment is to be applied by the Andhra Pradesh Administrative Tribunal, where it has occurred to the said Tribunal that the punishment imposed on the public servant is too grossly unjust and disproportionate, the matter will have to be remanded back for consideration afresh by the competent disciplinary authority for imposing a commensurate punishment. The Tribunal cannot exercise the disciplinary control over public servants on its own and keep on imposing one or the other of the punishments listed out in the discipline, control and appeal rules governing the public servant. What punishment would meet the offender and the misconduct held established is within the realm of consideration of the disciplinary authority concerned. Various factors go into consideration and contemplation of such authority. The image of the department concerned also is one factor which can be kept in view while making an assessment as to the choice of punishment to be imposed upon the public servant for the proven misconduct. Only in exceptional and rarest of the rare cases, the Courts have been exercising the judicial discretion of substituting the punishment by themselves. The essential philosophy behind such an exercise of judicial discretion being to cut short a long pending litigation. It was essentially intended to ensure that the suffering of the individual should be mitigated. But however, such a discretion is not to be exercised routinely and indiscriminately. Where second or the third round of litigation is brought forth before the Courts, exercise of such judicial discretion is called for and resorted to, but seldom at the very first instance itself. We are, therefore, clearly of the view that the Tribunal has grossly erred in preferring to impose a punishment against the writ petitioner at the very first instance.

9. Further, we are also of the opinion that adequate and proper judicious consideration has not been bestowed by the Andhra Pradesh Administrative Tribunal, at the first instance in deciding O.A. No. 5995 of 2005 instituted by Smt. K. Venkata Lakshmi-Revenue Inspector and also while deciding O.A. No. 4829 of 2008 instituted by the present writ petitioner herein. The Tribunal derived inspiration from the judgment rendered by the Division Bench of this Court in Mubashir Hussains case for deciding O.A. No. 5994 of 2005 instituted by Sri K. Venkata Lakshmi. No exception is called for to the ratio spelt out in Mubashir Hussains case by this Court. The Vigilance Commissioner or a Central Vigilance Commissioner or any Public Service Commission or Advisory Bodies would tender advice objectively for the benefit of consideration by the competent authority. The competent authority is required to apply his mind independently to the facts and circumstances of the case, the evidence gathered during the

disciplinary enquiry and the findings recorded based thereupon and then come to a conclusion as to whether the punishment as suggested by the advisory body such as Vigilance Commissioner/Service Commission should be followed or not. The competent disciplinary authority is not supposed to surrender the whole exercise of judicious consideration to the advice tendered by such an Advisory Body and wherever it was found that it has virtually succumbed to the dictates of any such Advisory Body, such an exercise can be described as abdication of the power.

10. In the instant case, the Tribunal has noticed the advise tendered by the Vigilance Commission on 09.07.2003. The Vigilance Commissioner has advised the State Government appropriately in the matter. It is worth noticing the advice of the Vigilance Commissioner tendered on 09.07.2003 in this regard.

"4. Having regard to the findings of T.D.P. in T.E.C. No. 20/2000 and 21/2000, the representations submitted by the Charged Officers on the finding of Tribunal for Disciplinary Proceedings may be rejected and the department may consider removal/dismissal of the two charged officers in T.E.C. Nos. 20/2000 and 21/2000 for the lapses held proved against them after following the due procedure in terms of the orders issued in G.O. Ms. No. 2 G.A. Department dated 4.1.1999."

11. Perhaps, this recommendation of the Vigilance Commissioner cannot legitimately be termed as a dictation to the State Government. The Vigilance Commissioner merely recommended the State Government to reject the representations submitted by the writ petitioner herein and Smt. K. Venkata Lakshmi against the report of the Tribunal for disciplinary proceedings and recommended for consideration of the department insofar as the punishment is concerned. However, what appears to have weighed with the Tribunal for describing the advice of the Vigilance Commissioner as a Dictation to the State Government comes from, the further recommendation made by the Vigilance Commissioner on 16.06.2005, wherein, towards the end of paragraph 3, it is noted as under:

"..The Charged Officers in T.E.C. No. 20 and 21 of 2000 may immediately be removed as advised earlier."

12. Perhaps, the Andhra Pradesh Administrative Tribunal has missed to note the distinction between the two different advices tendered by the Vigilance Commissioner. In fact, it made no attempt to analyze as to the reasons why the Vigilance Commissioners advice was solicited twice all over by the State Government. In the process, the Andhra Pradesh Administrative Tribunal has glossed over the fact that in between these 2 different occasions there was a show cause notice which has been issued to the two charged officers by the State Government proposing to impose a major punishment on them. After the first advice was tendered by the Vigilance Commissioner on 09.07.2003, the State Government in their Revenue (Vigilance-II) Department through their

memo No. 3122/Vig.II (1/2001-5 dated 20.10.2003 has drawn a show cause notice calling for the explanation of the writ petitioner herein (and obviously also from Smt. K. Venkata Lakshmi) as to why a major punishment should not be imposed on them. A look at the orders passed by the State Government through their G.O. Ms. No. 1626 would disclose that the writ petitioner herein has offered his explanation to the said show cause notice on 26.02.2005. It is, thereafter, the State Government once again solicited the advice of the Vigilance Commissioner before it finalized the punishment, and it is in that context, the second advise was tendered by the Vigilance Commissioner on 16.06.2005. It is, therefore, a clear case where the Vigilance Commissioner has not dictated the punishment to be imposed on the petitioner and Smt. K. Venkata Lakshmi at the first instance, for anybody to arrive at a conclusion that the State Government has succumbed to any such dictation. Thus, it is clear to us that the Andhra Pradesh Administrative Tribunal without bestowing appropriate attention and without properly applying the ratio, laid down by this Court in Mubashir Hussains case, rushed to a conclusion that the State Government had abdicated its disciplinary control in favour of Vigilance Commissioner in imposing the punishment on Smt. K. Venkata Lakshmi at the first instance and also subsequently in the O.A. No. 4829 of 2008 instituted by the present writ petitioner. It would have been much better if proper consideration and attention has been spared by the Andhra Pradesh Administrative Tribunal.

13. Be that as it may, the Tribunal has rendered its order in O.A. No. 4829 of 2008 instituted by this very petitioner as long back as on 22.08.2008. The present writ petition is preferred on 22.09.2014, i.e. more than 6 years after the said order is passed. No explanation worth the consideration was offered in this writ petition as to why the writ petitioner is approaching this Court after lapse of six years. Though, no period of limitation is prescribed for preferring a writ petition under Article 226 or 227 of the Constitution, but nonetheless, a writ petition is liable to be instituted within a reasonable and proximate period of one year. At any rate, a period of three years, which is a reasonable period for anyone to ventilate his grievance, and seek enforcement of ones legal rights, appears to be the spirit behind prescribing the said three years period as the period of limitation under the Limitation Act, 1961, for various causes of action. Therefore, taking a clue there from, if a party to a proceeding before the Andhra Pradesh Administrative Tribunal does not approach the High Court concerned, within one year period or at any rate within the three year period, such writ petitions cannot be entertained in normal course, unless an exceptional case is made out for entertaining any such writ petition.

14. Sadly, no attempt whatsoever worth the consideration has been made by the petitioner to compel us to entertain this writ petition after six years. We would, therefore, be justified in declining to exercise our discretion to correct the jurisdictional error committed by the Andhra Pradesh Administrative Tribunal in its order dated 22.08.2008 rendered in O.A. No. 4829 of 2008.

15. This apart, the order passed by the Andhra Pradesh Administrative Tribunal dated 22.08.2008 in O.A. No. 4829 of 2008 has already been acted upon and given effect to by the respondents. The pensionary benefits payable to the petitioner on that count have already been settled. At our request, Sri J.R. Manohar Rao has placed before us, copy of the pension payment order bearing No. 10-00941Z/SP dated 10.07.2009 passed by the Accountant General (A&E) A.P., Hyderabad. The writ petitioner has been settled a monthly pension of Rs. 7,988/- with effect from 01.07.2007, the following day of his retirement. He has also commuted a portion thereof namely Rs. 3,195/- and received the commuted value thereof in a sum of Rs. 3,88,385/-. He has also been settled the retirement gratuity in a sum of Rs. 2,63,588/-. If we were to uphold the plea of the petitioner, we will have to direct cancellation of this pension payment order and await an appropriate punishment to be imposed by the State Government that would cause greater hardship to the petitioner. For this additional reason also, we do not wish to disturb the pension which is being received by the petitioner pursuant to the pension payment order dated 10.07.2009.

16. For the aforesaid reasons, we dismiss this writ petition without costs.

17. Consequently, miscellaneous applications pending if any shall also stand dismissed.