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**(2016) 04 AP CK 0048**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No.8954 of 2006**

N. Samba Murthy (died)

APPELLANT

Vs

The Chairperson, APREI Society

RESPONDENT

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**Date of Decision : 27-04-2016**

**Acts Referred:**

Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 — Rule 20

Constitution of India, 1950 — Article 226

**Citation :** (2016) 5 ALT 466 : (2016) 6 AndhLD 28

**Hon'ble Judges :** Sri A. Rajasheker Reddy, J.

**Bench :** Single Bench

**Advocate :** Sri Y.V. Ravi Prasad, Counsel, for the Petitioner; G.P for School Education, Counsel, for the Respondent Nos.1 & 3; Sri Uma Sankar Lokanadham, Counsel, for the Respondent No.3

**Final Decision :** Disposed Off

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## **Judgement**

Sri A. Rajasheker Reddy, J.—;Writ petition is filed seeking to issue a writ of Certiorari calling for the records pertaining to the proceedings dated 14-12-2005 of the 1st respondent-Chairperson, APREI Society (R), Hyderabad, in confirming the proceedings dated 6-07-2005 of the 2nd respondent-Vice Chairman, APREI Society (R), Hyderabad, in imposing penalty on the petitioner withholding 50% pension permanently and gratuity in full under Rule 9 of the AP Revised Pension Rules, 1980, as being illegal, arbitrary, erroneous and consequently declare that the petitioner is entitled to full pension and gratuity.

2. Facts stated are: A case in Cr.No.26 of 1993 was registered by the Police, Rajavommangi, East Godavari District, against the petitioner (since deceased) now represented by his wife, for the offences punishable under Sections 354 & 376 IPC and the same was brought on file in PRC No.10 of 1994 on the file of Sub-Divisional Magistrate, Mobile Court, Rampachodavaram. The charge against the petitioner was that while he was working as Principal-cum-Special Officer at

AP Residential School (ST Girls), he has raped one of the IX standard girl by name K. Krishna Kumari during the month of August, 1993 and continued his illegal activity till the date of filing the complaint with the Police. That the petitioner was placed under suspension by the 2nd respondent on the ground that he was detained by the Police in custody for more than 48 hours on the charge involving moral turpitude. But, after the Police filing charge-sheet, the Sub-Divisional Magistrate on elaborate consideration of the evidence on record and having found that there was no prima facie case made out against the petitioner for the purpose of committal of the case to the Sessions Court, discharged the petitioner, at the committal stage. Thereafter the petitioner was reinstated into service, but during the pendency of the criminal proceedings, the authorities, on administrative side, initiated departmental disciplinary proceedings and appointed Regional Joint Director of School Education, Kakinada, as enquiry officer to conduct inquiry into the incident and to submit report. Enquiry officer submitted his report holding that the charge levelled against the petitioner stand proved. Petitioner was issued with a further notice requiring him to submit his reply on the findings of the enquiry officer holding him guilty of the charge, to which the petitioner is stated to have submitted his reply, but the same was rejected and a penalty of withholding of 50% pension permanently and also gratuity in full was imposed on the petitioner. That petitioner assailed the imposition of punishment by the 2nd respondent, in appeal before the 1st respondent, but the same was rejected confirming the punishment imposed by the 2nd respondent. Hence, this writ petition.

3. Counter affidavit is filed by the 3rd respondent-Secretary, APREI Society (R), Hyderabad, on behalf all the respondents, inter alia, stating that the Regional Joint Director of School Education, Kakinada, who was appointed to enquire into the matter, based on the statement of the victim girl and also the statements given by the teaching and non-teaching staff working in the said school concluded that the charge against the petitioner has been established. But as the charges framed against the petitioner in criminal case could not be proved in the Court of law for want of clear evidence, the petitioner was imposed with a penalty of withholding 50% of his pension permanently and gratuity in full for his misbehaviour with a girl student being a Principal, which itself was unbecoming of a Government servant warranting deterrent action. That the appeal preferred by the petitioner to the 1st respondent requesting to set aside the punishment imposed has been examined with reference to the enquiry report of the RJD of School Education, Kakinada, and also as per the advice of the Vigilance Commission, it was found not a fit case for consideration and accordingly the appeal filed by the petitioner was rejected. That there are no merits in the writ petition and the same is liable to be dismissed.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondents. Perused the material placed on record.

5. Sri YV Ravi Prasad, learned senior counsel appearing for the petitioner

strenuously contended that punishment of withholding 50% pension permanently and gratuity in full was imposed without conducting enquiry as contemplated under Rule 20 of CCA Rules and that the charges levelled against the petitioner on departmental side as well as in the criminal case are one and the same, the respondents ought not to have imposed the punishment of withholding of 50% cut in pension and full gratuity and the punishment imposed is disproportionate, particularly when the charge itself was not proved against the petitioner in criminal case. Learned counsel also contended that petitioner was victimised by the teaching and non-teaching staff of the said School as the petitioner being Principal of the school tried to bring in discipline among the staff working in the school. It is also stated that the enquiry conducted by the enquiry officer was ex-parte and no opportunity was given to the petitioner to cross examine the witnesses examined by the enquiry officer. Learned counsel further contended that the appellate authority did not consider the matter in proper perspective and rejected appeal without conforming to the principles of law and the order is a non-speaking order. In support of his contentions, learned senior counsel relied on the decisions of the Supreme Court in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC 679, Khem Chand v. Union of India, AIR 1958 SC 300, & Messrs Mahabir Prasad Santosh Kumar v. State of U.P, (1970) 1 SCC 764.

6. Per contra, learned counsel for the respondents contended that though the petitioner was discharged at the committal stage, that itself cannot absolve him from the departmental proceedings as the scope of these two proceedings is different and they can be continued independently. Learned counsel further contended that inasmuch as the enquiry officer found that the charge against the petitioner stand proved, the respondents considering the fact that the petitioner involved in act of moral turpitude and it was unbecoming on the part of a public servant to involve in such an act, imposed the punishment, which is sufficient in the facts and circumstances of the case.

7. Admittedly, the petitioner was placed under suspension basing only the charge that he has been involved in a criminal case and was in custody for more than 48 hours. The respondents reinstated the petitioner into service, after the Sub-Divisional Magistrate discharged him at the committal stage. Due to the mistake of the staff of the office, the criminal case was sent up to the Sessions Court as if the case is committed to the Court of Sessions and numbered as SC No.337 of 1995, which was rectified by this Court in Crl. Petition being Crl. P.No. 215 of 1996 filed by the petitioner in continuing the criminal proceedings against him by the Sessions Court, Rajahmundry, though he was discharged by the Sub-Divisional Magistrate, Rampachodavaram. In a report called for by this Court from the Sessions Court, it was clarified that it was a mistake on the part of the staff and under those circumstances, the proceedings in SC No.337 of 1995 were quashed by this Court.

8. It is to be seen that though the departmental proceedings are independent of the criminal proceedings, but in this case, the charge levelled against the

petitioner in departmental proceedings and criminal case is one and the same. The complainant, witnesses and the charge is one and the same in both the proceedings. So far as departmental proceedings are concerned, the grievance of the petitioner is that enquiry as contemplated under the CCA Rules has not been conducted, muchless an opportunity given to him to put forth his case nor cross examine the witnesses including the complainant. Since the basis of charge is same, it is worthwhile refer to what the learned Magistrate concluded in criminal case after considering the evidence adduced by the prosecution, the relevant portion reads thus:

9. Though serious charge of rape is levelled against the petitioner, who is Principal, that too committed on the student, but due to lethargy and non application of mind on the part of Disciplinary authority, petitioner had to be exonerated which is very painful, but there is no option even to remand the matter now as petitioner no.1 is no more.

"As seen from the suggestions given by the counsel for the accused, the following points emerge. M/s. Varalakshmi, Nageswara Rao and Vijaya are also working in the same school. They are at logger heads with the Principal. The accused took disciplinary action against Varalakshmi. Bearing that grouse in mind, the said Varalakshmi gave a complaint to the higher authorities. The higher authorities enquired into the matter and found the allegations of Varalakshmi made regarding the accused to be false and punished her by way of stopping of increments. Nageswara Rao occupies the quarters allotted to the P.E.T. The accused insisted upon him to vacate the same. As he did not vacate, the Principal-accused gave memos to him. Therefore, Nageswara Rao was also grinding axe against the accused. One Vijaya was the Deputy Warden of the Hostel. The accused removed her. The other strong piece of circumstance to show that the Police did not investigate the matter, but fabricated the entire record. PW-3 in-charge Principal of the school deposed in his evidence that the Police never examined him and that he never made any statement before the Police. He denied having told before the Police as in 161 Cr.P.C statement. It is not difficult for the Police to fabricate statements of the students of the school as they have fabricated the statement of an officer. This shows that the Police acted upon the words of the staff working against the accused.

In view of the above findings and discussion I am of the opinion that there is no prima facie case or sufficient grounds to commit the case to Court of Sessions for the offence under Section 376 (3) (c) IPC or to take the case on file under Section 354 IPC and proceed with that case. Hence the accused is accordingly discharged under Section 207-A (6) Cr.P.C. (old) for the offence under Section 376 (3) (c) or under Section 354 IPC."

10. From the above it is clear that the staff who were working against the petitioner were the same persons who were examined by the enquiry officer and based on the statements of those persons, it was concluded that the charge against the petitioner stand proved. It is not the case of the respondents that the

petitioner was given opportunity of cross examining the witnesses examined by the enquiry officer, which is a prerequisite under the CCA Rules. The conclusion reached by the enquiry officer to hold the petitioner guilty of the charge is one sided and does not appear to conform to the requirement of law. The so-called enquiry is prior to issuance of charge memo dated 25-09-1998 and admittedly no enquiry was conducted after petitioner submitted his explanation dated 11-06-1998, but straightaway imposed the punishment. It is no doubt true that in a criminal case, charge has to be proved by proof beyond reasonable doubt while in departmental proceedings the standard of proof for proving the charge is mere preponderance of probabilities. But, the enquiry report and the conclusion reached thereunder are ex parte proceedings and, therefore, it cannot be the basis to impose the any punishment, muchless withholding 50% pension and full gratuity. In Capt. M. Paul Anthony's case (1 supra) the Supreme Court in an identical case held that simultaneous continuance of both departmental and criminal proceedings, based on the same set of facts, which were sought to be proved by the same witnesses viz. Police and panchas and the Court had already acquitted the appellant by rejecting the prosecution story, the findings recorded against the appellant in an ex parte disciplinary enquiry could not be sustained. In Khem Chand's case (3 supra), the Supreme Court held that reasonable opportunity envisaged to the Government servant by the provision contained in Article 311 (2) of the Constitution includes an opportunity to deny his guilt and establish his innocence, an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence and an opportunity to make his representation as to why the proposed punishment should not be inflicted on him. As far as observation of opportunity of making representation against proposed punishment is concerned, the said right is taken away by 42nd Constitution Amendment.

11. This Court quashed the criminal proceedings initiated against the petitioner in SC No.337 of 1995 in CrI.P.No.215 of 1996 by order dated 20-01-1998 which has become final. But proceedings in Rc.No.90/C1-2/93-98, dated 25-05-1998 were issued by 3rd respondent framing charge against the petitioner basing on report of the RJD of School Education by stating that criminal case in SC No.337 of 1995 is pending against the petitioner before Assistant Sessions Court, though committal proceedings initiated against the petitioner were quashed by this Court by that time. After charge is framed against the petitioner by proceedings dated 25-05-1998, petitioner submitted explanation dated 11-06-1998, but without conducting regular departmental enquiry, as envisaged under Rule 20 (1) of CCA Rules, imposed punishment by the impugned proceedings, which is in violation of principles of natural justice. The proceedings in Rc.485/C1-1/98-2002, dated 2-5-2002 were issued permitting the petitioner to retire without prejudice to the case pending against him in District and Sessions Court which goes to show the same is issued without application of mind as criminal proceedings initiated against the petitioner were already quashed. Period of suspension of petitioner

was also regularised vide proceedings dated 8- 10-2000 and vide proceedings in Roc.No.11364/C1-1/2001, dated 04-05- 2002, he was also given special grade pay scale on completion of 16 years of incremental service.

12. Though petitioner filed appeal raising elaborate grounds against punishment imposed, a perusal of the impugned order passed by the 1st respondent, which is an appellate authority examining statutory appeal, it is clear that it has not adverted to any of the issues viz. the acts which led to the initiation of the departmental disciplinary proceedings and how they are not exactly the same allegations which were the subject of the criminal case, except stating that the enquiry officer held the charge proved and the Vigilance Commission advised that it was not a fit case for consideration. The impugned order is a non-speaking order. Time and again this Court as well as the Supreme Court have held that the practise of the executive authority dismissing statutory appeals against orders which prima facie seriously prejudice the rights of the aggrieved party without giving reasons is a negation of the rule of law. It was observed by the Supreme Court in Messrs Mahabir Prasad Santosh Kumar's case (2 supra) that a party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim. If the order is subject to appeal, the necessity to record reasons is greater, for without recorded reasons, the appellate authority has no material on which it may determine whether the facts were properly ascertained, the relevant law was correctly applied and the decision was just.

13. On the above analysis of the matter, the impugned order is not sustainable in law and it is accordingly set aside and consequently the writ petition is allowed. The benefits payable to the petitioner, including the payment 50% pension and the gratuity in full be paid to the wife of the petitioner, who is brought on record. The entire exercise shall be completed within a period of three months from the date of receipt of a copy of this order. Miscellaneous petitions, if any, pending in this Writ Petition shall stand disposed of. No order as to costs.