
(2014) 01 AP CK 0121

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7478 of 2002

O. Ramasudarshana Reddy

APPELLANT

Vs

Sri Venkateswara University and 3 Others

RESPONDENT

Date of Decision : 20-01-2014

Acts Referred:

Constitution of India, 1950 — Article 14 16 21 217(2)

Citation : (2014) 3 ALD 274 : (2014) 3 ALT 767 : (2014) 1 ESC 299

Hon'ble Judges : K.G. Shankar, J

Bench : Single Bench

Advocate : M. Panduranga Rao, for the Appellant; P. Govind Reddy, S.C. for Respondent-University, for the Respondent

Final Decision : Allowed

Judgement

Dr. K.G. Shankar, J.—The sole petitioner seeks for a Writ of Certiorari to set aside the order dated 03.11.2000 appointing the fourth respondent as Enquiry Officer by the first respondent-University and also to set aside the order dated 11.02.2002 removing the petitioner from service on the ground that the orders are illegal, violative of principles of natural justice and violative of Articles 14, 16 and 21 of the Constitution of India. The petitioner was appointed on 03.10.1968 as an Attender in the first respondent-Sri Venkateswara University, Tirupati. On 09.04.1974 he was promoted as a Lower Division Clerk (LDC, for short). On 04.04.1987 the petitioner was placed under suspension; on 12.11.1987 his services were terminated. The petitioner challenged the termination orders, through Writ Petition No. 5088 of 1998. A Division Bench of this Court held that the termination of the petitioner without due enquiry is violative of principles of natural justice and set aside the termination, through orders dated 26.10.1999. Basing upon the orders of the Division Bench, the petitioner was restored to duty, through orders dated 18.05.2000. The petitioner reported to duty on 12.06.2000. The petitioner was immediately placed under suspension on the very next day on 13.06.2000.

The petitioner filed the second writ petition in W.P. No. 10468 of 2000. Inter alia, the petitioner contended that in view of the orders of the Division Bench in W.P. No. 5088 of 1988, the fresh suspension of the petitioner was bad and was liable to be set aside.

A learned single Judge did not agree with this contention of the petitioner. He clarified that the Division Bench set aside the removal order on the ground that no enquiry was conducted against the petitioner; recording that the fresh suspension of the petitioner was with a view to conduct enquiry, the learned single Judge directed the University to complete the enquiry within a period of three months from the date of the order dated 20.06.2000.

2. However, the University filed WPMP No. 24251 of 2000 in WP No. 10468 of 2000 seeking for extension of time to comply the enquiry. The petitioner herein has taken a stand therein that the University has not been paying subsistence allowance under the revised pay scales. Recording that the petitioner herein was entitled to subsistence allowance in terms of the revised pay scales, WPMP No. 24251 of 2000 was allowed on 19.10.2000 granting extension of time to complete the enquiry by three months.

3. The University thereafter appointed the fourth respondent, who was a retired District Judge practicing as an advocate at that time, as Enquiry Officer to conduct enquiry. The Enquiry Officer (fourth respondent) issued a charge sheet consisting of four charges on 23.11.2000. The petitioner answered the charge sheet on 28.11.2000. The learned Enquiry Officer examined Sri G. Lakshmi Narayana Reddy, a retired Junior Assistant and M. Chinni Krishna as PWs. 1 & 2. The petitioner did not choose to examine anyone on his side. The petitioner filed written arguments contending that the charges have not been proved. The learned Enquiry Officer submitted report on 28.02.2001 holding that charges 3 & 4 have not been proved and that charges 1 & 2 have been established.

4. A show cause notice was issued on 18.07.2001 calling the petitioner to explain as to why he shall not be removed from service. The petitioner offered his explanation on 13.09.2001. Fresh explanation was again called for on 20.10.2001. The petitioner submitted further explanation on 01.11.2001. Not satisfied with the explanation, impugned orders dated 11.02.2002 removing the petitioner from service were passed.

5. Sri M. Panduranga Rao, learned counsel for the petitioner attacked the removal order on the ground that the very appointment of an outsider of the University as an Enquiry Officer is beyond the Rules. The learned counsel for the petitioner also submitted that the charge sheet was issued by the Enquiry Officer himself whereas it is not the business of the Enquiry Officer but the duty of the Disciplinary Authority to issue the charge sheet. He further raised the question of the Doctrine of Equality between the petitioner and the other employees involved in the same incident contending that imposition of penalty of removal against the petitioner is not sustainable, where the other employees involved were treated

with minor penalty. The fourth ground of attack is that subsistence allowance was not paid to the petitioner in accordance with the Rules and that the entire enquiry stands vitiated once subsistence allowance is not paid.

6. The learned standing counsel for the University submitted that the removal of the petitioner through orders dated 12.11.1987 was without any enquiry and that the Court, consequently, set aside the enquiry reports. He further contended that once enquiry officer was duly appointed and enquiry was duly conducted in the presence of the petitioner, the petitioner cannot later challenge the appointment of the Enquiry Officer. He also contended that the Rules did not contemplate that charge should be framed by the Disciplinary Authority and that when the petitioner did not challenge the charges when the charges were framed he is estopped from questioning the same once the petitioner is found guilty of the charges.

7. I may refer to the circumstances leading to the charges at the outset.

a) The Controller of Examinations submitted a report to the University that several degree certificates were issued by the petitioner in connivance with Sri A. Selvarajan, another Junior Assistant in 24th to 30th Annual Convocations. On the basis of the report of the Controller of Examinations, the petitioner and A. Selvarajan were placed under suspension. Explanation was called for from Sarvasri G. Lakshmi Narayana Reddy (PW. 1), M. Chinni Krishna (PW. 2), M. Chengaiah, G. Radhakrishnan, E. Rama Chenna Reddy, V. Venugopala Reddy and Miss. S. Noorjahan. The allegation is that the petitioner in connivance with G. Lakshmi Narayana Reddy admitted Sri B. Prasada Reddy and 10 other students who were declared ineligible for resorting to malpractice as candidates for 24th Convocation by allotting more marks than the marks secured by those students and that the petitioner resorted to the activity which is a misconduct being a conduct unbecoming of a University Employee and that the petitioner violated Rule 17(2) of Sri Venkateswara University Service (Discipline, Control and Appeal) Rules (the Rules, for short).

b) Charge No. 2 is that the petitioner along with Sri G. Lakshmi Narayana Reddy admitted Sri Shaik Sobhajan, Sri D. Rajendra Prasad and six other students, who were ineligible candidates on account of resorting to malpractice, admitting them to 25th Convocation by allotting more marks and that the petitioner committed misconduct under Rule 17(2) of the Rules. Two other charges were also levelled against the petitioner. After due enquiry, the petitioner was found guilty of charges 1 & 2 and were found not guilty of charges 3 & 4. The petitioner challenges the proceedings right from its inception.

8. Chapter XXII (Conditions of Service) of the Laws of the University issued Sri Venkateswara University Service Rules (Discipline, Control and Appeal) Rules amended from time to time by the Executive Council. Para VII of the Rules reads:

VII. a) No employee of the University shall be dismissed or removed or compulsorily retired or reduced in rank except after an inquiry in which he has

been informed of the changes against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed after such enquiry to impose on him any such penalty until he has been given a reasonable opportunity of making a representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry.

b) The inquiry under Sub-Rule (a) shall be made by a Standing Board of Enquiry which shall be reconstituted every five years. The Board shall be constituted:

i) by the Syndicate in the case of University employees of and above the rank of Lecturers in the case of teachers; and of and above the rank of Assistant Registrars in the case non-teaching employees and shall consist of;

1. A High Court Judge in service or retired; or any person qualified to be a High Court Judge;

2. An eminent educationist;

3. A Senior I.A.S. Officer or any retired Officer or any person who is well versed in administrative matters.

ii) By the Vice-Chancellor in the case of all other University employees and shall consist of three senior teachers or officers of the University.

9. The learned counsel for the petitioner contended that Para-VII (b)(i)(3) envisages the appointment of a Senior IAS Officer or any retired Officer or any person who is well-versed in administrative matters as Enquiry Officer. It is contended by him that the fourth respondent was a retired District Judge and does not fulfill the qualification provided by Para VII (b)(i)(3) of the Rules. The Rule does not contemplate that Senior IAS Officer alone should be appointed. The Rule further reads that any retired officer or any person who is well-versed in administrative matters may be appointed.

The fourth respondent was a retired District Judge.

By the date of enquiry, it would appear that he was practicing as an advocate.

Be it noted that he is now no more.

10. The learned standing counsel for the respondent-University contended that the fourth respondent fulfills the qualification as a retired officer, who is well-versed in administrative matters. When the fourth respondent admittedly was a retired District Judge and admittedly was practicing as an advocate at the time of his appointment and at the time of enquiry, I consider that he certainly fulfills the qualification of an officer well-versed in the administrative matters.

11. VII(b)(i)(1) postulates that a High Court Judge in service or retired or a person qualified to be a High Court Judge may also be appointed as an Enquiry Officer. Article 217(2) of the Constitution of India contemplates that a person shall have at least 10 years of experience as a judicial officer or as an advocate to be eligible to be appointed as Judge of High Court. There is no dispute that the

fourth respondent has put in around or more than 20 years of judicial service before his retirement. Obviously, the fourth respondent was qualified for appointment as Enquiry Officer, so much so, he fulfills para-VII(b)(i)(1) of the Rules also regarding the qualifications. It, therefore, is not open for the petitioner to contend that the fourth respondent was not eligible for appointment as Enquiry Officer under the Rules.

12. The learned counsel for the petitioner contended that the fourth respondent who was an outsider to the University and that such a person could not be appointed as an Enquiry Officer. In *G. Chandrakanth v. Guntur Dist. Milk Producers' Union Ltd.* 1994 (2) ALT 253, the Assistant Manager of M/s. Sangam Dairy, Guntur was charge sheeted for misconduct. An advocate was appointed by Disciplinary Authority as Enquiry Officer. The finding of the Enquiry Officer and the resolution of the Board of Directors to remove the Assistant Manager from service of the Society were impugned. A question regarding the appointment of an advocate as an Enquiry Officer also came up for consideration in that case. A learned single Judge of this Court held (in para-11 of the judgment):

11. A Bye-law of the society is a term of contract which binds the parties to it and therefore a Bye-law can be enforced against each other who are bound by it. There is no dispute that Bye-law 27(2) binds both the Management and the employees. It is settled position in law that power to appoint enquiry officer must be exercised subject to governing rules. It is also settled position in law that if an enquiry is held by an incompetent and unauthorised person, incompetent and unauthorised under the relevant Conduct regulations or rules, then it invalidates the entire proceedings and such a defect cannot be considered as a mere irregularity and consequently it cannot be regularised by showing that the competent authority itself had applied its mind and reviewed the enquiry records. Even if such a competent officer went through the enquiry records and recorded his agreement with the findings recorded by the incompetent enquiry officer, it is not sufficient when the rules do not permit the disciplinary authority to appoint an outsider as enquiry officer, the enquiry proceedings conducted by the advocate-enquiry officer should be held to be illegal and improper. Further, even the final impugned order passed against the petitioner should also be held illegal and improper because it is based on the enquiry report submitted by the advocate-enquiry officer.

13. On the basis of this decision, the learned counsel for the petitioner contended that the appointment of the fourth respondent, who was an officer of the University, was not permissible. In that case, Bye-law No. 27(2) did not permit the Disciplinary Authority to appoint an outsider as Enquiry Officer; the Court concluded that the enquiry proceedings conducted by the advocate, the Enquiry Officer were illegal and improper. In the present case, para-VII (b)(i)(1) and (3) empower the University to appoint an outsider as Enquiry Officer. Consequently, the claim of the petitioner that appointing the fourth respondent as Enquiry Officer vitiates the enquiry on the ground that a) a retired District Judge, who is

practicing as an advocate, is not eligible for appointment as an Enquiry Officer and b) the appointment of an outsider as an Enquiry Officer is not permissible cannot be accepted.

14. The learned counsel for the petitioner submitted that the very enquiry is bad, since the Enquiry Officer himself framed the charges and not the Disciplinary Authority. Under the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (CCCA Rules, 1991 for short), the Disciplinary Authority alone is competent to frame charges against the delinquent. Such a provision is not found in the Rules of the University. The learned counsel for the petitioner is not able to show any provision in the Rules of the University which prohibits the Enquiry Officer from framing charges. It may be recalled in this context that under the old CCCA Rules, 1963, charges were to be framed by the Enquiry Officer and not the Disciplinary Authority. It would appear that the University continued the same procedure even now. At any rate, there is no provision in the Rules ordaining that charges should be framed by the Disciplinary Authority and that charges shall not be framed by the Enquiry Officer. I, therefore, cannot agree with the contention of the learned counsel for the petitioner that the enquiry is vitiated since the Enquiry Officer has himself framed the charges.

15. In *Government of A.P. v. M.A. Majeed* 2006 (1) ALD 823 FB, a Full Bench of this Court considered the question of framing of charges by the Enquiry Officer/Disciplinary Authority. The Court distinguished between the Rule 19 of CCCA Rules, 1963 and Rules 20 & 21 of CCCA Rules, 1991 pointing out that under Rule 20 of 1991 Rules, charge is liable to be framed by the Disciplinary Authority, whereas under Rule 19 of 1963 Rules, it was the Enquiry Officer who was to frame charges.

16. The decision relied upon by the learned counsel for the petitioner has no application to the present circumstances, where the Rules of the University did not provide either that the Disciplinary Authority shall frame the charges or provided that CCCA Rules, 1991 are applicable to the employees of the University. Consequently, the petitioner cannot question the framing of charges by the Enquiry Officer. More important, the petitioner participated in the enquiry. After participation of the enquiry, the petitioner cannot take the claim that the enquiry is bad on the ground that the same is vitiated by not following the Rules. The petitioner is deemed to have acquiesced the incorrect application of the Rules, if any.

17. The learned counsel for the petitioner also submitted that the petitioner was not paid subsistence allowance in terms of the revised pay scales and that when subsistence allowance is not paid to the charged officer, the enquiry would stand vitiated. In WPMP No. 31214 of 2003 in the present writ petition together with WVMP No. 1944 of 2004 in WPMP No. 31214 of 2003, it was directed that the University shall pay the salary and other allowances for the period from 04.04.1987 till 12.06.2000, through orders dated 16.02.2004. The University filed WVMP No. 1944 of 2004 questioning the orders in WPMP No. 31214 of

2003. However, this Court dismissed WVMP No. 1944 of 2004 on the ground that WPMP No. 31214 of 2003 was allowed on merits after hearing the petition. Questioning the same, Writ Appeal No. 737 of 2005 was filed. The Division Bench held that the question whether the petitioner is entitled to salary from 04.04.1987 till 12.06.2000 is a matter for decision in the writ petition and that till the same is decided, the petitioner cannot be extended the relief as an interim measure. Consequently, Writ Appeal No. 737 of 2005 was allowed through orders dated 12.04.2005. The question whether the petitioner is entitled to salary from 04.04.1987 on which date he was initially placed under suspension till 12.06.2000 on which the petitioner reported to duty therefore falls for consideration in this writ petition.

18. The termination of the petitioner on 04.04.1987 was found to be illegal in W.P. No. 5088 of 1988. Consequently, the date on which the petitioner was placed under suspension till the date of his reinstatement shall be considered to be the period on duty. The petitioner shall be entitled to full salary together with all allowances during this period. Indeed, such a relief is not part of the relief sought for by the writ petitioner. However, the same being consequential relief, I hold that the petitioner is entitled to full salary together with all consequential allowances from 04.04.1987 to 12.06.2000 (both days inclusive) and shall be paid accordingly.

19. So far as the question of subsistence allowance is concerned, it is not the case of the petitioner that the petitioner has not been paid subsistence allowance. On the other hand, the petitioner contended that subsistence allowance has not been paid at the revised pay scales indicating thereby that subsisting allowance had indeed been paid. When the petitioner has been paid subsistence allowance, I am afraid that the petitioner cannot contend that subsistence allowance had not been paid. It is, however, evident that the balance of pay under revised pay scales has also been paid to the petitioner subsequent to the filing of the writ petition by the petitioner. Thus, it would appear that subsistence allowance at the revised pay scales had indeed been paid ultimately to the petitioner.

20. The learned counsel for the petitioner contended that when the subsistence allowance was not paid to the petitioner during the pendency of the enquiry, the enquiry shall stand vitiated. When the petitioner received subsistence allowance at revised pay scales rates after filing of the writ petition, the petitioner received the same without demur or protest. Further, it has never been the case of the petitioner much less the petitioner showed that the petitioner could not participate in the enquiry/could not participate in the inquiry effectively on account of shortage of financial support owing to nonpayment of subsistence allowance. When such a plea has not been taken and has not been established by the petitioner, the petitioner cannot seek for the setting aside of the enquiry report and consequential proceedings on the ground that subsistence allowance has not been paid to the petitioner. I, therefore, reject the contention of the

petitioner that subsistence allowance has not been paid to the petitioner and also reject his contention that the enquiry stands vitiated since subsistence allowance has not been paid. The petitioner cannot approbate and reprobate at one of the same time contesting the enquiry on the one hand and contending after the completion of the enquiry that the enquiry was vitiated since the subsistence allowance has not been paid.

21. The learned counsel for the petitioner also urged that the enquiry report itself is defective and perverse since the learned Enquiry Officer examined only two witnesses and reached the conclusion that the petitioner was guilty. The learned counsel for the petitioner further submitted that Sri G. Lakshmi Narayana Reddy, who more or less was a co-delinquent, had been examined as a witness against the petitioner and that it was not safe to accept the evidence of co-delinquent to hold the petitioner guilty of charges.

22. The learned standing counsel for the University, however, submitted that the scope of a Writ of Certiorari to appreciate the enquiry report is quite limited. A reading of the enquiry report discloses that the learned fourth respondent placed reliance upon enough material before him to conclude that the petitioner was guilty of charges 1 & 2 levelled against him and was not guilty of charges 3 & 4. I do not find any ground to interfere with the finding of the Enquiry Officer. Indeed, PW. 1 was alleged to be a co-delinquent but his evidence was appreciated by the fourth respondent having regard to the fact that he was a co-delinquent. I, therefore, see no reason to defer with the report of the Enquiry Officer in this context.

23. The learned counsel for the petitioner also claimed that the petitioner was allegedly involved in this scandal along with G. Lakshmi Narayana Reddy and that no punishment was imposed against G. Lakshmi Narayana Reddy. The learned standing counsel for the University submitted that Sri G. Lakshmi Narayana Reddy was an assistant of the petitioner and that various assistants including G. Lakshmi Narayana Reddy were placed under suspension initially. He further submitted that syndicate resolved on 02.11.1987 to terminate the services of the petitioner and to administer warning to A. Selvarajan and G. Lakshmi Narayana Reddy since they happened to be assistants of the petitioner. It is the case of the University that the petitioner is the main culprit. G. Lakshmi Narayana Reddy and the other employee by name A. Selvarajan were mere abettors or assistants of the petitioner, who did not prevent the misconduct of the petitioner.

24. The learned counsel for the petitioner referred to *Rajendra Yadav v. State of Madhya Pradesh*. In that case, the Supreme Court held that the Doctrine of Equality applies even among the persons who are found guilty. The learned standing counsel for the University, however, placed reliance upon *Rajasthan Tourism Development Corporation Limited v. Jai Raj Singh Chauhan*. In that case, it was noticed that the scope of judicial review on the penalty imposed by the Disciplinary Authority/Appellate Authority upon the employee is quite limited.

25. The Supreme Court referred to a) Union of India v. Sardar Bahadur, b) Union of India v. Parma Nanda, c) B.C. Chaturvedi v. Union of India and d) Apparel Export Promotion Council v. A.K. Chopra and held that it is not appropriate for the Court to substitute punishment of dismissal from service with stoppage of two increments with cumulative effect in the concerned case. I, however, consider that if the punishment imposed is not in tune with the punishment imposed upon other delinquents in the same case, such imposition of penalty can be interfered with on the ground of violation of Article 14 of the Constitution of India. The question is whether the punishment against the petitioner is shockingly disproportionate to the proven misconduct and other employees similarly situated were treated similarly or otherwise.

26. Admittedly, G. Lakshmi Narayana Reddy and A. Selvarajan were also involved in the same scandal.

The University thought it appropriate to impose the penalty of warning on the ground that they were assistants to the petitioner. If the Disciplinary Authority deemed it appropriate to administer mere warning to the assistants of the petitioner and where warning is not even a punishment, the imposition of penalty of removal from service so far as the petitioner is concerned shall certainly be treated as highly disproportionate to the proven misconduct.

27. In comparison with the punishment, the penalty imposed against G. Lakshmi Narayana Reddy and A. Selvarajan, the penalty imposed against the petitioner is shockingly disproportionate and deserves to be interfered with. I consider that imposition of penalty of withholding of two annual increments with cumulative effect would meet the ends of justice, where the assistants of the petitioner who were more or less went scot-free. I opine that the appointment of fourth respondent is within the disciplinary Rules of the University. I also hold that the finding of the fourth respondent that the petitioner was guilty of charges 1 & 2 is correct and does not require to be interfered with. The punishment recorded against the petitioner is shockingly disproportionate and is liable to be set aside. The writ petition is allowed. The punishment of removal of the petitioner from service is set aside.

The petitioner is imposed the penalty of withholding of two annual increments with cumulative effect.

The respondents 1 to 3 are consequently directed to reinstate the petitioner forthwith together with continuity of service and all attendant benefits and with a penalty of stoppage of two annual increments with cumulative effect. No costs. Miscellaneous Petitions, if any pending in this writ petition, shall stand closed.