

(1999) 11 AP CK 0024

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15860 of 1989

S. Chennakesavulu

APPELLANT

Vs

Managing Director, A.P. Handloom Weavers Co-operative

RESPONDENT

Date of Decision : 24-11-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Penal Code, 1860 (IPC) — Section 120, 409, 420, 477(4)

Citation : (2000) 3 ALD 303

Hon'ble Judges : R. Ramanujam, J

Bench : Single Bench

Advocate : Mr. Ch. Sudarsana Rao, for the Appellant; Mr. T. Rangaiah, for the Respondent

Judgement

1. The petitioner, who was working as Manager in the service of the respondent-Society, filed this writ petition challenging the validity of the order dated 17-12-1983 dismissing him from service and praying for a consequential direction to reinstate him into service with all attendant benefits.

2. The facts of the case, in brief, are:

The petitioner was appointed as Inspecting Officer in the respondent-Society in the year 1957. In the year 1980 he was promoted as Manager, in charge, of the Central Godown at Cuddapah. While he was working in that capacity, he was charged with falsification of Society accounts and misappropriation of moneys. On a complaint given by the Divisional Marketing Officer of the Society, Police have registered a case, and after investigation prosecution was launched in CC No. 120 of 1982 in the Court of the I Additional Munsif Magistrate, Cuddapah, under Sections 120 read with 420, 477(4) and 409 1PC. In the meanwhile, departmental proceedings were also commenced against him, charge Memo was issued and he was asked to explain. It appears that the petitioner did offer his explanation on 20-9-1982, but did not participate in the enquiry that was conducted, inspite of several opportunities being given to him. An ex parte

enquiry was, therefore, conducted and he was dismissed from service by order dated 17-2-1983.

3. The petitioner kept quiet till July, 1989. It appears that he was acquitted by the criminal Court on 23-2-1989. Thereafter, on 5-7-1989 he made a representation to the respondent to reinstate him into service in view of his acquittal in the criminal case. As there was no response, he submitted further representations on 29-7-1989 and 7-8-1989. As there was no reply, he filed the present writ petition in November, 1989.

4. From the aforementioned facts it is clear that though the dismissal order was issued on 17-2-1983, the petitioner has approached this Court in November, 1989. Thus, there is an inordinate delay of more than five years.

5. Sri Ch. Sudershan Rao, learned Counsel for the petitioner, however, submitted that: the petitioner could not challenge the dismissal order immediately because of the pendency of the criminal case against him, soon after the said criminal case ended in his favour in February, 1989 he made representations to the respondent, since there was no response from the respondent-Society he has approached this Court by way of the present writ petition in November, 1989, and, therefore, there was no delay in filing the present writ petition. In support of this contention, he relied upon the decision of the Honourable Supreme Court in *Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another*, .

6. I do not see any merit in the aforesaid contention. The petitioner, who suffered an order of dismissal long back on 17-2-1983, kept quiet without even making a representation to the respondent-Society. Pendency of the criminal case cannot be a ground for not taking appropriate steps including approaching this Court within a reasonable time. The decision of the Supreme Court in *Ajib Singh's case (supra)*, cited by the learned Counsel for the petitioner, has no application to the facts of this case. That was a case arising out of the Industrial Disputes Act. In that case, Ajib Singh (workman) approached the Industrial Tribunal challenging his termination after a delay of 7 years. Before the Industrial Tribunal, the Management did not take the plea regarding delay and the Industrial Tribunal made an Award directing reinstatement of the workman with full back wages from the date of his termination. Challenging that Award, the Management filed a writ petition in the High Court of Punjab and Haryana. A learned single Judge of the High Court allowed the writ petition and set aside the Industrial Tribunal's order holding that as the workman has slept over the matter for seven years, he is not entitled to any relief. That judgment was upheld by a Division Bench of the said High Court on appeal. On a further appeal, the Supreme Court reversed the order of the High Court holding that "the provisions of limitation are not applicable to the proceedings under the Industrial Disputes Act, and it is not the function of the Court to prescribe the period of limitation where the Legislature in its wisdom has thought it fit not to prescribe any period of limitation". But, the case on hand is entirely different. Here the petitioner is

seeking a writ of mandamus after lapse of more than five years of his dismissal from service. Time and again Courts have held that the equitable and discretionary remedy under Article 226 of the Constitution of India will not be invoked in favour of a person who had slept over the matter. However, I am not inclined to non-suit the petitioner on the ground of laches alone. Accordingly, I have permitted the Counsel for the petitioner to address his arguments on the merits of the case.

7. The Counsel for the petitioner then strenuously contended that since the petitioner was acquitted in the criminal case in February, 1989, the dismissal order founded on the same charges no longer subsists; consequently, it should be set aside and he should be reinstated into service. He has relied upon the decision of the Supreme Court in *Capt. M. Paul Anthony v. Bharat Gold Mines Limited* 1993(3) SC 376, in support of his contention. In my considered view, this contention is wholly misconceived and is untenable. It is now well settled that the nature and scope of a criminal case are very different from those of a departmental disciplinary proceedings and the order of acquittal, therefore, will not conclude the departmental proceedings. (See the decision of the Supreme Court in *Nelson Motis Vs. Union of India* and another,

8. In the present case the departmental authority has conducted an enquiry, independently, and came to a conclusion that the petitioner is liable to be dismissed from service. This finding is not liable to be set aside, automatically, by reason of the petitioner's acquittal in the criminal case. Further, no material was produced before this Court to see whether the charges in criminal case and the departmental proceedings are the same. The final judgment in the criminal case was also not produced to see whether he got a clean acquittal or the acquittal was on the benefit of doubt. In this view of the matter, the decision of the Supreme Court in *Capt. M. Paul Anthony's* case (supra), wherein it was held that there is no bar for simultaneously holding departmental proceedings and criminal proceedings but if both proceedings are based on identical set of facts and evidence without there being an iota of difference, departmental proceedings cannot be proceeded with, has no application to the facts of the case on hand.

9. The Counsel for the petitioner nextly contended that the petitioner was not paid the subsistence allowance during the enquiry and, consequently, he could not attend the enquiry. Relying upon the decision of the Supreme Court in *Capt. M. Paul Anthony's* case (supra), he contends that non-payment of subsistence allowance amounts to denial of reasonable opportunity and, therefore, the impugned order is liable to be set aside.

10. In my considered view this contention is also wholly misconceived and baseless. There is absolutely no pleading, whatsoever, to the effect that the petitioner was not paid the subsistence allowance during the pendency of the departmental proceedings. On the other hand, the case of the petitioner, as is evident from the affidavit filed in support of the writ petition, is that he did not attend the enquiry because of the pendency of the criminal case. In these

circumstances, the decision of the Supreme Court in Capt. M Paul Anthony's case (supra) cannot be of any help to the petitioner. The Counsel for the petitioner could not did not point out any infirmity or illegality in the impugned order.

11. For the aforementioned reasons, the writ petition fails and it is accordingly dismissed. No costs.