
(2022) 07 TEL CK 0036
In the Telangana High Court
Case No : Writ Petition No. 5106 Of 2022

S.M.P.M. Hashmi

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 14-07-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 32, 226

Andhra Pradesh Civil Services. (Classification, Control and Appeal) Rules, 1991 — Rule 38

Andhra Pradesh Revised Pension Rules, 1980 — Rule 9

Citation : (2022) 07 TEL CK 0036

Hon'ble Judges : Ujjal Bhuyan, CJ; Surepalli Nanda, J

Bench : Division Bench

Advocate : Vedula Chitralekha

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner and learned Government Pleader for Services-I.

2. The present Writ Petition is filed against the order of A.P Administrative Tribunal (for short 'the Tribunal') in O.A No. 2685 of 2006, dated 04.12.2008, whereby the Tribunal has dismissed the OA and did not interfere with the punishment of withholding of 30% pension permanently payable to the petitioner and to quash the said order dated 04.12.2008 and also to set aside the order of punishment imposed in G.O.Rt.No.877, dated 13.03.2006.

3. The brief facts of the case are as follows:

The Petitioner worked as Sub-Treasury Officer, in the District Treasury Office, Karimnagar during the period from March, 1997 to 31.01.2001 and he retired on 31.01.2001 after attaining superannuation. On 18.02.2004 four Articles of charge were drawn against the petitioner and his explanation was called for.

4. The Articles of charge are as follows:

a. that an amount of Rs. 75,000/- was paid to one Mr. Syed Ameena Ahmed, Sr. Accountant, Dist. Treasury, Karimnagar towards medical advance bill without having any sanction orders of the head of the department. Consequently, this resulted in fraudulent drawl of amount causing financial loss to the Govt.

b. that another medical reimbursement bill of Rs. 5410/- was processed of the same officer, which is also a fraudulent drawl.

c. That one G. Ranga Swamy, Sub-Treasury Officer, Karimnagar, has also drawn an amount of Rs.17,662/- towards medical reimbursement though the bill did not receive proper sanction.

d. That an amount of Rs. 714/-, included in the above-mentioned amount of Rs.17,662/-, was also drawn by the same office, which is also a fraudulent drawl.

5. The petitioner submitted his explanation on 10.04.2004 denying the charges and with the defence as follows:

a) He has no authority to sanction the bills since he is only a Sub-Treasury Officer and that the bills are prepared by the District Treasury Officer and are passed by the Assistant Treasury Officer and as such he is not responsible for both preparing and passing of bills for payment. Several employees of the Karimnagar Treasury Office were charge sheeted with the same allegations and, the government conducted common inquiry against all the charged officers by appointing G. Vijay Kumar, Joint Director as Inquiry Officer and the Inquiry Officer found those charges as proved against all the charged employees and consequently, the Government issued G.O.Rt.No.877, dated 13.03.2006 imposing the punishment of withholding of 30% pension permanently on the petitioner. The order of punishment suffers from non-application of mind and unreasonableness. The disciplinary authority failed to see that there is no role played by the charged officer in both preparation and passing of bills for payment and therefore, cannot be implicated for fraudulent drawal.

b) The charged officer questioned the G.O Rt. 877, and approached the Tribunal by way of O.A.No.2685 of 2006, which was dismissed on 04.12.2008 stating that the inquiry was conducted in accordance with the rules and no prejudice has been caused to the employee and that the case of the petitioner doesn't warrant any interference. The petitioner again approached the Government and submitted various representations seeking the consideration inspired by the events that have subsequently taken place in respect of the other charged employees i.e. one Smt. Sofiya, who was initially punished with stoppage of two years increments with cumulative effect and later converted into stoppage of one increment with no cumulative effect and that of one V. Babu Rao, who was initially reduced in rank from the post of AO to ATO and later converted into withholding of 2% pension for one year and that of one Saleem Raza, who was also initially given the punishment of stoppage of two increments with cumulative effect and then converted into stoppage of one increment with no cumulative effect and that of one S.Kommaiah, who was initially punished with withholding

of 30% pension permanently and after the High Court quashed the order of punishment in WP.No.28523/2009 on 13.07.2017, which was converted into withholding of 2% pension for one year. The petitioner stated that he also deserves a similar benefit since he is better placed than those officers as he was not involved in the preparation and passing of the bills nor sanctioned the bills. It is submitted that the petitioner's representation was considered by the 2nd Respondent and recommended to the 1st respondent in letter no. G2/4013/2018, dated 23.10.2018 to reconsider the case and to impose punishment of 2% cut in the pension for one year on par with the case of Kommaiah, decided on 13.07.2017 in WP.No.28523/2009. But, the Government issued Memo No.2756-A/145/DTA/C/2018, dt.12.02.2019 rejecting to interfere with the punishment imposed on the petitioner. Aggrieved by the same, the petitioner filed WP. No. 7815/2019 before the High Court seeking to quash the order of punishment imposed in G.O.Rt.No.877, dated 13.03.2006 and also to set aside the memo dated 12.02.2019. Unfortunately, the petitioner's counsel omitted to challenge the order of the Tribunal in OA.No.2685/2006, dated 04.12.2008, when the W.P.No.7815 of 2019 came up for hearing on 30.12.2021, the same was withdrawn with liberty to file fresh writ petition. Therefore, this writ petition is filed.

6. The respondents filed counter contending as follows:

The Government after examination of the inquiry report and after following due procedure awarded punishment of withholding 30% of pension vide G.O.Rt.No.877 of Finance (Admn-I VIG) Department, dated 13.03.2006 and that the petitioner has not chosen to prefer review petition as provided under Rule 38 of APCS (CC& A) Rules, 1991 and directly challenged the said GO before the Tribunal vide O.A.No.268 of 2006, which was dismissed on 04.12.2008. That the impugned proceedings are in accordance with law. It is further stated in the counter that the petitioner has passed the bills in contravention of the audit rules though they are not admissible for the reason that the sanction for the expenditure was accorded by the DTO, who was not the competent authority to do so. It is submitted that based on the inquiry report submitted by the Regional Joint Director, Region III, the Director of Treasuries and Accounts has initiated disciplinary action against the in service personnel and forwarded the case of the petitioner, who retired from service and that the Government has initiated departmental proceedings under Rule 9 of A.P. Revised Pension Rules, 1980 against the petitioner and framed charges vide G.O.Rt.No.829 Finance (Admn.I VIG), Department, dated 18.02.2004 appointing G.Vijay Kumar, Joint Director as Inquiry Officer. The Inquiry Officer conducted inquiry and held all the charges proved against the petitioner and submitted report to the Government. After examination of the Inquiry report, the Government awarded punishment of withholding of 30% in pension vide G.O.Rt.No.877, Finance (Admn.-I VIG), Department, dated 13.03.2006. Sri S.Kommaiah, ATO (retired), who was charged in the said case filed W.P.No.28523 of 2009 before the A.P. High Court against the orders issued in G.O.Rt.No.876, dated 13.03.2006 as well as the

orders of the Tribunal dated 06.11.2009 in O.A.No.2206 of 2006 and in the said writ petition punishment of imposing 30% cut of pension was quashed and consequently, the Government issued G.O.Rt.No.1212, Finance (VC) Department, dated 24.09.2018 modifying the punishment imposed on him to withhold 2% cut of pension for a period of one year. But the petitioner has not chosen to prefer any review petition as provided under Rule 38 of APCS (CC&A) Rules, 1991 to the Government and directly approached the Tribunal and hence, the Tribunal dismissed the said OA. That the impugned proceedings are in accordance with law. The mercy petition dated 14.03.2011 of the petitioner was rejected vide Memo No.10066/343/A1/Admn.I/2015, of Finance (Admn-I) Department, dated 26.08.2015 as there are no new grounds.

7. The main contentions of learned counsel for the petitioner are as follows:

1) The order of punishment imposed by the Tribunal is non application of mind and also unreasonableness.

2) The disciplinary authority failed to see that there is no role played by the petitioner either in preparation of the bills or in passing of the same for payment.

3) The petitioner cannot be implicated for fraudulent drawal of bills since they were prepared and passed by the ATO.

4) The petitioner's case unfortunately did not receive favourable consideration before the Tribunal and also before the Government.

5) In view of the fact that the case of all other employees, who involved in the similar allegations were reconsidered and were imposed with lightest punishment and hence, the petitioner's case also deserves a similar benefit. The petitioner had no involvement at all in preparation of the bills and passing of the same since the bills were not prepared by the petitioner or were sanctioned by the petitioner.

6) The petitioner's case is clear case of discrimination and the impugned order of punishment is violative under Article 14 of the Constitution of India and opposed of doctrine of equality, as such the petitioner is also entitled for the same relief.

7) Though the 2nd respondent considered petitioner's representation and recommended to the 1st respondent (Government) vide letter No.G2/4013/2018, dated 23.10.2018 to consider the petitioner's case and impose punishment of 2% cut in the pension for one year on par with the case of Kommaiah decided in W.P.No.28523 of 2009, dated 13.07.2017, but the Government mechanically issued Memo No.2756-A/145/DTA/VC/2018, dated 12.02.2019 rejecting to interfere with the punishment imposed on the petitioner.

8) The order of the High Court dated 13.07.2017 passed in W.P.No.28523 of 2009 is squarely applicable to the case of the petitioner and therefore, the order of punishment in G.O.Rt.No.877, dated 13.03,2006 is liable to be quashed entirely and the writ petition is liable to be allowed as prayed for.

8. Learned Government Pleader mainly contended as follows:

1) Based on the preliminary inquiry report submitted by the Regional Joint Director, Region III, the Director of Treasuries and Accounts has initiated disciplinary action against the in-service personnel and forwarded the case to Government in respect of the employees retired from service.

2) The Government initiated departmental proceedings under Rule 9 of Andhra Pradesh Revised Pension Rules, 1980 against the petitioner and charges were framed against the petitioner vide G.O.Rt.No.829, dated 18.03.2004.

3) Sri G.Vijay Kumar, Joint Director and Inquiry Officer had held that all the charges framed against the petitioner are proved and the Government after examination of inquiry report and after following due procedure had awarded a punishment of withholding 30% in pension permanently to the petitioner vide G.O.Rt No.877 (Finance (Admn.I.VIG) Department, dated 13.03.2006.

4) The punishment awarded was conclusion of disciplinary proceedings and the punishment was reduced in respect of the other charged officers at the stage of appeal or review by the Government, after examination of the material adduced at the time of appeal. But the petitioner had not chosen to prefer review petition to the Government as provided under Rule 38 of the A.P.C.S(CC&A) Rules, 1991 and directly challenged the orders before the Tribunal in O.A.No.2685 of 2006, wherein orders were passed on 04.12.2008 observing that the impugned proceedings are in accordance with law and the OA is accordingly dismissed and therefore, the Government had rejected the mercy petition of the petitioner.

5) Learned Government Pleader relied upon the judgment dated 12.08.2015 of the Division Bench of A.P. High Court in W.P.No. 28539 of 2014 following judgment in Mubashir Hussain v Commissioner of Central Excise-III, Hyderabad and others 2004(7) ALT 289 (289) held that a party to the proceedings before the APAT does not approach the High Court concerned within one year period or at any rate within three years period, such writ petitions cannot be entertained in normal course, unless an exceptional case is made out for entertaining any such writ petition.

6) Learned Government Pleader also relied on the judgment of the Apex Court in Jagdish Lal and others v State of Haryana and others 1997(6) SCC 538 wherein it was held that the delay disentitles a party to discretionary relief under Article 226 or the Article 32 of the Constitution of India.

9. Perused the material available on record.

10. Para 9 of the counter affidavit reads as under:

"It is respectfully submitted that Sri S.Kommaiah, ATO (Rtd), who is also a Charged Officer in this case, filed a W.P.No.28523 of 2009, in the Hon'ble AP High Court against the orders issued vide G.O.Rt.No.876, dated 13.03.2006 as well as the orders of the Hon'ble APAT dated 06.11.2009 in O.A.No.2206 of 2006. The

Hon'ble High Court of Judicature at Hyderabad, vide order W.P.No.28523 of 2009, dated 13.07.2017, quashed the orders imposing 30% cut of pension in r/o Sri S.Kommaiah, Assistant Treasury Officer (Rtd). And consequently Government, vide, G.O.Rt.No.1212, Finance (VC) Department, dated 24.09.2018 have modified the punishment to withholding of 2% cut in pension for a period of (01) year. But the petitioner has not chosen to prefer review petition in the matter to the Government as provided under Rule 38 of APCS (CC&A) Rules, 1991 and directly challenged the orders in the Hon'ble APAT in the O.A.No.2685 of 2006, which has the OA on merits, wherein orders were passed, dated 04.12.2008, stating that the 'impugned proceedings are in accordance with law and the O.A., is accordingly dismissed.' And accordingly Government have rejected the mercy petition of the petitioner."

11. As per the counter affidavit filed by the respondents the only ground for denial of relief to the petitioner is that O.A. No.2685 of 2006 was decided on merits wherein orders were passed on 4.12.2008 stating that the impugned proceedings are in accordance with law and OA is accordingly dismissed and that the petitioner has not chosen to prefer review petition in the matter to the Government as provided under Rule 38 of APCS (CC&A) Rules 1991.

12. This Court opines that the judgments relied upon by the Learned Government Pleader appearing on behalf of the respondents do not apply to the facts and circumstances of the present case in view of the fact that the petitioner explained the circumstances under which he approached this Court by filing the present writ petition in detail in the affidavit filed in support of the petition. That apart, the petitioner is a retired government employee with attendant life complications. Further the petitioner seeks relief on parity. It would be wholly incongruous if similar benefits being enjoyed by identically placed persons are denied to the petitioner only on the ground of delay. In such a fact situation the maxim 'delay defeats justice' would not apply. Therefore, the petitioner cannot be denied relief on the ground of delay.

13. A bare perusal of contents of letter of Director, Treasuries and Accounts Department, Telangana State to the Secretary to Government (CVO) Finance (VC) Department, Telangana State Secretariat, Hyderabad vide letter No.G2/4013/2018, dated 23.10.2018 clearly indicates that the 2nd respondent recommended the case of the petitioner to the 1st respondent duly considering the representation of the petitioner and requested the 1st respondent to consider the mercy petition of the petitioner for necessary orders in the light of the judgment of High Court in a similar case referring to case of one Sri S.Kommaiah, ATO (retired), who is also a charged officer in this case and who had filed W.P.No.28523 of 2009, before the High Court of Andhra Pradesh against the orders issued in G.O.Rt.No.876, dated 13.03.2006 as well as the orders of the Tribunal dated 06.11.2009 in OA No.2206 of 2006 and the High Court vide its orders dated 13.07.2017 passed in W.P.No.28523 of 2009 quashed the GO imposing 30% cut of pension and consequently, vide G.O.Rt.No.1212 Finance

(Vigilance Cell) Department, dated 24.09.2018 the punishment was modified to withholding of 2% cut in pension for a period of one year.

14. The proceedings dated 23.10.2018 clearly observed as under:

"In view of the above, I am herewith forwarding the mercy petition of Sri S.M.P.M.Hashmi, STO (Rtd) for further necessary orders in the light of judgment of Hon'ble High Court in the same case based on which the punishment was reduced to 2% cut for (01) year. Similar relief/reduction may be permitted to the applicant as it involves procedural violation and no financial loss to Government on humanitarian grounds."

15. In spite of a clear recommendation in favour of the petitioner by the 2nd respondent vide his letter No.42/4013/2018, dated 23.10.2018 addressed to the 1st respondent, which very clearly observed that similar relief – reduction may be permitted to the applicant as it involves procedural violation and no financial loss to government on humanitarian grounds yet the 1st respondent passed a very cryptic, unreasoned order vide Memo No.2756-A/145/DTA/VC/2018, dated 12.02.2019, this Court opines that failure to give reasons amounts to denial of justice.

16. The Apex Court in Gurusharan Singh v New Delhi Municipal Committee and others 1996 SCC (2) 459, at para 9 of the said judgment observed as under:

"before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination".

17. This Court opines that the disciplinary authority and also APAT in its order dated 04.12.2008 in O.A.No.2685 of 2006 failed to take into account the categorical statement made by the petitioner in the writ petition that he has no authority to sanction the bills since he is only a sub-treasury officer and that the bills are prepared by the District Treasury Officer and are passed by the Assistant Treasury Officer and as such the petitioner is not responsible for both preparing and passing of bills for payment and the said statement has also not been categorically denied by the respondents in their counter affidavit. Undoubtedly the above factors are relevant to be taken into account while awarding punishment which has not been taken into account in the present case. The respondents even failed to explain the justification in denying the grant of relief to the petitioner as extended to the petitioner in W.P.No.28523 of 2009 in the counter affidavit filed by them, having admitted in the counter affidavit that the same was granted to one Sri Kommaiah in similar circumstances. It is also borne on record that different punishments have been awarded to similarly situated persons and the same constitutes clear discrimination and therefore, the writ petition is liable to be allowed, since the treatment meted out to the writ petitioner suffers from the vice of arbitrariness and this Court opines that Article 14 of the Constitution of India forbids any arbitrary action which would tantamount to denial of equality as guaranteed by Article 14 of the Constitution

of India.

18. The petitioner's case is based on equality clause and the petitioner has established before the Court that his claim is just and legal, but however, the same has been denied to him, while it has been extended to others and in this process there has been discrimination. Therefore, the petitioner is entitled for the same benefit as extended to the petitioner in W.P.No.28523 of 2009 on the ground of equality of treatment with person's similarly situated.

19. Accordingly, the writ petition is allowed as prayed for. There shall be no order as to costs.

20. Pending miscellaneous applications, if any, shall stand closed.