

**(2014) 07 AP CK 0007**

**In the Andhra Pradesh High Court**

**Case No : Writ Appeal No. 1543 of 2013**

Society for Training and Employment Promotion (Step)

APPELLANT

Vs

A. Shakar

RESPONDENT

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**Date of Decision :** 18-07-2014

**Acts Referred:**

**Citation :** (2014) 07 AP CK 0007

**Hon'ble Judges :** L.N. Reddy, J;Challa Kodanda Ram, J

**Bench :** Division Bench

**Advocate :** Gangula Ashok Kumar Reddy, SC, Advocate for the Appellant; S. Satyam Reddy, Sr. Counsel for K.V. Rajasree, Advocate for the Respondent

**Final Decision :** Disposed Off

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## **Judgement**

L. Narasimha Reddy, J.—The sole respondent herein is the Junior Assistant in the appellants-society. Disciplinary proceedings were initiated against him by issuing a charge sheet, dated 27.03.2001 containing 14 charges. The explanation submitted by the respondent was found not satisfactory. An enquiry officer was appointed and through his report, dated 02.11.2002, he held that 7 out of 14 charges were proved. Taking the same into account, the disciplinary authority passed an order, dated 05.01.2003, dismissing the respondent from service. Challenging the same, the respondent filed W.P. No. 1639 of 2003. He pleaded that the enquiry was conducted in contravention of the prescribed procedure and settled principles of law and that no witnesses whatever were examined to prove the charges. Certain other contentions were also urged.

2. The writ petition was opposed by the appellants. They filed a counter affidavit stating that the enquiry was conducted in accordance with law. It was also stated that on a representation made by the respondent, a further enquiry was conducted and in his report, dated 30.09.2009, the enquiry officer found that the charges are proved.

3. Through order, dated 31.12.2012, the learned Single Judge allowed the writ

petition. The order of dismissal was set aside and the respondent was directed to be reinstated into service. The relief of payment of backwages was also granted. However, it was left open to the appellants to conduct fresh enquiry into the charges, if they are so advised. This writ appeal is filed challenging the said order.

4. Heard learned counsel for the appellants and learned counsel for the respondent.

5. A cursory look at the various proceedings discloses that the appellants were totally unaware of the procedure to be followed in the disciplinary matters. As many as 14 charges were framed against the respondent in the charge sheet. The very fact that an enquiry officer was appointed discloses that the explanation submitted by the respondent was found to be not satisfactory. It is for the employer to prove the charges framed against an employee. In the instant case, a list of several witnesses was furnished before the enquiry officer. However, none of them were examined nor any documents were made part of the record. Obviously on account of his experience, the enquiry officer proceeded in a way, which he thought proper and recorded findings to the effect that 7 charges are proved. Accepting the same, the disciplinary authority passed an order, dated 05.01.2003 dismissing the respondent from service.

6. A peculiar development in the case is that on a representation submitted by the respondent to Revenue Minister, a report was called for from the District Collector and he in turn caused enquiry akin to the departmental enquiry. On 30.09.2009, an enquiry report is said to have been submitted. All this was even while the order of dismissal was in force.

7. Learned Single Judge took note of these abnormalities of the case and has set aside the order of dismissal. To be fair to the appellants, an opportunity was given to them to proceed with the enquiry, if they are so advised. To that extent, we do not find any defect in the order under appeal.

8. In addition to granting the relief of reinstatement, learned Single Judge directed payment of backwages to the respondent. We find it difficult to sustain that. Had it been a case where the charges framed against the respondent were found not proved, even by undertaking the re-appreciation of evidence, such a direction could have been issued. Once the enquiry is directed to be held, the manner in which the period between the date of dismissal and the date of reinstatement must be treated has to be left to be dealt with by the disciplinary authority. We derive support for this from the judgment of the Hon'ble Supreme Court in *Managing Director, Electronic Corporation of India Vs. B. Karunakar*, .

9. We therefore partly allow the writ appeal, setting aside that portion of the order through which the learned Single Judge directed payment of backwages. We direct that the question as to payment of backwages or the manner in which the period between the date of dismissal and the date of reinstatement must be treated shall be dealt with by the disciplinary authority in the on going proceedings.

10. It is brought to our notice that though the respondent is reinstated into service, he is being paid emoluments on the basis of the last pay drawn by the time of his dismissal. This is not disputed by the learned counsel for the appellants. Such payment is improper and contrary to law. We direct that the respondent shall be paid the salary on par with the employees of similar nature, ignoring the fact that he was out of service from 2003.

11. The miscellaneous petition filed in this writ appeal shall also stand disposed of. There shall be no order as to costs.