
(1998) 09 AP CK 0091
In the Andhra Pradesh High Court
Case No : W.P.No. 16268 of 1995

Srinivasan

APPELLANT

Vs

Hon"ble Upa Lokayukta of A.P. and Another

RESPONDENT

Date of Decision : 15-09-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 6 ALD 289 : (1998) 5 ALT 621

Hon'ble Judges : Y.V. Narayana, J; Motilal B. Naik, J

Bench : Division Bench

Advocate : Mr. K. Somakonda Reddy, for the Appellant; Mr. M.V.S. Suresh Kumar, for the Respondent

Judgement

MOTILAL B. NAIK, J

1. The writ of Prohibition or any other writ or order directing the first respondent not to proceed further with investigation into the Complaint No.747 of 1993 is sought from this Court invoking the jurisdiction of this Court under Article 226 of the Constitution of India by the petitioner.

2. According to the petitioner he retired as Joint Director, Agricultural Department on 31-5-1993. On the basis of the complaint made by the second respondent to the first respondent on 4-3-1993, the first respondent issued notice in Form No.VII requiring the petitioner to submit his reply to the notice issued in Form No.VII. Petitioner has submitted reply to the first respondent on 8-11-1994 and 11-11-1994.

3. In the reply filed by the petitioner, two principal objections were raised by him. The one being that since he has retired from service, no proceedings could be initiated against him and the second being that the allegation on which the present enquiry is sought to be made against the petitioner has already been enquired into in the enquiries held by the various authorities and that as required under Rule 4 (4) (g) of the A.P. Lokayukta and Upa-Lokayukta Rules, 1984 (for

short "the Rules") if on the same issues enquiry has been held by earlier authorities, the complaint has to be rejected in limini.

4. The learned Counsel for the petitioner Sri K. Soma Kondareddy states that insofar as the first objection is concerned in view of the law laid down by this Court in *The Lokayukta for Andhra Pradesh Vs. Dr. B. Seshadri*, , the first objection cannot be sustained as the Division Bench of this Court held that even against the retired employees the investigation could be commenced provided the complaint has been lodged during his tenure in the office. Since the complaint was filed against the petitioner when he was serving as Joint Director, he is not pressing the first objection. Insofar as the second objection is concerned, the learned Counsel for the petitioner says that as required under Rule 4 (4) (g) of the Rules, when the petitioner has filed an objection before the Upa-Lokayukta first respondent herein u/s 11(2) (d) of A.P. Act No.11 of 1983 seeking summoning of the records in which details have been indicated in the petition, the first respondent ought to have summoned the records as pleaded by him in the miscellaneous application which was filed in the year 1995 so as to satisfy himself whether on the very same allegations various departments have made enquiries and certain orders have been passed. The learned Counsel also states that though the application was filed seeking calling for the records, the first respondent has failed to act upon the application, but, however, through the impugned order, the first respondent found fault with the petitioner as if the petitioner is in custody of such records and deliberately failed to place such records. The learned Counsel for the petitioner, therefore, states that the petitioner who is retired from service is not in possession of those records enlisted in the application.

5. In normal circumstances, when application is filed, the first respondent ought to have called for the records and satisfied himself by verifying the records and if the first respondent was not satisfied that the allegations made in the present application are not similar to the enquiries made by the earlier authorities, it could have been open to him to proceed to make enquiries against the petitioner according to law. The learned Counsel, therefore, states that the order impugned has to be set aside on this ground alone remitting the matter to the first respondent with a direction to call for the records as enlisted in the miscellaneous petition filed by the petitioner in the year 1995 and further scrutiny the records and ascertain whether the plea of the petitioner is correct or not.

6. We have Sri Suresh Kumar, learned Counsel for the respondent No. 1. The learned Counsel tried to justify the order passed by the first respondent contending that when an enquiry sought to be made against the petitioner, it is for him to place such material justifying the benefit which the petitioner is entitled to under Rule 4(4)(g) of the Rules and therefore pleads that the order of the first respondent who has given cogent reasons is valid. and no interference is called for.

7. It is no doubt, true that when a complaint is filed against the delinquent

officer, on such complaint enquiry is contemplated, if the delinquent officer has such material to show that on the very same allegation earlier enquiries were held, it would be open to him to place such material in order to reap the benefit under Rule 4 (4) (g) of the Rules. In certain cases where the delinquent officer is retired by the time the enquiry commenced though the complaint has been filed much earlier, we are probably inclined to say that it would be difficult for the delinquent officer to get all such records of earlier investigation and place it before the inquiring authority such as the first respondent. When an application is filed calling for the records, in the set of plea raised by the petitioner, the first respondent in our considered view, ought to have sought the records from the various departments as enlisted in the application and satisfy himself whether the plea put forth by the petitioner is justified or not. In this case, the first respondent probably thought it fit that the burden is on the petitioner to place the entire material. It shall be remembered, in certain circumstances, the burden cannot be shifted on the petitioner or the complainant himself or herself but the forums have to see reasons and lend proper assistance to the parties who litigate before it. If the Rule 4 (4) (g) is to be construed to hold that the burden lies on the petitioner who seeks voluminous documents from other agencies on which the petitioner has no control at all we are of the view, the effect would be frustrating the benefit given to the litigant party before these forums. We, therefore, hold that the first respondent in all probability ought to have called for the records as sought by the petitioner and ought to have satisfied himself whether the plea taken by the petitioner is correct or not. If the plea taken by the petitioner is found to be incorrect after verification of facts, it would have been open to the first respondent to proceed with the matter according to Law.

8. In this view of the matter, we set aside the order of the Upa Lokayukta on this ground alone and remit the matter to the first respondent with a direction to call for the records as sought by the petitioner in the miscellaneous petition filed by him in the year 1995, on which apparently no orders seem to have been passed by the first respondent and verify whether the plea taken by the petitioner is genuine or not. In the opinion of the first respondent, after procuring the records, the plea taken by the petitioner not found to be genuine, it is open to the first respondent to proceed against the petitioner according to law.

9. The writ petition is accordingly allowed. No costs.