

(2009) 11 AP CK 0054

In the Andhra Pradesh High Court

Case No : Writ Petition No. 8000 of 2009

State of A.P. and Others

APPELLANT

Vs

P. Rajasekhar and Others

RESPONDENT

Date of Decision : 17-11-2009

Acts Referred:

Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 — Rule 19, 19(3), 20, 21, 22
Constitution of India, 1950 — Article 311(2)
Criminal Procedure Code, 1973 (CrPC) — Section 313, 389
Penal Code, 1860 (IPC) — Section 329
Prevention of Corruption Act, 1988 — Section 5(1)

Citation : (2010) 1 ALT 468

Hon'ble Judges : Vilas V. Afzulpurkar, J;V. Eswaraiyah, J

Bench : Division Bench

Advocate : G.P. for Services I and II, for the Appellant; Venkateswar Varanasi, M. Viswanadham, K.R. Prabhakar, S.R. Sanku, N. Ashok Kumar, Harinath Reddy Soma, Lakshmi D.S., D. Bala Kishan Rao, D. Linga Rao, K. Ram Reddy, V. Venugopal Rao, M. Venkata Narayana, P.V. Ramana, P. Revathi, K. Venkaresh Gupta, S. Gopal Rao, Ch. Ganesh, Srinivasa Rao Bodduluri, A. Sreedhar, Subba Rao Korrapati, for the Respondent

Final Decision : Allowed

Judgement

Vilas V. Afzulpurkar, J.—In this batch of cases, the question involved is regarding the authority of the State/Disciplinary Authority to impose penalty on a Government servant, based upon his conduct leading to his conviction on a criminal charge, as provided under Rule 25 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (hereinafter referred to as CCA Rules). The said issue is no more res integra in view of the pronouncements of the Supreme Court in Deputy Director of Collegiate Education (Administration), Madras Vs. S. Nagoor Meera, ; Union of India (UOI) Vs. V.K. Bhaskar, ; Union of India and others Vs. Ramesh Kum, ; K.C. Sareen Vs. C.B.I., Chandigarh, ; Haryana State Coop. Supply and Marketing Federation Ltd. v. N.K. Sharma 1997

SCC (L & S) 1766; Noida Entrepreneurs Assn. v. Noida (2007) 10 SCC 385 : 2007 (4) SCJ 839 : 2008 (1) ALT 4.1 (DNSEC); apart from a Division Bench judgment of this Court in Municipal Corporation of Guntur Vs. B. Syamala Kumari and Another, .

2. One such matter involving the same issue was decided by the Andhra Pradesh Administrative Tribunal (APAT) by order dated 19.04.2007 in O.A. No. 2206 of 2007 whereunder the order of the State in G.O.Ms. No. 91 Finance (ADM-III) Department dated 16.04.2007 dismissing the employee from service by invoking Rule 25(i) of the Rules referred to above was upheld. The said employee preferred W.P. No. 16102 of 2007 before this Court. The said writ petition was allowed by another Division Bench by order dated 07.08.2007 holding, inter alia, that though the petitioner was dismissed in view of his conviction in C.C. No. 34 of 2002 on the file of the Special Judge for SPE and ACB cases, City Civil Court, Hyderabad, a criminal appeal being Crl.A. No. 371 of 2007 was filed against the said judgment before this Court and the sentence of imprisonment imposed by the learned Special Judge was suspended by this Court vide Crl.A. M.P. No. 497 of 2007 dated 29.03.2007. This Court, therefore, held that in view of the pendency of the criminal appeal as well as the suspension of sentence imposed by the ACB Court, the judgment passed by the ACB Court has not become final, therefore, passing of G.O.MS. No. 91 at this stage amounts to violation of the special procedure as laid down under Rule 25 of the CCA Rules and thereby the same is hit by principles of subjudice and consequently the order of the tribunal as well as the G.O.Ms. No. 91 dated 16.04.2007 referred to above was set aside. Neither the petitioner nor the respondent appears to have brought to the notice of the aforesaid Division Bench; the decisions of the Supreme Court referred to above.

3. Based on the aforesaid pronouncement of the Division Bench in the aforesaid WP. No. 16102 of 2007, the APAT has allowed several of the OA's involved in this batch and set aside the order of dismissal by holding that in view of the pendency of the criminal appeal and the suspension of sentence, the order of dismissal is not sustainable. Consequently, while setting aside the said dismissal order the tribunal directed the State to reinduct the applicants forthwith with a liberty to pass appropriate orders leaving it open for Government to keep the applicants under suspension under Rule 8(2)(b) of the CCA Rules. The aforesaid orders are questioned by the State in this batch of writ petitions.

4. For the purpose of appreciating the contentions and the issue involved, as briefly referred to above, the facts in WP. No. 8000 of 2009 are as under:

(a) The respondent herein was working as a Bill Collector in Nizamabad Municipal Corporation. He was involved in ACB trap case out of which C.C. No. 41 of 2003 was registered with the Principal Special Judge for SPE and ACB Cases Hyderabad. Under judgment dated 17.03.2008 the respondent was convicted and against the said conviction he preferred an appeal before this Court being Crl.A. No. 469 of 2008. Pending the said criminal appeal by orders of this Court

dated 10.04.2008 in CrI.A.MP. No. 695 of 2008, the sentence imposed on the respondent in C.C. No. 41 of 2003 was suspended. However, in view of the conviction of the respondent, the petitioners vide proceedings bearing No. Rc.A3/2347/2000 dated 28.05.2008 passed orders of dismissal against the respondent. Questioning the said orders, the respondent filed O.A. No. 4088 of 2008 before APAT. The respondent relied upon the decision of this Court in WP. No. 16102 of 2007 dated 27.08.2008 referred to above by contending that he is also similarly placed and the dismissal order is liable to be set aside following the said decision.

(b) The petitioners resisted the contention of the respondent by placing reliance upon the decision in Deputy Director of Collegiate Education (Administration), Madras Vs. S. Nagoor Meera, as well as Union of India and others Vs. Ramesh Kum, and also relied upon another unreported decision of this Court in WP. No. 13421 of 2006 and batch dated 27.09.2006 in support of the contention that disciplinary authority need not wait till the criminal appeal preferred by the Government servant is disposed of and notwithstanding the pendency of the appeal and suspension of the sentence, the disciplinary authority can pass an order of dismissal against the convicted employee.

(c) The tribunal, however, has followed the decision of this Court in WP. No. 16102 of 2007 referred to above and set aside the order of dismissal passed against the respondent with liberty to the petitioners to invoke Rule 8(2)(b) of the CCA Rules, if they so desire, whereby the petitioners can suspend the Government employee pending appeal. The said order, as stated above, is under challenge in this writ petition.

5. We have heard the learned Government Pleader for Services I in support of the writ petitioners and M/s. D. Linga Rao, Mr. K. Subba Rao, Mr. P.V. Ramana, Mr. D. Bala Kishan Rao and Mr. V. Venugopal Rao, Advcoates, the learned Counsel appearing for the respondents in this batch of cases.

6. As mentioned in the opening paragraph, since the issue is already covered by the decisions of the Supreme Court and a reported decision of a Division Bench of this Court, the said Division Bench has elaborately extracted all the relevant rules relating to the issue and has also discussed the ratio of the decisions of the Supreme Court referred to above. We, therefore, do not propose to burden this judgment with all the said details all over again. We may also mention that the decision of another Division Bench of this Court in WP. No. 16102 of 2007 was also cited before yet another Division Bench in Chief Rationing Officer and Another Vs. T.V. Rama Sarma, , which also considered the self-same issue as we are now concerned with. The said Division Bench was of the view that had the various decisions of the Supreme Court and the reported decision of the Division Bench of this Court were brought to the notice of the later Division Bench which decided WP. No. 16102 of 2007, the decision of the later Division Bench would have been otherwise. Their Lordships, therefore, allowed the writ petition by applying the ratio of Nagoor Atom's (1995) 3 SCC 977 and K.C. Sareen Vs.

C.B.I., Chandigarh, referred to above and upheld the order of dismissal passed against the Government servant.

7. The said Division Bench judgment in Chief Rationing Officer and Another Vs. T.V. Rama Sarma, was not brought to the notice of APAT in the present batch of cases leading to the impugned judgments being passed by the tribunal by following the decision in WP. No. 16102 of 2007.

8. We would briefly indicate the Rule, which empowers the disciplinary authority to impose punishment on the Government servant based upon his conduct leading to his conviction in a criminal case. Rule 25 of the CCA Rules is extracted below:

Rule 25. Special procedure in certain cases:

Notwithstanding anything contained in Rule 20 to Rule 24-

(i) Where penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or

(ii) Where the disciplinary authority is satisfied for reasons to be recorded it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or

(iii) Where the Government is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these Rules,

the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:

Provided that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule.

[Provided further that no such consultation with the Commission is necessary before any orders are made in any case under Clause (i) of this rule.]

Rule 8(2)(b) of the CCA Rules is as follows:

"Rule 8. Suspension:

(1)...

(2) A Government servant shall be deemed to have been placed under suspension by an order of the authority competent to place him under suspension-

(a)

(b) with effect from the date of his conviction if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired

consequent to such conviction.

Rule 9 provides for minor and major penalties and the relevant portions of Rule 9(ix) and (x) together with proviso are as follows:

Rule 9. Penalties:

(i) to(viii)...

(ix) removal from service which shall not be a disqualification for future employment under the Government;

(x) dismissal from service which shall ordinarily be a disqualification for future employment under the Government:

Provided that, in every case in which the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is established, the penalty mentioned in [Clause (ix) or Clause (x)] shall be imposed;

Provided further that in any exceptional case and for special reasons to be recorded in writing, any other penalty may be imposed.

9. The aforesaid Rule 25 of the CCA Rules originally contained the proviso after Clause (iii) which was as follows:

Provided that the Government servant may be given an opportunity of making representation, on the penalty proposed to be imposed before any order is made in a case under Clause (ii)

The second proviso thereof is as follows:

Provided further that the commission shall be consulted, where such consultation is necessary, before any orders are made in any case under these Rules.

Both the aforesaid provisos were amended and vide G.O.Rt. No. 6421 GA (Ser-C) Department dated 29.12.1993 the first proviso was deleted and vide further amendment under G.O.Ms. No. 240 GA (Ser-C) Department dated 14.08.2003 the second proviso shown above was added, which says as follows:

Provided further that no such consultation with the commission is necessary before any orders are made under Clause (i) of this Rule.

10. Article 311(2) of the Constitution of India provides as follows:

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.-

(1)...

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of

those charges:

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply -

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

11. In *Deputy Director of Collegiate Education (Administration), Madras Vs. S. Nagoor Meera*, the Supreme Court held as follows:

...The tribunal seems to be of the opinion that until the appeal against conviction is disposed of, action under Clause (a) of Second proviso to Article 311(2) is not permissible. We see no basis or justification for the said view. The more appropriate course in all such cases is to take action under Clause (a) of the second proviso to Article 311(2) once a government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be. If, however, the Government servant-accused is acquitted on appeal or other proceeding, the order can always be revised and if the government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service. The other course suggested, viz., to wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a criminal court....

What is really relevant thus is the conduct of the government servant which has led to his conviction on a criminal charge.... Until the said conviction is set aside by the appellate or other higher court, it may not be advisable to retain such person in service....

12. In *V.K. Bhaskar's case* (1997) 11 SCC 838 the Supreme Court disapproved the view of the tribunal in holding that the respondent could not be dismissed invoking the provisions of Rule 19(i) because the appeal filed by him against conviction and sentence is pending in the High Court.

13. In *Union of India and others Vs. Ramesh Kum*, the Supreme Court held at para 6 as follows:

6. A bare reading of Rule 19 shows that the Disciplinary Authority is empowered

to take action against a government servant on the ground of misconduct which has led to his conviction on a criminal charge. The rules, however, do not provide that on suspension of execution of sentence by the Appellate Court the order of dismissal based on conviction stands obliterated and dismissed Govt. servant has to be treated under suspension till disposal of appeal by the appellate Court. The rules also do not provide the Disciplinary Authority to await disposal of the appeal by the Appellate Court filed by a government servant for taking action against him on the ground of misconduct which has led to his conviction by a competent Court of law. Having regard to the provisions of the rules, the order dismissing the respondent from service on the ground of misconduct leading to his conviction by a competent Court of law has not lost its string merely because a criminal appeal was filed by the respondent against his conviction and the Appellate Court has suspended the execution of sentence and enlarged the respondent on bail. This matter may be examined from another angle. u/s 389 of the Code of Criminal Procedure, the appellate Court has power to suspend the execution of sentence and to release an accused on bail. When the appellate Court suspends the execution of sentence, and grants bail to an accused the effect of the order is that sentence based on conviction is for the time being postponed, or kept in abeyance during the pendency of the appeal. In other words, by suspension of execution of sentence u/s 389 CrPC an accused avoids undergoing sentence pending criminal appeal. However, the conviction continues and is not obliterated and if the conviction is not obliterated, any action taken against a government servant on a misconduct which led to his conviction by the Court of law does not lose its efficacy merely because Appellate Court has suspended the execution of sentence. Such being the position of law, the Administrative Tribunal fell in error in holding that by suspension of execution of sentence by the appellate Court, the order of dismissal passed against the respondent was liable to be quashed and the respondent is to be treated under suspension till the disposal of Criminal Appeal by the High Court.

14. In Haryana State Coop. Supply and Marketing Federation Ltd.'s case 1977 SCC (L & S) 1766 following the ratio of Deputy Director of Collegiate Education (Administration), Madras Vs. S. Nagoor Meera, the Supreme Court held as follows:

2. We have heard the learned Counsel for the parties. The High Court was in error in holding that since revision petition was pending the appellant could not take action against the respondent employee under Rule 19(3) of the Rules on the basis of his conviction for offences involving moral turpitude. The fact that the criminal revision petition had been filed by the respondent employee and the same was pending in the High Court does not mean that the appellant was precluded from taking action under Rule 19(3) of the Rules. This matter has been examined recently by this Court in Deputy Director of Collegiate Education (Administration), Madras Vs. S. Nagoor Meera, , In that case the Court has considered Clause (a) of the proviso to Article 311(2) of the Constitution which prescribes for dispensing with the requirement of giving reasonable opportunity

to an employee where the employee is dismissed or removed or reduced in rank on the ground of conduct which hassled to his conviction on a criminal charge. The Court has held that merely because an appeal has been filed against the conviction by the employee does not mean that the conviction is suspended during the pendency of the appeal and that suspension of sentence has to be distinguished from suspension of conviction and that it is open to the competent authority to proceed against the government servant during the pendency of the appeal. It has, however, been laid down that if the government servant is later acquitted the order can always be revised and the government servant can be reinstated and he will be entitled to all the benefits to which he would have been entitled to had he continued the service. The same principle is applicable in the matter of exercise of powers under Rule 19(3) of the Rules because the said provision is akin to the provision in Clause (a) of the proviso to Article 311(2). We are, therefore, unable to uphold the impugned judgment of the High Court.

15. Lastly in *K.C. Sareen Vs. C.B.I., Chandigarh*, the Supreme Court held in paras 12 and 13 as follows:

12. Corruption by public servants has now reached a monstrous dimension in India. Its tentacles have started grappling even the institutions created for the protection of the republic. Unless those tentacles are intercepted and impeded from gripping the normal and orderly functioning of the public offices, through strong legislative, executive as well as judicial exercises the corrupt public servants could even paralyse the functioning of such institutions and thereby hinder the democratic policy. Proliferation of corrupt public servants could garner momentum to cripple the social order if such men are allowed to continue to manage and operate public institutions. When a public servant is found guilty of corruption after a judicial adjudicatory process conducted by a court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior Court. The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction, it is public interest which suffers and sometimes, even irreparably. When a public servant who is convicted of corruption is allowed to continue to hold public office, it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction, the fallout would be one of shaking the system itself. Hence it is necessary that the court should not aid the public servant who stands convicted for corruption charges to hold only public office until he is exonerated after conducting a judicial adjudication at the

appellate or revisional level. It is a different matter if a corrupt public officer could continue to hold such public office even without the help of a court order suspending the conviction.

13. The above policy can be acknowledged as necessary for the efficacy and proper functioning of public offices. If so, the legal position can be laid down that when conviction is on a corruption charge against a public servant the appellate court or the revisional court should not suspend the order of conviction during the pendency of the appeal even if the sentence of imprisonment is suspended. It would be a sublime public policy that the convicted public servant is kept under disability of the conviction in spite of keeping the sentence of imprisonment in abeyance till the disposal of the appeal or revision.

16. The Division Bench of this Court in an elaborate judgment in *Municipal Corporation of Guntur Vs. B. Syamala Kumari and Another*, after considering all the decisions referred to above held in Para 30 as follows:

30. Suspension of the sentence imposed by the criminal Court, the Criminal Appeal preferred against the criminal Court judgment, neither necessitates the government servant being continued under suspension nor does it preclude the Disciplinary Authority from exercising his discretion under Clause (a) of the second proviso to Article 311(2) or Rule 25(i) of the A.P.C.S. (C.C. & A) Rules, 1991 to impose any penalty which he deems fit, including that of dismissal from service.

17. The later Division Bench in *Chief Rationing Officer and Another Vs. T.V. Rama Sarma*, also took the same view and held in Paras 12, 16 and 28 as follows:

12. From the above, it is obvious that the disciplinary authority, depending upon the facts and circumstances, mentioned in Sub-rules (i), (ii) and (iii) of Rule 25 of the Rules, can exercise its discretionary jurisdiction to some extent and pass appropriate orders. The expression "appropriate orders" would include imposition of any penalty, as provided under Rule 9, even without conducting any enquiry.

...

16. Any conduct can be brought into the fold of Sub-rule (i) of Rule 25 of the Rules, for the purpose of imposing any punishment, without conducting any enquiry. However, the punishment shall commensurate with the gravity of misconduct.

...

28. From the above facts and circumstances, particularly keeping in view the nature of charges levelled against the respondent and the consequential conviction and sentence, recorded by the trial Court, inasmuch as, the sentence only has been suspended by this Court, we are of the view that the order of dismissal of the respondent from service, passed by the disciplinary authority, exercising the jurisdiction under Rule 25(i) of the Rules, does not warrant any

interference by this Court.

As mentioned above, the decision of another Division Bench in WP. No. 16102 of 2007 was brought to the notice of this Division Bench and in Para 31 it was held as follows:

31. The above observations of the Division Bench appear to be contrary to the settled legal proposition laid down by the apex Court as well as Rule 25 of the Rules.

18. While the aforesaid legal position emerges from the examination of the decisions aforesaid, learned Counsel for the respondents have contended that the disciplinary authority must apply its mind to the facts and circumstances of each case and should not mechanically pass orders of dismissal or removal merely based upon the conviction. The gravity of charge and the punishment imposed must satisfy the test of proportionality. It is also argued that the order of dismissal or removal cannot be automatic especially when in the appeal filed against conviction the order of suspension of sentence passed by the appellate Court must be given due weight, as the correctness of the conviction is subjudice in appeal. It is also contended that the order of the tribunal need not be disturbed as it has given opportunity to the disciplinary authority to invoke powers under Rule 8 of the Rules whereby the government servant is automatically placed on suspension, which satisfies the purpose of keeping the government servant from out of job temporarily pending the appeal. Learned Counsel, therefore, supported the impugned orders of the tribunal, which are based upon the judgment of the Division Bench of this Court in WP. No. 16102 of 2007.

19. Learned Counsel also placed reliance upon a decision of the Supreme Court in G.M. Tank Vs. State of Gujarat and Another, and have contended that wherever charges framed against an employee under the departmental proceedings are identical to the criminal charge, if the criminal Court acquits the government servant, the disciplinary proceedings based on the selfsame charges are liable to be quashed. The learned Counsel also relied upon a Division Bench decision of this Court in A.P.S.R.T.C. and others Vs. T. Venkatapathi, for the proposition that once the charge in a criminal proceeding is held not proved and the employee is acquitted, the disciplinary proceedings based upon the charge in the criminal case would be unsustainable once the criminal case ends in favour of the delinquent. It is also contended that the State Government is being selective in the matters and wherever the orders setting aside dismissals based on convictions in criminal Court are set aside by the tribunal by passing similar orders as impugned herein, the Government has chosen to implement the said orders by issuing GOs for reinstatement of the employees concerned, whereas in other cases the Government has chosen to approach this Court by way of these writ petitions challenging the similar orders of the tribunal. It is, therefore, contended that wherever it suits, the Government chooses to implement the orders of the tribunal and in other cases challenges the same before this Court,

with the result that similar employees, who have suffered conviction are reinstated while others are made to litigate before this Court.

20. We have considered the aforesaid contentions and in our view, the only question that arises is whether the State/Disciplinary Authority has power to pass orders of dismissal or removal based on the conduct of the government servant which led to his conviction in a criminal case.

21. Rule 25 of the CCA Rules extracted above read with Rule 9 and the decisions of the Supreme Court as well as a Division Bench judgment of this Court clearly support the contention of the petitioners that the disciplinary authority is specifically bestowed with a power to pass orders of removal or dismissal. The view of the Division Bench in WP. No. 16102 of 2007 is clearly not in accord with the decisions of the Supreme Court in Deputy Director of Collegiate Education (Administration), Madras Vs. S. Nagoor Meera, ; Union of India (UOI) Vs. V.K. Bhaskar, ; Union of India and others Vs. Ramesh Kum, and K.C. Sareen Vs. C.B.I., Chandigarh, . Deputy Director of Collegiate Education (Administration), Madras Vs. S. Nagoor Meera, , which is extracted in paragraphs above, specifically negated the contention that the disciplinary authority should await the decision of the appeal/revision against the conviction. Clause (a) of the second proviso to Article 311(2) of the Constitution of India also does not permit such conclusion. It is also well settled that suspension of sentence does not obliterate the conviction and mere pendency of the criminal appeal or revision does not preclude the State or the disciplinary authority from invoking the said power under Rule 25(1) of the CCA Rules referred to above. The conclusions reached by the Division Bench in WP. No. 16102 of 2007 are directly opposed to the aforesaid ratio in several decisions of the Supreme Court. Unfortunately, all these decisions were not brought to the notice of the Division Bench, which decided the aforesaid writ petition. Further, the Supreme Court has expressed its views very categorically in the case of K.C. Sareen Vs. C.B.I., Chandigarh, that the Court should not aid the public servant, who stands convicted for corruption charges, to hold any public office until he is exonerated. The Supreme Court held that

...When a public servant is found guilty of corruption after a judicial adjudicatory process conducted by a court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior Court....

Thus, the view taken by the Division Bench in WP. No. 16102 of 2007 is directly being opposed to binding pronouncements of the Supreme Court referred to above. Since we are sitting in a coordinate Bench, we have considered the matter in the perspective of legal position with respect to declaring a decision per incuriam. The following passage from Halsbury's Laws of England (Fourth Edition) Vol. 26, at pages 297-298, para 578, which was quoted by the Supreme Court in State of Punjab and Another Vs. Devans Modern Brewaries Ltd. and Another, , is apt to be reproduced here.

A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow *Young v. Bristol Aeroplane Co. Ltd.* (1944) 1 KB 718 : (1944) 2 All ER 293. In *Huddersfield Police Authority v. Waton* (1947) KB 842 : (1947) 2 All ER 193 or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force *Young v. Bristol Aeroplane Co. Ltd.* (1944) 1 KB 718 : (1944) 2 All ER 293. See also *Lancaster Motor Co. (London) Ltd. v. Bremith Ltd.* (1941) 1 KB 675 For a Divisional Court decision disregarded by that court as being per incuriam, See *Nicholas v. Penny* (1950) 2 KB 466 : 1950 2 All ER 89. A decision should not be treated as given per incuriam, however, simply because of a deficiency of parties, *Morvelle Ltd. v. Wakeling* (1955) 2 QB 379 : (1955) 1 All ER 708 C. or because the court had not the benefit of the best argument, *Bryers v. Canadian Pacific Steamships Ltd.* (1957) 1 QB 134 : (1956) 3 All ER 560 CA, Per Singleton LJ, *fad Sub nom. Canadian Pacific Steamship Ltd. v. Bryers* (1958) AC 485 : (1957) 3 All ER 572 and as a general rule, the only cases in which decision should be held to be given per incuriam are those given in ignorance of some inconsistent statute or binding authority *A. and J. Mukclow Ltd. v. IRC* (1954) Ch. 615. (1954) 2 All ER 508 CA, *Morvelle Ltd. v. Wakeling* (1955) 2 QB 379 : (1955) 1 All ER 708 CA, See also *Bonsor v. Musicians Union* (1954) Ch. 479 : (1954) 1 All ER 822 CA, where the per incuriam contention was rejected and on appeal to the house of lords although the House overruled the case which bound the Court of Appeal, the House agreed that court had been bound by it see (1956) AC 104. (1955) 3 All ER 518 All. Even if a decision of the Court of Appeal has misinterpreted a previous decision of the House of lords, the Court of Appeal must follow its previous decision and leave the House of Lords to rectify the mistake. *Williams v. Glasbrook Bros Ltd.* (1947) 2 All ER 884 CA

In view of the above, therefore, the decision of this Court in WP. No. 16102 of 2007 is necessarily to be treated as per incuriam and the judgments of the tribunal impugned herein, which follow the aforesaid decision also deserve to be set aside.

22. So far as the other contentions of the learned Counsel for the respondents, particularly, with reference to the decision in *G.M. Tank Vs. State of Gujarat and Another*, are concerned, the issue involved therein does not really arise in this batch of cases. Even otherwise, it has to be remembered that the said decision relates to a charge against an employee by the ACB regarding that he was having assets disproportionate to his known sources of income and a criminal case was initiated against the government servant. On the basis of aforesaid charge by the ACB, a charge was framed on the same lines in the departmental enquiry proposed against the said government servant. The Supreme Court noticed that in the criminal case the government servant was able to satisfactorily explain the said criminal charge and on the basis of the evidence adduced and the statement of accused/government servant u/s 313 Cr.P.C. the

criminal Court had acquitted the accused/government servant of the said charge. The Supreme Court also noticed a marked distinction with regard to Section 5(1) ((e) of the Prevention of Corruption Act in the following words:

The provision contained in Section 5(1)(e) is self-contained provision. The first part of the section casts a burden on the prosecution and the second on the accused as stated above. From the words used in Clause (e) of Section 5(1) of the PC Act it is implied that the burden is on the accused to account for the sources for the acquisition of disproportionate assets. As in all other criminal cases wherein the accused is charged with an offence, the prosecution is required to discharge the burden of establishing the charge beyond reasonable doubt.

Thus, the decision of the Supreme Court proceeded by taking into consideration that burden of explaining or giving the account of such excessive property lies on the accused but once that burden is discharged it is again for the prosecution to prove that the explanation furnished by the accused is not satisfactory. It is in such circumstances that the Supreme Court held that the accused, who is acquitted of the charge of holding disproportionate assets, cannot be proceeded against in the disciplinary enquiry on the self-same charges. The Supreme Court, therefore, made a very categorical distinction in the following words:

...The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case....

Thus, it is in those circumstances that the charge in the departmental proceedings could not be proceeded further in view of the acquittal of the government servant of the charges in criminal proceedings. Without keeping the aforesaid distinction in mind the ratio of the above decision cannot be applied to every case of acquittal of criminal charges, for seeking quashing of the departmental proceedings also.

23. Further reliance placed by the learned Counsel for the respondents in A.P.S.R.T.C. and others Vs. T. Venkatapathi, is also distinguishable, as the Division Bench has specifically noted as follows:

...It has to be noted that the charge was not for the substantive act of having caused death of the wife. The charge was only that petitioner was involved in a criminal case and the said involvement had resulting in framing of a criminal case for offence u/s 329 IPC.... It cannot be disputed that the disciplinary authority is entitled to hold disciplinary enquiry on the same charge as is before a criminal Court because the scope of disciplinary enquiry and criminal trial is different. But where the charge in the disciplinary enquiry is necessarily dependant on the result of the criminal case if the criminal case itself ends in favour of the delinquent, the charge in the disciplinary enquiry will become unsustainable one....

Thus, the said decision also is not of assistance with regard to the issue involved in the present case.

24. The contention of the learned Counsel for the respondents that the disciplinary authority is mechanically passing orders of removal or dismissal, however, needs to be considered. The legal position in that regard is aptly set out in Para 7 of the decision of the Supreme Court in *Shankar Dass Vs. Union of India (UOI) and Another*, , which is extracted as under:

7. It is to be lamented that despite these observations of the learned Magistrate, the Government chose to dismiss the appellant in a huff, without applying its mind to the penalty which could appropriately be imposed upon him insofar as his service career was concerned. Clause (a) of the second proviso to Article 311(2) of the Constitution of India confers on the Government the power to dismiss a person from service "on the ground of conduct which has led to his conviction on a criminal charge". But, that power, like every other power, has to be exercised fairly, justly and reasonably. Surely, the Constitution does not contemplate that a Government servant who is convicted for parking in a no-parking area should be dismissed from service. He may, perhaps, not be entitled to be heard on the question of penalty since Clause (a) of the second proviso to Article 311(2) makes the provisions of that article inapplicable when a penalty is to be imposed to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly. Considering the facts of his case, there can be no two opinions that the penalty of dismissal from service imposed upon the appellant is whimsical.

25. The same legal position is also reiterated by the Supreme Court in *Deputy Director of Collegiate Education (Administration), Madras Vs. S. Nagoor Meera*, and considering the aforesaid legal position, the Division Bench in *Municipal Corporation of Guntur Vs. B. Syamala Kumari and Another*, has already held that the disciplinary authority must consider all the relevant facts and circumstances in relation to the conduct which led to the delinquent employee's conviction on a criminal charge and pass such order or orders as it deems fit. No further reiteration of the legal position is warranted.

26. The last contention of the learned Counsel for the respondents that the disciplinary authority/State is acting selectively, however, needs to be considered. It has been brought to our notice that one Junior Assistant, who was trapped by ACB authorities on allegation of demand and acceptance of bribe of Rs. 600/-, was convicted by the criminal Court in C.C. No. 41 of 2000. The disciplinary authority dismissed her from service on the basis of the conduct, which led to her conviction. The said employee, however, challenged the order of dismissal from service in O.A. No. 301 of 2006 before APAT. The tribunal, however, allowed the OA by setting aside the order of dismissal following its earlier judgment and directed the Government to reinstate the employee forthwith by giving an opportunity to the Government to pass appropriate orders under Rule 8(2)(c) of the CCA Rules, just as the present impugned order. The

Government, however, has not questioned the said order but has issued G.O.Ms. No. 558 Revenue (Vigilance-VI) Department dated 29.03.2008. Learned Counsel for the respondents assert that there are several such cases where convicted government servants are reinducted.

27. We are of the view that the State as a model employer cannot act in such selective manner. The enunciation of the legal position as has been discussed above is well settled by several pronouncements of the Supreme Court and this Court. The observations of the Supreme Court in K.C. Sareen Vs. C.B.I., Chandigarh, in particular leave no room for doubt as to how the State/disciplinary authority must act in a situation where the government employee is convicted of a serious offence. The power of dismissal or removal exercised by the State/disciplinary authority in such cases has been held to be in public interest. It has also been held that continuing such officer in service would not only be against public interest but would also demoralize other honest officers. Furthermore, the action and treatment towards government employees by the State cannot be discriminatory or selective. The aforesaid selective treatment by the State/disciplinary authority would, therefore, be contrary to public interest apart from violative of law declared by the Supreme Court. We, therefore, strongly deprecate such discriminatory and selective treatment and direct the State/disciplinary authority to review all such cases where the Government servants have suffered conviction and even if appeals or revisions against the conviction are pending, in the light of this decision and take appropriate corrective action and file a compliance report before this Court within six (6) months from the date of receipt of a copy of this order.

28. A copy of this order may be marked to the Chief Secretary to the Government of Andhra Pradesh, for necessary and appropriate action.

In the light of the above, therefore, all the writ petitions deserve to be allowed and are accordingly allowed and the impugned orders of the tribunal are set aside and the OAs filed by the respondents are dismissed. There shall be no order as to costs.

For filing compliance report as ordered in para-27 of this judgment, the matter be listed in the last week of June, 2010 for orders.