

(1992) 07 AP CK 0029

In the Andhra Pradesh High Court

Case No : Writ Appeal No's. 1646 of 1987 and 150 of 1988

The Lokayukta for Andhra Pradesh

APPELLANT

Vs

Dr. B. Seshadri

RESPONDENT

Date of Decision : 22-07-1992

Acts Referred:

Andhra Pradesh Revised Pension Rules, 1980 — Rule 9
Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 193

Citation : (1992) 3 ALT 224

Hon'ble Judges : A. Lakshmana Rao, Acting C.J.; D.J. Jagannadha Raju, J

Bench : Division Bench

Advocate : K. Subramanya Reddy, C.V. Rajeeva Reddy, C.V. Vinitha Reddy and R. Subarayudu, for the Appellant; P.R. Prasad, for the Respondent

Final Decision : Allowed

Judgement

D.J. Jagannadha Raju, J.—These two writ appeals arise out of the common judgment dated 16th October, 1987, in writ petitions W.P. No. 3555 of 1986 and W.P. No. 4753 of 1986. W.P. No. 3555 of 1986 was filed questioning the proposal to conduct an investigation by the Lokayukta into Complaint No. 871 of 1986 regarding three allegations. W.P. No. 4753 of 1986 was filed questioning the proceedings of the Lokayukta in Dis. No. 4144 dated 15-4-1986 initiating an investigation on his own motion. The learned single judge allowed the two writ petitions and quashed the proceedings impugned in the two writ petitions.

2. The present respondent Dr. B. Seshadri was working as the Principal and Superintendent of the Government Dental College/Hospital, Hyderabad. A student by name C. Sekhar gave a complaint to the Lokayukta. Subsequently the complainant did not support the allegations in the complaint and when an opportunity was given to him to fulfil the formalities of a complaint under the Andhra Pradesh Lokayukta and Upa-Lokayukta Act, 1983, (hereinafter called "the Act"), he failed to do it. The learned Lokayukta did not dismiss the complaint in

limine though Section 9 of the Act and Rule 3 of the Andhra Pradesh Lokayukta and Upa-Lokayukta (Investigations) Rules, 1984 (hereinafter called "the Rules") were not complied with. The Lokayukta took cognizance of the petition as a complaint by order dated 13-8-1984 and on the ground that there are verifiable allegations, he forwarded a copy of the complaint to the Director of Medical Education to have a probe made into the matter and send a report. He also gave an opportunity to the complainant to appear before him and file Forms I and II and he dispensed with the deposit necessary to be made by the complainant under the Rules. The Lokayukta got a preliminary verification done by the Investigating Officer Sri P. Koteswara Rao and on the basis of the Investigating Officer's report, which was submitted on 28-12-1985, passed proceedings dated 31-8-1986 to the following effect:

"Since I am satisfied that there is prima facie case on the above four allegations, I propose to hold final investigation against the said public servant in respect of the said four allegations only.

I, therefore, direct the Registrar and the legal section of this Institution to take all necessary setps to conduct the final investigation.

I further direct that notice be sent to Sekhar the complainant, who has personally appeared before me.

Since allegations 9,10 and 11 were found out during preliminary probe, to that extent, this investigation will be suo motu."

In spite of an opportunity being given to C. Sekhar, he has not come forward and he did not give evidence. Then on 11-4-1986, the Lokayukta passed another order in the following terms:

"I decide to hold suo motu investigation in respect of allegation No. 1 also."

He further observed that he would treat the other three allegations which are extraneous to the complaint sent by C. Sekhar and which were made out by the Investigating Officer's preliminary verification as having been taken cognizance of suo motu and order suo motu investigation. Accordingly Form No.VII was issued to the present respondent Dr. B. Seshadri and then the present writ petitions were filed questioning the action taken by the Lokayukta.

3. The learned single judge came to the conclusion that as the formalities of a complaint are not complied with in this case and as there is no compliance of Section 9(2) of the Act and Rule 3 of the Rules, the only course open to the Lokayukta is to dismiss the complaint in limine and drop all further proceedings. The Lokayukta is not justified in embarking upon a roving enquiry and then initiating action as suo motu proceedings. In that view of the matter, the learned single judge allowed both the writ petitions and quashed the proceedings. Aggrieved by the same, the present appeals are filed by the Lokayukta.

4. Sri K. Subramanya Reddy, the learned senior counsel appearing on behalf of

the Lokayukta raised the following contentions: The learned judge has failed to appreciate the facts of the case in the light of the scheme of the Act and the Rules. Relying only upon Section 9 of the Act and Rule 4 of the Rules, ignoring the other provisions in the Act and the Rules, the learned judge came to a wrong conclusion that the only course open to the Lokayukta is to dismiss the complaint in limine and that the actions initiated by the Lokayukta are ab initio void as they are without jurisdiction. He further contends that according to the scheme of the Act, the Lokayukta is competent to take cognizance of any allegation or action even suo motu. He also contends that the writ petition is premature as only a show-cause-notice was given. It is open to the respondent to submit his explanation and after consideration of the explanation under the scheme of the Act and the Rules, the Lokayukta may drop action and discontinue investigation. Mr. Subramanya Reddy contends that quashing of the proceedings at this stage amounts to foreclosing an investigation. He also points out that the voluntary retirement of the officer with effect from 7-1-1988 has no effect upon the proceedings and these proceedings can certainly be continued after his retirement as contemplated under Rule 9 of the Revised Pension Rules of 1980. It is open to the State to impose a punishment of cut in pension if the proceedings establish the misconduct of the officer. Mr. Subramanya Reddy contends that the Lokayukta is an institution like the Ombudsman and it is the duty of the Lokayukta to look into and investigate any action which comes to his notice and where he is satisfied that there is some material to investigate into the allegation. The learned single judge treated the matter as if it is a complaint in a criminal case. That is not a proper approach. The learned judge is also not justified in recording findings with regard to the various allegations which were proposed to be investigated. Mr. Reddy contends that the judgment of the learned single judge should be set aside and the proceedings may be remitted to the Lokayukta so that the proceedings may continue from the stage of Form VII notice.

5. On behalf of the respondent Sri P.R. Prasad contends that the Lokayukta has no jurisdiction to entertain the complaint when Section 9 of the Act and the Rule 3 of the Rules are not complied with. As the respondent retired from service, he is no more a public servant and hence the proceedings before the Lokayukta cannot be continued. The two writ appeals have become infructuous. The proceedings before the Lokayukta are neither departmental proceedings nor judicial proceedings. As the proceedings have not commenced with the service of a charge-sheet, the proceedings cannot be initiated after his retirement. The Judgment of the learned single judge is perfectly correct and there is no justification to interfere with that judgment. Mr. Prasad points out that in this case though the proceedings commenced on the basis of a complaint, when the complaint did not satisfy the legal requirements and when there is no properly constituted complaint and when the complainant is not prepared to give evidence in support of his complaint, the Lokayukta is not justified in embarking upon a roving enquiry and get investigation made by seizing records and then fishing

out information from the seized records and making out various allegations which are extraneous to the complaint. He also contends that in view of the long lapse of time, there is no justification for upsetting the judgment of the learned single judge and remitting the proceedings to the Lokayukta.

6. A reading of the judgment of the learned single judge indicates that the learned judge was mainly considering the effect of the complainant's inaction and refusal to give evidence. The learned judge did not refer to the scheme of the Act and the Rules, but placing reliance upon Section 9 of the Act and Rule 3 of the Rules, arrived at the conclusion that the proceedings initiated against the writ petitioner are liable to be quashed as they are ab initio void and as they are without jurisdiction. If we consider the overall scheme of the Act and the Rules, we find that under this Act, the Lokayukta is entitled to take cognizance in different ways. The Lokayukta is not obliged to take cognizance only on the basis of a valid complaint. In our considered opinion, the approach adopted by the learned judge is against the general scheme of the Act and the Rules framed there under. We shall presently point out in brief the scheme of the Act and the Rules and point out how the learned judge, by reason of a wrong approach, arrived at a wrong conclusion and interfered with the proceedings at the stage of a show-cause-notice which is clearly not contemplated by law.

7. u/s 2 of the Act which deals with definitions, "action" is defined in sub-section (a) and "allegation" is defined in sub-section (b) which is as follows: "allegation" in relation to a public servant means any affirmation that such public servant-

(i) has abused his position as such, to obtain any gain or favour to himself or to any other person, or to cause undue harm or hardship to any other person;

(ii) was actuated in the discharge of his functions as such public servant by improper or corrupt motive and thereby caused loss to the State or any member or section of the public; or

(iii) is guilty of corruption or lack of integrity in his capacity as such public servant."

Under Section 2(i), "Officer" is defined while "public servant" is defined u/s 2(k). We are only concerned with "Officer" in this case. Section 7 indicates the matters which may be investigated by the Lokayukta or Upa Lokayukta. Sub-section (1) clearly indicates that the Lokayukta may investigate any action which is taken by a public servant if there is a complaint involving an allegation in respect of the action. The wording of Section 7(1)(iv) is very significant. It is of very wide amplitude and it clearly indicates that if, in the opinion of the Lokayukta, the action could have been the subject of an allegation, the Lokayukta can investigate. Section 9(1) contemplates that a complaint may be made by any person under this Act to the Lokayukta relating to an allegation in respect of any action. The proviso to Sub-section (1) is only an enabling provision under which if the aggrieved person is dead or is, for any reason, unable to act, the complaint could be made by any person who in law represents his estate, or by any person

who is authorised by him in this behalf. The language of the proviso does not mean that only an aggrieved person can make a complaint. Sub-section (2) reads as follows:

"Every complaint shall be made in such form and shall be accompanied by such affidavits as may be prescribed."

Rules 2,3 and 4 of the Rules which are relevant in this context will be referred to a little later.

8. Section 10 of the Act deals with the procedure in respect of investigation. Sub-section (1) indicates that after making such preliminary verification as he deems fit, the Lokayukta can take action as provided in that sub-section. Sub-section (2) deals with "preliminary verification" and how it should be done. Sub-section (4) of Section 10 of the Act reads as follows:

"(4) The Lokayukta or Upa-Lokayukta may, in his discretion, refuse to investigate or discontinue the investigation of any complaint involving any allegation if in his opinion-

- (a) the complaint is frivolous or vexatious, or is not made in good faith; or
- (b) there are no sufficient grounds for investigation or, as the case may be, for continuing the investigation; or
- (c) other remedies are available to the complainant and in the circumstances of the case it would be more proper for the complainant to avail of such remedies."

This sub-section gives power and discretion to the Lokayukta to refuse to investigate or discontinue investigation of any complaint, if, in his cognition, the complaints fall under clauses (a), (b) and (c). Sub-section (5) contemplates that in any case where Lokayukta decides not to entertain a complaint or to discontinue any investigation, he should record his reasons therefore and communicate the same to the complainant and the public servant. Section 18(3) empowers the Governor to require the Lokayukta to investigate any action in respect of which a complaint may be made under this Act to the Lokayukta. Thus it is clear from the scheme of the Act that u/s 7 cognizance can be taken even suo motu. u/s 9, cognizance can be taken on the basis of a complaint. u/s 18(3), cognizance can be taken on the basis of a reference by the Governor. No importance can be given to Section 9 only ignoring the general scheme of the Act.

9. When we come to the Rules, we find that Rule 2(1)(ii) defines "complainant". Rule 2(1)(iii) defines "complaint". The language of Rule 2(1)(iii) is very important. It reads as follows: "'Complaint' means a statement made in writing to the Lokayukta or Upa-Lokayukta by a complainant containing an allegation against a public servant in respect of an action taken by such public servant". Rule 2(1)(viii) defines "preliminary verification". Rule 2(vii) defines "aggrieved person". Rule 3 deals with formalities of complaint while Rule 4 deals with Scrutiny of Complaint. It is true, in the present case, the requirements of Rule 3

were not satisfied and even after the complainant was given an opportunity to comply with the formalities, he did not do so. Rule 4(1) contemplates that on presentation or receipt of the complaint, it shall be scrutinised by such member of the staff as is authorised by Lokayukta. Rule 4(2) contemplates that in case of defective or deficient complaints, complainant should be asked to rectify the defects and supply the omissions. Sub-rule (3) of Rule 4 contemplates that in case defects are not rectified and the omissions are not supplied, the Lokayukta is empowered to reject the complaint and inform the complainant in Form No.IV. It is significant to remember that the words used are "may reject the complaint". The Rule does not contemplate that the Lokayukta "shall reject the complaint". Sub-rule (4) uses a different language and it lays down that the complaint shall also be liable for rejection in certain specified cases. In view of the discretion given to the Lokayukta under Rule 4(3) of the Rules, it cannot be said that in all cases where the complainant does not rectify the defects or supply the omissions, the complaint shall be rejected in limine. In limine rejection comes only under Rule 4(4) of the Rules. Rule 5 deals with "Preliminary Verification" and this Rule contemplates that after registration of the complaint, the Lokayukta or Upa-Lokayukta, as the case may be, shall inform the complainant and may make such preliminary verification as he deems fit. It is significant to remember that under this Rule, the preliminary verification can be made in regard to the allegation in the complaint and the action complained of on the basis of the information furnished through the complaint and the affidavits, documents and copies thereof, if any, enclosed to the complaint and also on his own motion, before he proposes to conduct any investigation. It is clear that under this Rule, it is open to the Lokayukta to have the preliminary verification done on his own motion. He need not necessarily confine himself to the allegations in a validly filed complaint. While dealing with Rule 5, it should be pointed out that what is originally laid down in sub-rules (1), (2) and (3) is sought to be reinforced by adding sub-rules (4) to (8) by CO.Ms. No. 120 (G.A.D.) dated 19-3-1987. For the purpose of the present case, which took place prior to the amendment of the Rules on 19-3-1987, we will confine our attention only to sub-rules (1) to (3) of Rule 5. We need not take support from the subsequently introduced amended Rules. But it may be pointed out that under the sub-rules (4), (6) and (8) which were added on 19-3-1987, the position is made clear that if the complaint contains verifiable details, it is open to the Lokayukta to take further action. Rule 6 deals with Commencement of investigation. Sub-rule (1) contemplates that after making necessary preliminary verification if the Lokayukta or Upa-Lokayukta proposes to conduct an investigation into the complaint, he shall inform the complainant accordingly and forward a copy of the complaint together with the list of witnesses to the public servant concerned and the competent authority. Sub-rule (2) contemplates that where the Lokayukta or Upa Lokayukta proposes to conduct an investigation on his own motion against a public servant, he shall forward to the public servant concerned and the competent authority concerned a statement containing the details of the action attributed to such public servant or the allegation against him regarding which

information has been received by the Lokayukta or Upa-Lokayukta otherwise than through a complaint together with the list of witnesses whom the Lokayukta proposes to examine. Sub-rule (4) contemplates affording an opportunity in Form No.VII to the public servant to explain his case. In the present proceedings the Lokayukta issued notice under Form No.VII and immediately the writ petitions were filed without the public servant offering or submitting his explanation. Sub-rule(5) contemplates that if no comments are received from the public servant in response to the Form No.VII notice, the Lokayukta or Upa-Lokayukta may proceed further with the investigation on the basis of the material available. Under sub-rule (6), it is open to the Lokayukta to discontinue further investigation if he is satisfied with the explanation or comments of the public servant. Rule 15 deals with withdrawal of complaint. Under this Rule, no complaint shall be permitted to be withdrawn unless the Lokayukta or Upa-Lokayukta, as the case maybe, is satisfied that the complaint was made under a bona fide mistake or that the grievance complained of has been adequately redressed. This Rule clearly indicates that under the scheme of this Act and the Rules, the choice is not left to the complainant and the power to withdraw is very much restricted. It is the lokayukta that ultimately decides the matter if an effort is made to withdraw a complaint. In view of the language of this Rule, merely because the complainant C. Sekhar was not willing to co-operate with the Lokayukta, the Lokayukta is not bound to close the proceedings. The conclusion of the learned single judge that the Lokayukta had no alternative except to dismiss the complaint in limine does not appear to be correct in view of the language of Rule 15 of the Rules.

10. An examination of the scheme of the Act and the Rules clearly indicates that Lokayukta can take cognizance of the matters in diverse ways when the matter comes to his notice. He may take cognizance u/s 7; he may take cognizance u/s 9 on the basis of a complaint; or he may do so after getting the preliminary verification done and obtaining some material by virtue of preliminary verification conducted. In our considered opinion, the learned single judge did not consider the general scheme of the Act and the Rules and the learned judge relied upon Section 9 of the Act and Rules 3 and 4 of the Rules. In our considered opinion, the approach of the learned judge is against the scheme of this Act.

11. It is now well settled law that a writ petition does not lie at the stage of a show-cause-notice. In the present case, the writ petitions were filed after the show-cause-notice was issued in Form No.VII as contemplated under Rule 6(4) of the Rules. State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, clearly lays down the law in paragraph 9 at page 948 as follows:

"The High Court was not justified in quashing the show cause notice. When a show cause notice is issued to a Govt. Servant under a statutory provision calling upon him to show cause, ordinarily the Govt. Servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with notice at that stage unless the notice is shown to have been issued

palpably without any authority of law. The purpose of issuing show cause notice is to afford opportunity of hearing to the Govt. Servant and once cause is shown it is open to the Govt. to consider the matter in the light of the facts and submissions placed by the Govt. Servant and only thereafter a final decision in the matter could be taken. Interference by the Court before that stage would be premature. The High Court in our opinion ought not to have interfered with the show cause notice."

12. Sri P.R. Prasad argued that the writ appeals have become infructuous as the writ petitioner was permitted to retire from service voluntarily and he was relieved on 7-1-1988. This argument is not based upon a correct appreciation of the facts and the legal position. Though, at one time, it was the law that a disciplinary proceeding cannot be entertained after a public servant retires, under the present rules, the position is totally different. Rule 9 of the Andhra Pradesh Revised Pension Rules, 1980, enables the State Government to impose the punishment of withholding or withdrawing pension or part thereof even in cases where the officer has retired from service. Rule 9 of the A.P. Revised Pension Rules is similar to or rather identical with Rules 188 and 189 of the Bombay Civil Service Rules. It is almost identical with Rule 9 of the Civil Services Pension Rules of 1972 of Government of India. Interpreting those Rules, courts have held that it is open to the Government to reduce or withhold pension by taking proceedings against a Government servant even after his retirement. *State of Maharashtra Vs. M.H. Mazumdar*, . deals with the Rules 188 and 189 of the Bombay Civil Service Rules and the Supreme Court observed in paragraph 5 at page 843 as follows:

"The aforesaid two Rules empower Government to reduce or withdraw a pension. Rule 189 contemplates withholding or withdrawing of a pension or any part of it if the pensioner is found guilty of grave misconduct while he was in service or after the completion of his service. Grant of pension and its continuance to a Government servant depend upon the good conduct of the Government servant... The State Government's power to reduce or withhold pension by taking proceedings against a Government servant even after his retirement is expressly preserved by the aforesaid Rules.... Similar Rules authorising the Government to withhold or reduce the pension granted to the Government servant were interpreted and this Court held that merely because a Government servant retired from service on attaining the age of superannuation he could not escape the liability for misconduct and negligence or financial irregularities which he may have committed during the period of his service and the Government was entitled to withhold or reduce the pension granted to a Government servant."

This decision deals with a situation where, after the retirement, the Government servant was served with a charge-sheet and ultimately the punishment was imposed five years after his retirement. The court upheld the action relying upon Rules 188 and 189 of the Bombay Civil Service Rules. In *D.V. Kapoor Vs. Union of India and others*, ., the Supreme Court dealt with Rule 9(2) of Civil Services

Pension Rules, 1972 which is almost identical with Rule 9 of the A.P. Revised Pension Rules. In that decision, the Supreme Court was dealing with a case where the officer was allowed to retire voluntarily while the proceedings were pending. Dealing with such a situation, the Supreme Court observed at page 1924 as follows:

"Rule 9(2) of the Rules provided that the departmental proceedings if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service."

State of U.P. v. Brahmada Sharma (1 supra) also lays down that Government has the right to impose a cut in pension in view of Article 470 of Civil Service Regulations. In that decision, an Executive Engineer faced a departmental enquiry regarding a number of charges which were found proved. Then he was dismissed from service. He unsuccessfully challenged the validity of the dismissal order before the U.P. Public Services Tribunal. Afterwards he filed a writ petition under Article 226 of the Constitution before the High Court. A single judge, by order dated 10-8-1984, set aside the order of dismissal on the ground of his not being afforded an opportunity. The respondent retired from service during the pendency of the writ petition before the High Court on attaining the age of superannuation. In such a situation, when notice was issued on 29-1-1986, after his retirement, calling upon him to show cause as to why orders for forfeiture of his pension and gratuity be not issued in accordance with Article 470(b) of Civil Service Regulations, he filed his reply, and before his reply could be examined and decision taken by the Government he filed the writ petition. Dealing with such a situation, the court observed at page 945 as follows:

"In fact while allowing the writ petition the learned single judge himself observed in his order dated 10-8-84 that it would be open to the State Govt. to draw fresh proceedings if it was permissible to do so. The High Court did not enter into the validity of the charges or the findings recorded against the respondent during the inquiry held against him. After the decision of the writ petition, it was open to the State Govt. to have taken up proceedings against the respondent from the stage at which it was found to be vitiated. Had the respondent not retired from service on attaining the age of superannuation it was open to the State Govt. to pass order awarding punishment to him after issuing a fresh show cause notice and supplying to him a copy of the recommendation made by the Inquiry Officer. There was no legal bar against the State Govt. in following such a course of action. There were serious allegations of misconduct against the respondent which had been proceeded against him during inquiry; those charges remained alive even after quashing of the dismissal order and it was therefore open to the State Govt. to take action against the respondent in accordance with the rules. No disciplinary proceedings could be taken as the respondent had retired from

service, the Govt. therefore considered it appropriate to take action against him under Article 470, Civil Service Regulations. The Regulation vests power in the appointing authority to take action for imposing reduction in the pension, as the State Govt. is the appointing authority it was competent to issue show cause notice to the respondent..... If disciplinary proceedings against an employee of the Govt. are initiated in respect of misconduct committed by him and if he retires from service on attaining the age of superannuation, before the completion of the proceedings it is open to the State Govt. to direct deduction in his pension on the proof of the allegations made against him. If the charges are not established during the disciplinary proceedings or if the disciplinary proceedings are quashed it is not permissible to the State Govt. to direct reduction in the pension on the same allegations, but if the disciplinary proceedings could not be completed and if the charges of serious allegations are established, which may have bearing on the question of rendering efficient and satisfactory service, it would be open to the Govt. to take proceedings against the Govt. servant in accordance with rules for the deduction of pension and gratuity."

The court further observed in paragraph 6 that "The statutory rules therefore contain provisions for the forfeiture and deduction in the pension of Govt. servant who have not rendered satisfactory service or who may have been found guilty of misconduct or negligence resulting in pecuniary loss to the Government. Merely because a Govt. servant retires from service on attaining the age of superannuation he cannot escape the liability misconduct and negligence or financial irregularities."

Then, after dealing with Article 470 of the Civil Service Regulations, the court held that a plain reading of the Regulation indicates that full pension is not awarded as a matter of course to the Government servant on his retirement and it is awarded to him if his satisfactory service is approved.

13. In view of the various pronouncements of the Supreme Court on provisions similar to Rule 9 of the A.P. Revised Pension Rules, it is quite clear that the proceedings have not abated by reason of the writ petitioner retiring from service voluntarily on 7-1-1988.

14. Mr. Prasad placed strong reliance upon K. Satyanarayana Vs. The State of Andhra Pradesh and Another, a Full Bench decision. That decision deals with the provisions of Rule 351-A of the Pension Code. During the pendency of the disciplinary proceedings before the Tribunal, the delinquent officer retired from service and in G.O. No. 233 dated 16-7-1964, he was informed that all those whose services were extended beyond the date of their superannuation for the purpose of continuing proceedings against them shall be deemed to have retired. The appellant was due to retire on 24-9-1964. It is an admitted fact that the government did not pass any order extending the services as required under the Fundamental Rules for purposes of continuing the enquiry. In such a situation, the court had to deal with the question whether the provisions of Article 351-A of

the Pension Code are inconsistent with the provisions of Act II of 1960 i.e., A.P. Civil Services (Disciplinary Proceedings Tribunal) Act and whether Article 351-A should be regarded as void on the ground that it is in conflict with, or repugnant to Act II of 1960. The court observed at page 225 as follows:

"There is no specific provision in Act II of 1960 enabling the Tribunal to continue the enquiry after a Government servant, against whom an enquiry is pending, attains the age of superannuation during the enquiry. If orders are passed under the Fundamental Rules refusing to retire the Government servant and continuing him in Service till the enquiry is over, the Tribunal can certainly proceed with such an enquiry. But in the present case there was no such order passed under the Fundamental Rules..... Instead of appointing another authority for the purpose of Article 351-A of the Pension Code, it is perfectly open to the Government, by virtue of the very same provision, to continue the enquiry. Proviso (a) to Article 351-A serves this purpose as it provides that after the final retirement of the officer, departmental proceedings shall be deemed to be proceedings under this Article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service. This provision has the same effect and achieves the same result as an order passed under the Fundamental Rule 56 by which the services of a Government servant are continued after retirement for the purpose of concluding the disciplinary proceedings pending against him. We are, therefore, unable to notice any direct or indirect conflict between the provisions of Article 351-A and the provisions of Act II of 1960. We are in entire agreement with the view expressed by Parthasarathi, J. that the two provisions may be read as complementary to each other as there is nothing inconsistent between them."

The court then went into the question as to what punishments or penalty can be imposed when the enquiry was completed after the officer attained the age of superannuation and observed,

"In the present context the only penalty which can be imposed under Article 351-A is withholding or withdrawing any pension or any part of it. The imposition of this penalty always rests in the Government and the Tribunal is a mere recommending authority.... In view of the statutory provision contained in proviso to Article 351-A, the public servant continues to be in service till the disciplinary enquiry is concluded. Hence the Government servant continues to be such for the purposes of the enquiry before the Tribunal. In any view of the matter, we are unable to see that there is any conflict between the provisions of Act II of 1960 and Article 351-A of the Pension Code..... We accordingly hold that the Tribunal has jurisdiction to proceed with the enquiry for the purposes of imposing penalties under the Pension Code."

This decision does not, in any way, support the writ petitioner's contention, but on the other hand, it supports the arguments of Sri Subramanya Reddy, the advocate on behalf of the appellant.

15. Mr. Prasad contended that a departmental enquiry commences only after a charge-sheet is drawn up and served and in this case, as no charge-sheet was served before he retired voluntarily on 7-1-1988, the proceedings cannot be continued after his retirement. He also contends that proceedings under the Act cannot be deemed to be disciplinary proceedings or judicial proceedings and hence Rule 9 of the A.P. Revised Pension Rule cannot be invoked by the appellant. It should be remembered that under the A.P. Lokayukta & Upa-Lokayukta Act, Section 11(3) provides that any proceedings before the Lokayukta or Upa-Lokayukta shall be deemed to be a judicial proceeding within the meaning of Section 193 of the India Penal Code. Apart from relying upon Section 11(3) of the Act, the appellant's counsel relies upon the definition of "departmental inquiry" given in The Departmental Enquiries (Enforcement of Attendance of Witnesses and Production of Witnesses and Production of Documents) Act, 1972. Section 3(a) defines "departmental inquiry". The definition reads as follows:

"3. Definitions - For the purposes of this Act-

(a) "departmental inquiry" means an inquiry held under and in accordance with-

(i) any law made by Parliament or any rule made thereunder, or

(ii) any rule made under the proviso to Article 309, or continued under Article 313 of the Constitution of India, into any allegation of lack of integrity against any person to whom this Act applies;"

Mr. Reddy contends that the word "departmental inquiry" is not defined in the State enactments and hence we have to rely upon the definition given in this Central Act, 1972 and as the proceedings are taken under an Act passed by the State, namely, Act 11 of 1983, we can safely take it that the proceedings before the Lokayukta would certainly satisfy the definition of "departmental inquiry".

16. Giving a harmonious interpretation to the provisions of the Act and the provisions of Rule 9 of the A.P. Revised Pension Rules, we are of the view that the proceedings before the Lokayukta certainly satisfy the definition of "judicial proceedings and/or departmental proceedings."

17. Mr. Prasad contended that under the provisions of the Act, the Lokayukta has no power to convert the proceedings initiated on a complaint into "a proceedings on his own motion or suo motu proceedings." He also submits that in this particular case though the proceedings commenced with the complaint, when the Lokayukta found that the complainant is unwilling to pursue the complaint and when it was found that there is no chance of proving the allegations, the Lokayukta, on the basis of the preliminary verification and a roving enquiry, decided to take proceedings against the petitioner and issued Form No.VII notice treating the enquiry as a suo motu enquiry. This is not permissible.

18. As pointed out earlier while discussing the scheme of the Act and the Rules,

the Lokayukta is entitled to take cognizance either on the basis of a complaint or on the basis of Section 7(1)(iv) of the Act or on the basis of preliminary verification as contemplated under Rule 5 of the Rules. Under the scheme of the Act and the Rules, there is no necessity for converting proceedings on the basis of a complaint into a proceedings on his own motion. It is open to the Lokayukta to proceed on his own motion on the basis of the information that has come to light during the preliminary verification.

19. It should be remembered that the notice under Form No.VII is in the nature of a show-cause-notice. The public servant was given an opportunity to submit his explanation. Instead of submitting the explanation and inviting a decision, he rushed to the High Court by way of writ petitions. These, in our view, are writ petitions filed on the basis of a show-cause-notice. Such a thing cannot be permitted. A writ petition on the basis of a show-cause-notice could be maintainable only in cases where there is absolute lack of jurisdiction. We are of the considered view that the writ petitions are premature. We take this view in view of specific provisions contained in Rule 6(6)*bf the Rules and Section 10(4) and (5) of the Act. It should be remembered that the Lokayukta is an institution similar to Ombudsman. The Lokayukta should have the power to investigate into any action or allegation. Considering the high authority of the Lokayukta, we feel that it is not proper for the courts to interfere with the process of investigation by the Lokayukta. The process should be left to the Lokayukta. Only after a final order is passed by the Lokayukta, if the party has any grievance, it can seek the extraordinary relief of a writ petition under Article 226 of the Constitution. In this view of the matter, we are clearly of the view that the writ petitions are not maintainable as they are premature.

20. For the various reasons mentioned above, we hold that these two writ appeals are liable to be allowed. In the result, the two writ appeals are allowed. The judgment dated 16th October, 1987 of the learned single judge is hereby set aside. The two writ petitions - W.P. No. 3555 of 1986 and W.P. No. 4753 of 1986, stand dismissed. The matter is remitted to the Lokayukta to continue the proceedings from the stage of Form No.VII notice issued under Rule 6(4) of the Rules. The writ petitioner, respondent in these appeals, shall have four weeks" time to submit his comments to the Form No.VII notice.

21. Before parting with these appeals, we would like to mention that it would be for the Lokayukta to consider whether in the particular circumstances of this case it would be necessary to proceed further with the investigation, especially, in view of the fact that more than eight years have elapsed after the complaint was received by the Lokayukta on 9-8-1984. Section 8(2) of the Act clearly lays down that Lokayukta or Upa-Lokayukta shall not investigate any complaint involving any allegation if the complaint is made after the expiry of 6 years from the date on which the action complained against is alleged to have taken place. The learned Lokayukta may also consider the change of events, especially, the retirement of the writ petitioner in 1988 January, and the fact that three of the

allegations mentioned in Form No.VII notice are based upon the information extraneous to the complaint and they depend on the basis of the preliminary verification done by the Investigating Officer.

22. In the peculiar circumstances of the case, each party shall bear its own costs. Advocate's fees fixed at Rs. 500/-.