
(2016) 04 AP CK 0053
In the Andhra Pradesh High Court
Case No : Writ Petition No. 10601 of 2016

V. Kannaiah

APPELLANT

Vs

The Commandant SAR CPL

RESPONDENT

Date of Decision : 07-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 5 ALT 251 : (2016) 5 AndhLD 396

Hon'ble Judges : Sri C.V. Nagarjuna Reddy and Sri M.S.K. Jaiswal, JJ.

Bench : Division Bench

Advocate : Mr. A. Tirupathi Goud, Advocate, for the Petitioner; GP for Services (AP), for the Respondent; None appeared, for the Respondent No. 4

Final Decision : Disposed Off

Judgement

Sri C.V. Nagarjuna Reddy, J.—This Writ Petition is filed against Order, dated 16.03.2016, in OA. No. 1060 of 2016 on the file of the Andhra Pradesh Administrative Tribunal.

2. I have heard Mr. A. Tirupathi Goud, learned Counsel for the petitioner, and the learned Government Pleader for Services (AP).

3. The petitioner is an Armed Reserve Sub-Inspector. His pay scale was fixed as per PRC 1992 and also PRC 2003. However, by proceeding, dated 15-12-2015, respondent No. 1 has revised his pay scale and by a separate order passed on 16.12.2015, he ordered recovery of a sum of Rs. 1,41,957/- on the ground that due to wrong fixation of pay scale, the afore mention sum was paid to the petitioner in excess of his entitlement for the period from 01-04-1993 to 30-11-2015. Feeling aggrieved by the said orders, the petitioner filed OA. No.1060 of 2016. By the impugned order, the Tribunal has dismissed the said OA on the ground that the petitioner has not availed the alternative remedy and therefore, the OA was barred by Section 20 of the Administrative Tribunals Act, 1985.

4. A perusal of the record shows that the main ground on which the petitioner

assailed the proceedings of respondent No.1 before the Tribunal was that the said respondent has unilaterally revised his pay scales without even issuing a notice to him. We have perused proceeding, dated 15.12.2015, of respondent No.1. It does not contain any reference to notice issued to the petitioner or any explanation being called from him. It is also not the pleaded case of respondent No.1 through the respective Government Pleaders before the Tribunal as well as before this Court that the said proceedings were issued after notice to the petitioner. By the said proceeding, respondent No.1 has not only made a downward revision of the pay scale of the petitioner but also ordered recovery of the alleged excess payment in 24 instalments commencing from the month of December, 2015. The law is well settled that any order, which results in adverse civil consequences, must be preceded by a notice and an opportunity of being heard to the person, who is likely to be affected by such order.

5. The learned Government Pleader has fairly not disputed that Order, dated 15-12-2015, and the consequential Order, dated 16-12-2015, were not preceded by notices to the petitioner. Therefore, the order challenged before the Tribunal was a nullity. Once an order is a nullity, the same does not exist in law and the doctrine of alternative remedy has no application in a case where such an order is sought to be challenged (See *Thansingh Nathmal v. Superintendent of Taxes* AIR 1964 SC 1419, *A.V. Venkateshwaran v. R.S.Wadhwani* AIR 1961 SC 1506, *Whirlpool Corporation v. Registrar of Trade Marks* (1998) 8 SCC 1, *Harbanslal Sahnia v. Indian Oil Corporation Ltd.* (2003) 2 SCC 107 and *ABL International Limited v. Export Credit Guarantee Corporation of India Limited* (2004) 3 SCC 553).

6. The Tribunal has completely overlooked the above settled legal position of law and dismissed the OA on the purported ground of non-availing of the alternative remedy by the petitioner.

7. For the afore mention reasons, the Writ Petition is allowed and both the orders, dated 05-12-2015 and 16-12-2015, are set aside, however, with liberty to respondent No.1 to initiate fresh action by issuing a show cause notice to the petitioner and pass a speaking order after considering the explanation, if any filed by the petitioner.

8. As a sequel, WPMP. No. 13359 of 2016, filed by the petitioner for interim relief, is disposed of as infructuous.