

(1996) 08 AP CK 0101

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2743 of 1996

V. Murali Prakash Rao

APPELLANT

Vs

The District and Sessions Judge and Another

RESPONDENT

Date of Decision : 01-08-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 3 ALT 525

Hon'ble Judges : Neelam Sanjiva Reddy, J;N.Y. Hanumanthappa, J

Bench : Division Bench

Advocate : K.G. Kannabhiran and I. Mallikarjuna Sarma, for the Appellant; P. Ravi Prasad, for the Respondent

Judgement

Neelam Sanjiva Reddy, J.—This petition is filed to issue a writ in the nature of Certiorari, appropriately mandamus or any other appropriate writ, direction or order quashing the impugned order of petitioner's removal from service dated 1-2-95 in Rc.A. No. 172 / 91 passed by the Respondent No. 1 herein, together with the order ROC No. 540/95, C.Spl. (Con), dated 11-12-1995 passed by the Respondent No. 2 herein, as illegal and void, along with a consequential direction to reinstate the petitioner forthwith with continuity of service, full back wages and all other attendant benefits.

2. Facts culminating in this writ petition and necessary for its disposal briefly stated are these:-

The petitioner herein was working as Process Server in District Munsif Court, Venkatagiri, Nellore District. P.W.1 (B. Eswaraiah), P.W.2 (Shaik Muniraja), P.W.3 (B. Chandrasekhar Reddy), P.W.4 (Ch. Udaykumar) and two more persons sent Ex. P-3 petition to the District Judge, Nellore on 16-7-1991 complaining against the writ petitioner herein and N. Adinarayana Reddy, a record assistant of the Court of District Munsif, Venkatagiri. Their grievance is that they are accused in Cr. Nos. 30/91 and 31 /91 of Venkatagiri Police Station and they were released on bail by the Munsif Magistrate, Venkatagiri. For completion of formalities to

release them on bail, that is to obtain the signatures on relevant bonds etc., the writ petitioner and another employee N. Adinarayana Reddy demanded and obtained some amounts, besides demanding some more amounts to help them in the case. Consequent upon Ex. P-3 complaint, the District Judge summoned the complainants to appear before him on 19-8-1991 for enquiry. On 19-8-1991 P.Ws.1 to 4 appeared before him and their sworn statements were recorded. Exs. P-1, P-2, P-4 and P-5 are sworn statements of P.Ws. 1,2,3 and 4 respectively. Those statements were recorded by the District Judge and read over to the witnesses, who admitted that they were correctly recorded. These statements were given in support of their complaint Ex. P-3 against the writ petitioner and another employee of the District Munsif Court, Venkatagiri. Thereupon, first respondent initiated departmental enquiry against the delinquents by appointing Mr. P. Dasaradha Ramaiah, Munsif Magistrate, Gudur as an Enquiry Officer to conduct regular departmental enquiry against the two delinquents. On the transfer of the said enquiry officer, Mr. M. Chalapathi Rao, Munsif Magistrate, Gudur was appointed as enquiry officer in his place.

3. The enquiry officer framed the following three charges against N. Adinarayana Reddy, Record Assistant (delinquent No. 1) and V. Murali Prakash Rao, Process Server (delinquent No. 2):

Charge No. 1:

"It is alleged that one B. Eswaraiah and 5 others who are accused in Cr. Nos. 30/91 and 31/91, Venkatagiri Police Station surrendered in Munsif Magistrate's Court, Venkatagiri on 28/5/1991, that the Munsif Magistrate granted bail and asked them to sign on papers, that they asked delinquent No. 2 of you, an attender of the Court standing outside, that delinquent No. 2 of you told them to go to delinquent No. 1 of you for putting the signatures, that delinquent No. 2 of you demanded Rs. 200/- from them as bribe, that delinquent No. 2 of you further told them to pay Rs. 50/- to delinquent No. 1 of you, that when they expressed their inability to pay the amount delinquent No. 2 of you threatened them to pay Rs. 200/-."

Charge No. 2:

"It is further alleged that delinquent No. 2 of you asked them to meet No. 1 of you in the evening, that the accused met delinquent No. 1 of you accordingly, that No. 1 of you gave them a "Patti" stating that each one of the accused numbering eleven has to pay Rs. 5/- each for bail bond, that they have to further pay Rs. 100/- to the office staff and Rs. 300/- to the Judicial Officer and that if the amount was not paid by the next adjournment, delinquent No. 1 of you threatened them to foist a false case against them by the police and that they in turn paid Rs. 200/- to delinquent No. 1 of you."

Charge No. 3:

"It is further alleged that on 10-6-1991, delinquent No. 1 of you again demanded

the amount from them and told them to pay Rs. 6,000/- stating that No. 1 of you would talk to the officer and see that no charge-sheet would be filed, that delinquent No. 1 of you further demanded Rs. 3,000/- as advance and remaining Rs. 3,000/- after the work is over, that afterwards delinquent No. 1 of you again asked the accused in those cases for the payment of Rs. 6,000/- and that they stated that they cannot pay such an amount."

The delinquents were given full opportunity to defend themselves in the enquiry and in fact, they were defended by their counsel during enquiry. During enquiry, P.Ws. 1 to 4 were examined and Exs. P-1 to P-5 were marked. The delinquents examined D.Ws. 1,2 and 6, Advocates practising at Venkatagiri, D.W.3 Head Clerk, District Munsif Court, Venkatagiri, D.W-4 a process server at the same Court and D.W.5 T. Narasimha Rao, Munsif Magistrate, Badvel, besides marking Ex. D-1, statement given by P.W3 to the delinquents on 29-9-1991, and Ex. D-2 a resolution dated 19-8-1991 passed by the Bar Association, Venkatagiri. The learned Enquiry Officer, after considering the evidence on record, found that the charge No. 1 is proved against the delinquents 1 and 2 in part, the charge No. 3 is proved against the delinquent No. 1 and the charge No. 2 is not proved. After receipt of the report of the enquiry officer, disciplinary authority, that is the first respondent after giving notice, opportunity and hearing the delinquents, passed the impugned order dated 1-2-95 in R.C. No 172/91 removing the delinquents 1 and 2 from service and the order was given effect to. The delinquents, aggrieved by the above order, preferred an appeal to the High Court of Andhra Pradesh on administrative side and the High Court, after considering all material on record, dismissed the appeal.

4. The second delinquent preferred this writ petition questioning the order of his removal by the first respondent and the order of the second respondent in confirming the same on appeal by the second delinquent.

5. Mr. K.G. Kannabhiran, Sr. Counsel appearing for the petitioner contended that the enquiry proceedings are vitiated for not giving sufficient opportunity to the delinquent to defend himself and for non-supply of required documents to the delinquent for his effective defence. He further contended that this is a case of no evidence and the findings of the enquiry officer are perverse and consequently the impugned orders are liable to be set aside and the petitioner is entitled to the relief prayed for in the petition.

6. Mr. P. Ravi Prasad, learned counsel appearing for the respondents, while refuting the submissions made by the learned senior counsel for the petitioner, submitted that all opportunities contemplated under the rules were given to the petitioner and that all documents required and also the documents requested for by the petitioner were supplied to him and that the enquiry was not in any way conducted in violation of principles of natural justice and the findings of the enquiry officer are wholly based on evidence on record and that there is sufficient evidence in support of the conclusions reached by the enquiry officer and the respondents 1 and 2 are fully justified in passing the impugned orders.

7. We have gone through the whole record and satisfied that the delinquent-petitioner was given opportunity as contemplated under the rules and was supplied with all the required material and also the documents requested for by him. We are of the view that this is a case where more opportunity was given and better facilities were provided to the delinquents than to the department. The department was not represented by any presenting officer. On the other hand, the delinquent was represented by a senior counsel as seen from the record. Therefore, we do not think that the enquiry was vitiated in any way and there is absolutely no violation of principles of natural justice in this case.

8. The next question for our consideration is whether this is a case of no evidence and the findings of the enquiry officer are perverse. The substance of accusation is P.Ws.1 to 4 and two others were released on bail in a criminal case by the Munsif Magistrate, Venkatagiri and they had to grease the palms of some of the staff in that Court for completion of process of execution of bail bonds for their release and the petitioner herein played his role in extracting moneys from them. P.Ws.1 to 4 and two others, who were aggrieved by the misconduct of the petitioner and another, made Ex. P-3 petition to the first respondent. The first respondent, having noticed the seriousness of the accusation, naturally called for the aggrieved, that is, P.Ws.1 to 4 and others. P.Ws. 1 to 4 gave their sworn statements Exs. P-1, P-2, P-4 and P-5 supporting their complaint Ex.P-3. But, during the enquiry by the enquiry officer against the delinquents, P.Ws. 1, 2 and 4 resiled from their prior statements. But, still they admitted that they made Ex. P-3 statement to the first respondent and that they gave their sworn statements before the first respondent. It is quite apparent that the delinquents, taking advantage of the lapse of time and false sympathies of people in such cases, prevailed on these witnesses and made them to depose in their favour. There is absolutely no evidence to show that Ex. P-3 complaint and the prior sworn statements of P. Ws. 1, 2 and 4 were resultant of any extraneous influence than of their original suffering at the hands of the delinquents. P.W.3 consistently supported the accusation. Ex. D-1 alleged statement of P.W.3 was extracted by force by the delinquents outside as spoken to by P.W.3 himself. General opinion of the members of the bar association, who were examined as some of the defence witnesses and Ex. D-2 resolution of the bar association, Venkatagiri regarding the general conduct of the delinquent would not help the delinquent when the enquiry was on particular charges as per rules. There is sufficient evidence that the petitioner had played his role in this sordid affair and his plea that he was on vacation and had no opportunity to extract money cannot be accepted in view of the evidence of P.W.3 and Exs. P-1 to P-5. Mere avilment of vacation does not rule out the possibility of the employee on vacation coming to Court and spending his time along with his colleagues.

9. In B.C. Chaturvedi Vs. Union of India and others, the Supreme Court held that the

"Judicial review is not an appeal from a decision but a review of the manner in

which the decision is made. Power of judicial review is meant i to ensure that the individual receives fair treatment and not to ensure mat the conclusion which the authority reaches is necessarily correct in the eye of the Court When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal ;is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry . has jurisdiction, power and authority to reach a rinding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts the evidence and the conclusion receives support thereform, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappraise the evidence or the nature of punishment. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disdplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of that case."

10. In view of the above factual and legal position, we do not find any reason to interfere with the findings of the enquiry officer and the disciplinary authorities in the instant case.

11. The petitioner was a process server. He could not have indulged in collecting moneys from the litigants without the active co-operation of the other staff members at higher level. Compared to the delinquent No. 1, who was at a higher level in the ministerial hierarchy, we are of the view that the punishment imposed on the writ petitioner is disproportionately excessive and requires to be modified proportionately. Considering all the circumstances of this case, we are of the view that the punishment of withholding two increments without cumulative effect and non-payment of back wages on reinstatement would suffice and meets the ends of justice.

12. In the result, the writ petition is disposed of modifying the punishment of dismissal to one of withholding two increments without cumulative effect and that the petitioner shall not be entitled to back wages on reinstatement.