

(2009) 02 AP CK 0058
In the Andhra Pradesh High Court
Case No : Writ Petition No. 27752 of 2008

V. Raju

APPELLANT

Vs

The Commander Works Engineer, Military Engineering Service
and Another

RESPONDENT

Date of Decision : 24-02-2009

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2009) 4 ALD 286 : (2009) 4 ALT 158

Hon'ble Judges : Sanjay, J; Ghulam Mohammed, J

Bench : Division Bench

Advocate : P. Naveen Rao, for the Appellant; A. Rajashekar Reddy, Asst. Solicitor-General, for the Respondent

Final Decision : Allowed

Judgement

Ghulam Mohammed, J.—This writ petition is filed challenging the order dated 03.10.2008 passed by the Central Administrative Tribunal, Hyderabad in O.A. No. 549 of 2007, whereunder the relief sought for by the petitioner for reinstatement into service was negated.

2. The brief facts of the case are as follows:

The petitioner was appointed by the first respondent to the post of Mazdoor in February, 1988 in pursuance of sponsoring of his name by the Employment Exchange. While so, the first respondent issued a Charge Sheet to him in the year 1992 alleging that he has produced a false school transfer certificate to secure employment. Based on that allegation, the first respondent passed an order dated 29.8.1994 removing him from service. On appeal, the second respondent confirmed the orders of removal, vide Order dated 08.05.1995. Challenging the same, the petitioner filed O.A. No. 818 of 1995 and the same was disposed of on 20.3.1998 observing that the punishment of removal from service is excessive and disproportionate to the proved charges and remanded

the matter to the appellate authority to reconsider the appeal for moderate punishment. The second respondent passed an order dated 25.06.1998 confirming the penalty of removal from service. Aggrieved by the same, the petitioner filed O.A. No. 945 of 1998 and the same was dismissed on 3.9.1999. Against that order, the petitioner filed W.P.No.26770 of 1999 and the same was allowed on 22.06.2001 setting aside the order passed by the Tribunal, as also the order dated 25.6.1998 of the second respondent and directed the appellate authority to consider the matter afresh.

3. Pursuant to the order of this court, the petitioner approached the appellate authority-second respondent to consider for imposing a moderate penalty, but he confirmed his earlier decision by order dated 09.08.2001. Thereafter, he filed O.A. No. 1483 of 2001 and the same was allowed with the direction to the respondents to consider the matter afresh and to comply with directions of this court in W.P. No. 26770 of 1999 and pass fresh orders. After the remand, orders were passed on 13.04.2004 once again rejecting the request of the petitioner for imposing a moderate penalty. Aggrieved by the same, the petitioner filed O.A. No. 623 of 2004 and the same was allowed with costs by order dated 6.3.2007 directing the second respondent to reconsider the matter in the light of orders of this Court, but the second respondent rejected the same by order dated 30.04.2007. Again he filed O.A. No. 549 of 2007 and the same was dismissed. Against the dismissal of the O.A., the petitioner has filed the present writ petition.

4. The learned Counsel for the petitioner contended that the attitude of the respondents is adamant and they are sitting over the judgment of this court as well as the judgments of the Tribunal as an appellate authority by falling back to the Departmental Circular, dated 19.5.1993. They have brazenly disobeyed and disregarded the orders of the Tribunal, when the Tribunal categorically held that the punishment imposed on the petitioner is excessive and disproportionate to the proved charges. He further contended that in spite of directions issued by this court as well as the Tribunal time and again, they have totally disrespected the same with an intention to harass the petitioner. He further contended that the respondents have not filed any writ petition against the orders in O.A. Nos. 818 of 1995, 1483 of 2001, and O.A. No. 623 of 2004, which were in favour of the petitioner and those orders have become final. He further contended that similarly placed persons like petitioner, were removed from service, but later they were reinstated into service with much lesser penalties.

5. On the other hand, the learned Assistant Solicitor General of India appearing on behalf of the respondents submitted that the Central Bureau of Investigation has enquired into the matter and based on their report the petitioner was removed from the service. He submitted that in view of the decision of the Supreme Court in Ram Saran Vs. I.G. of Police, CRPF and Others, the action of the respondents cannot be found fault with and that the respondents have followed the Circular of Department of Personnel & Training, vide O.M. No. 11012 /91/Estt.(A), dated 19th May 1993 and submitted that where ever it is

found that a Government servant, who was not qualified or eligible in terms of the recruitment rules etc. for initial recruitment in service or had furnished false information or produced a false certificate in order to secure appointment he should not be retained in service. Therefore, the Tribunal has rightly dismissed the O.A. and the same cannot be interfered with. 6. Heard the learned Counsel for the petitioners and the learned Assistant Solicitor General of India appearing on behalf of the respondents and perused the record.

7. This case has a chequered history. It is to be seen that in O.A. No. 818 of 1995, the Tribunal has categorically held that the punishment imposed on the petitioner is excessive and disproportionate and directed the second respondent to reconsider the appeal for moderate punishment, but he failed to comply with the same. Subsequently, a Division Bench of this court in W.P. Nos. 26770 of 1999 and 26784 of 1999 while allowing the same, has observed as under:

While considering the administrative action the court may invoke the underlying principles adumbrated in Article 14 of Constitution of India, if the same suffers from the virus of unreasonableness, in the light of decision of the Apex Court in *E.P. Rayappa v. State of Tamil Nadu*. Another important aspect which requires consideration from another angle is if a misrepresentation is made for the purpose of obtaining appointment, the same would constitute a serious misconduct, but if person has produced something which was not necessary to be produced and/or the documents so produced were wholly irrelevant for the purpose of obtaining the appointment, the same may be considered in a different perspective.

and set aside the order dated 3.9.1999 passed by the Tribunal in O.A. No. 945 of 1998, and also the order dated 25.6.1998 of the second respondent and directed the appellate authority to consider the matter afresh. Despite the orders of this court in the above writ petitions and the orders of the Tribunal, the respondents did not adhere to pass any reasonable order. The entire exercise undertaken by the authority is not sincere and honest and they are bent upon to harass the petitioner. The petitioner had filed O.As on five occasions and he approached this court by filing writ petition No. 26770 of 1999. The respondents are sitting over the judgment of this court and the orders of the Tribunal as an appellate authority and it clearly reflects the adamant attitude of the respondents and it has to be deprecated. The punishment imposed on the petitioner is unwarranted, unjustified and unreasonable, since the school transfer certificate produced by the petitioner is irrelevant document for the purpose of securing employment. The respondents are falling upon the Circular, dated 19.5.1993, without complying the judicial orders. Further, it appears that similarly situated persons like petitioner, were reinstated into service with lesser penalty of reduction of pay by three increments.

8. As held by the Supreme Court and this court in catena of decisions that in such cases though the matter has to be sent back to the Disciplinary Authority for lesser penalty, without exercising judicial review, in view of the peculiar facts

and circumstances of the case and the peculiar attitude of the respondents, we deem it appropriate to direct the authorities to reinstate the petitioner into service by imposing punishment of reduction of pay in three stages. Hence, the order, dated 03.10.2008 passed by the Tribunal in O.A. No. 549 of 2007 and the order, dated 30.04.2007 of the second respondent are set-aside.

9. With the above direction, the writ petition is allowed. No order as to costs.