



IN THE HIGH COURT OF ANDHRA PRADESH: AT AMARAVATI

W.P.No.12882 of 2019

Between

M.Tirupathi Rao, S/o. late Bheema Raju,
Aged about 67 years,
Occ: Superintendent (Retired) (Judicial Department),
R/o. D.No.68-7-5, Jatla Pedakapu street,
Ashok Nagar, Kakinada, East Godavari District

... Petitioner

Vs.

The State of Andhra Pradesh,
Represented by its Secretary,
Department of Law (L.A & J-Home Courts-B),
Secretariat Buildings, Velagapudi,
Guntur District
and two others

... Respondents

DATE OF JUDGMENT PRONOUNCED: 05.07.2022

**HON'BLE SRI JUSTICE A.V.SESHA SAI
AND
HON'BLE SMT JUSTICE V.SUJATHA**

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|----|----------------------------------------------------------------------------|--------|
| 1. | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reports/Journals? | Yes/No |
| 3. | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

JUSTICE A.V.SESHA SAI

JUSTICE V.SUJATHA



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! Counsel for the petitioner : Smt. K.Pallavi

^Counsel for respondent No.1 : Sri Aswartha Narayana,
Learned G.P. for Services-I

^^Counsel for respondent Nos.2 and 3: Sri K.Srinivasa Rao,
Learned Standing Counsel

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➤ Head Note:

? CASES REFERRED: NIL.



**HON'BLE SRI JUSTICE A.V.SESHA SAI
AND
HON'BLE SMT JUSTICE V.SUJATHA**

W.P.No.12882 of 2019

ORDER: (*Per Hon'ble Sri Justice A.V.Sesha Sai*)

Heard Smt. K.Pallavi, learned counsel for the petitioner, Sri Aswartha Narayana, learned Government Pleader for Services-I, Sri K.Srinivasa Rao, learned Standing Counsel for respondents 2 and 3 apart from perusing the material available on record.

2. Challenge in the present writ petition is to the order passed by the State Government vide G.O.Ms.No.64, HOME (COURTS-B) DEPARTMENT, dated 19.04.2017 and the consequential order of rejection dated 06.03.2019, rejecting the representation of the petitioner. The petitioner herein joined as Amin in the Court of Munsif Magistrate, Razole on 20.12.1977. After periodical promotions, he retired from service while working as Superintendent in the Agency Court of Judicial First Class Magistrate, Rampachodavaram, East Godavari District, pursuant to the order of compulsory retirement passed by the learned Principal District Judge, Rajahmundry on 01.10.2009. In respect of certain allegations pertaining to the period 27.04.2005 to 16.05.2007, six disciplinary proceedings were initiated. Out of six departmental enquiries, in respect of four, 1st respondent State Government issued G.O.Ms.No.31, LAW (LA&J-HOME-COURTS-D1) DEPARTMENT, dated 05.03.2014, G.O.Ms.No.32, LAW (LA&J-



HOME-COURTS-D1) DEPARTMENT, dated 05.03.2014, G.O.Ms.No.33, LAW (LA&J-HOME-COURTS-D1) DEPARTMENT, dated 05.03.2014 and G.O.Ms.No.52, HOME (COURTS-B) DEPARTMENT, dated 06.04.2017, imposing in each of the enquiries, the punishment of 2% cut in pension permanently i.e. total of 8% cut in pension came to be imposed against the petitioner.

3. The petitioner herein did not question the aforesaid orders and filed W.P.No.23113 of 2015 for release of retirement benefits and the said writ petition was disposed of vide order dated 24.11.2015 with a direction to the respondents therein to complete the disciplinary proceedings and to issue final orders at the earliest, in any event not later than two months from the date of receipt of a copy of the order. Subsequently, the State Government while provisionally deciding to issue penalty of withholding 2% pension permanently on the petitioner, called upon the petitioner to submit explanation vide letter dated 17.12.2012.

4. In response to the said show-cause notice, the petitioner submitted his explanation on 12.01.2013. Since the petitioner herein is a retired employee, the State Government in terms of proviso to Rule 9 of the Andhra Pradesh Revised Pension Rules, 1980, addressed a letter to the Andhra Pradesh Public Service Commission (APPSC) on 25.11.2013, seeking its advice on the provisional decision. The APPSC vide letter dated 06.08.2016, advised to impose a punishment of 20% cut in pension



permanently. Obviously taking the said advise into consideration, the State Government vide G.O.Ms.No.64, HOME (COURTS-B) DEPARTMENT, dated 19.04.2017 imposed on the petitioner the penalty of withholding of 20% pension permanently on the charged officer. Subsequently, on 21.08.2017, petitioner submitted a representation with a request to consider the issues sympathetically and sought reduction to 2%. The said representation came to be rejected by the State Government vide Memo No.1465/Courts.B/2018, dated 06.03.2019.

5. In the above background, questioning the validity and legal sustainability of the order of the State Government passed vide G.O.Ms.No.64, HOME (COURTS-B) DEPARTMENT, dated 19.04.2017 and the Memo dated 06.03.2019, referred to supra, the petitioner herein has come up before this Court with the present writ petition.

6. Smt.K.Pallavi, learned counsel for the petitioner contends that the orders impugned in the present writ petition are highly illegal, arbitrary, unreasonable, opposed to the very spirit and object of the provisions of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 and the Andhra Pradesh Revised Pension Rules, 1980. Learned counsel further submits in elaboration that since the Government in the show-cause notice proposed only 2% cut in pension, the order passed by the State Government, imposing punishment of 20% cut in pension permanently, is totally one



without jurisdiction and the Government should not have resorted to such an arbitrary action. It is further submitted by the learned counsel that none of the provisions of either the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 or the Andhra Pradesh Revised Pension Rules, 1980 would authorize the APPSC to recommend for enhancement of the proposed punishment by the State Government. It is further submitted that the word 'consultation' employed in proviso to Rule 9 (1) of the Andhra Pradesh Revised Pension Rules does not enable or empower the APPSC to recommend for the enhancement of the punishment indicated in the show-cause notice. It is further submitted that the word consultation as stipulated in the above rule includes the approval of punishment by the Government or disagreement for imposition of penalty. It is further contended that the State Government also by way of the impugned Governmental Order, did not make any endeavour to consider the explanation of the petitioner herein, submitted in response to the show-cause notice, proposing the enhancement.

7. On the other hand, it is contended by Sri Aswartha Narayana, learned Government Pleader for Services-I and Sri K.Srinivasa Rao, learned Standing Counsel for respondents 2 and 3 that there is no illegality nor there exists any procedural infirmity in the impugned action and having regard to the gravity of the charges levelled against the petitioner, the present writ petition is liable to be dismissed.



8. In the above background, now the issue that arises for consideration of this Court in the present writ petition is :-

Whether the order of punishment passed by the State Government which is impugned in the present writ petition is sustainable and tenable and whether the petitioner herein is entitled for any relief from this Court under Article 226 of the Constitution of India?

There is absolutely no dispute with regard to the fact that as many as six departmental enquiries came to be initiated against the petitioner and out of six departmental enquiries, in respect of four departmental enquiries, the Government passed orders, imposing in each of them the punishment of 2% cut in pension permanently i.e. total of 8% cut in pension was imposed against the petitioner.

9. Coming to the present disciplinary enquiry, after conclusion of the enquiry, the State Government while provisionally coming to the conclusion to impose a penalty of 2% cut in pension under Rule 9 of the Andhra Pradesh Revised Pension Rules, 1980, issued a show-cause notice on 17.12.2012, calling upon the petitioner to show cause as to why such punishment should not be imposed on him. There is absolutely no dispute with regard to the fact that the petitioner herein submitted explanation to the said show-cause notice on 12.01.2013. Obviously, in terms of proviso to Rule 9 (1) of the Andhra Pradesh Revised Pension Rules,



the State Government addressed a letter to the APPSC seeking its opinion / concurrence on the decision of the Government by way of a letter dated 25.11.2013. A perusal of the order impugned in the writ petition, in clear and unequivocal terms, indicates that though the Government proposed 2% cut in the show-cause notice, evidently on the basis of the opinion expressed by the APPSC, the State Government passed the orders under challenge, imposing penalty of 20% cut in pension contrary to the punishment indicated in the show-cause notice.

10. It is very much clear from a reading of the proviso to Rule 9(1) of the Andhra Pradesh Revised Pension Rules that before passing any final orders, consultation with the APPSC is mandatory. However, it is nowhere stipulated that the APPSC is empowered to recommend for the enhancement of punishment, proposed by the Government. In the considered opinion of this Court, the term consultation includes consultation for the purpose of imposing punishment on the delinquent and the disagreement if any. It is also significant to note that the State Government also did not consider the explanation offered by the petitioner in response to the show-cause notice dated 17.12.2012. Having called for the explanation and having acknowledged the same, it would not be appropriate to completely ignore the explanation offered by the petitioner herein.



11. For the aforesaid reasons, the Writ Petition is allowed setting aside the order of the State Government passed vide G.O.Ms.No.64, HOME (COURTS-B) DEPARTMENT, dated 19.04.2017 and the matter is remanded to the State Government for fresh consideration of the issue and for passing the appropriate orders strictly in accordance with law and in the light of the observations made supra, within a period of two (02) months from the date of receipt of a copy of this order. There shall be no order as to costs.

Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE A.V.SESHA SAI

JUSTICE V.SUJATHA

Date: 05.07.2022

Note: L.R. copy to be marked

(B/o)
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**HON'BLE SRI JUSTICE A.V.SESHA SAI
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