



HIGH COURT OF ANDHRA PRADESH
THURSDAY ,THE TWENTIETH DAY OF AUGUST
TWO THOUSAND AND TWENTY

PRESENT

THE HONOURABLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION NO: 13055 OF 2020

Between:

1. Banala Naghabhushana Rao, S/o. Rama Murthy,
Aged 55 years,
Occ Deputy Tahsildar (Election),
Pathapatnam Mandal, Srikakulam District

...PETITIONER(S)

AND:

1. THE COLLECTOR AND DISTRICT MAGISTRATE Srikakulam,
Srikakulam District.
2. The Chief Commissioner of Land Administration, State of Andhra
Pradesh, Vijayawada, Krishna District.
3. The State of Andhra Pradesh, Rep. by its Special Chief Secretary,
Revenue Department, Secretariat Building, Velagapudi/Amaravathi,
Guntur District.
4. The Special Deputy Collector/ Inquiry Authority, KRRC Srikakulam,
Srikakulam District

...RESPONDENTS

Counsel for the Petitioner(s): P V KRISHNAIAH

Counsel for the Respondents: GP FOR SERVICES I (AP)

The Court made the following: ORDER



*** HON'BLE SRI JUSTICE G. SHYAM PRASAD**

+ W P No.13055 OF 2020

% 20-08-2020

Banala Naghabhushana Rao,
S/o Rama Murthy, aged 55 years
Occ: Deputy Tahsildar (Election)
Pathapatnam Mandal, Srikakulam District

... petitioner.

vs.

- \$ 1. The Collector & District Manager,
Srikakulam, Srikakulam District.
2. The Chief Commissioner of Land Administration
State of Andhra Pradesh,
Vijayawada, Krishna District.
3. The State of Andhra Pradesh
Rep by its Special Chief Secretary
Revenue Department, Secretariat Building
Velagapudi/Amaravathi, Guntur District.
4. The Special Deputy Collector/
Inquiry Authority
KRRC Srikakulam, Srikakulam District.

... Respondents.

!Counsel for the petitioner : Sri P V Krishnaiah

^Counsel for the Respondents : G.P. for Services-I

<Gist :

>Head Note :

? Cases referred :

**HON'BLE SRI JUSTICE G. SHYAM PRASAD****W.P. No.13055 OF 2020****ORDER:**

This is a writ of mandamus filed under Article 226 of the Constitution of India seeking to declare the action of the 2nd respondent in not disposing of the appeal filed by the petitioner dated 19.02.2019 against the major punishment imposed by the 1st respondent vide proceedings dated 02.12.2018 as arbitrary and illegal. The petitioner consequentially sought for setting aside the proceedings and also sought a direction to the respondents to consider the promotion of the petitioner to the post of passing the Zone-I as per his seniority before considering the promotions of the petitioners' junior.

2. Heard arguments of learned counsel for petitioner and the Government Pleader appearing for respondents.

3. The Collector and District Magistrates, Srikakulam, the respondent No. 1 herein has issued proceedings imposing of major penalty of withholding of 2 annual grade increments with cumulative effect to the writ petitioner, vide his orders dated 02.12.2018.

4. Aggrieved by the impugned orders the writ petitioner has preferred an appeal to the 2nd respondent, the Chief Commissioner of Land Administration, Vijayawada, challenging the impugned orders passed by the learned Additional Collector and District Magistrates on various grounds inter alia contending that the enquiry was not conducted as per the procedure under



Rule 20 of APCS CCA rules and there is violation of principles of natural justice.

5. The writ petitioner has sought for a relief of declaring the impugned proceedings of the 1st respondent illegal and arbitrary. The petitioner has also sought for suspension of the operation of the proceedings issued by the 2nd respondent dated 02.12.2018.

6. The point for determination in this writ petition is **whether the appellant is entitled for the relief sought for in the main writ petition?**

7. The learned counsel for appellant has invited the attention of this Court to the proceedings of the Collector and District Magistrates and contends the respondent No.1 herein did not conduct the disciplinary enquiry as per the procedure under Rule 20 of the APCS CCA Rules 1991 and there is violation of principles of natural justice.

8. Admittedly, the writ petitioner has preferred an appeal against the impugned order passed by the 1st respondent. The grievance of the petitioner is that the appeal is pending on the file of appellate authority. In the meanwhile, the Departmental promotions are being affected. The rights of promotion of the petitioner is being affected, in view of the pendency of the appeal. The promotion of the petitioner Could not be considered because of the pendency of the appeal.



9. The learned counsel for appellant has not only challenging the impugned order passed by the 1st respondent, and he has also challenging the non-disposal of the appeal by the appellate authority, the 2nd respondent herein.

10. The learned Government Pleader submits that when the writ petitioner has preferred an appeal and it is pending before the appellate authority, the merits of the appeal cannot be gone into in this writ petition. The appellate authority may be directed to dispose of the appeal. The writ petitioner cannot seek to set aside the impugned orders passed by the 1st respondent as they cannot be challenged before this Court, except by way of filing an appeal before the 2nd respondent due to availability of an alternative relief. The 2nd respondent is the competent authority to consider the appeal.

11. There is some force in the contentions raised by the learned Government pleader. Admittedly, the appeal is pending on the file of the appellate authority. The subject matter in the appeal and the writ petition are almost similar. The writ petitioner is not entitled to agitate the same in this writ petition. The main relief sought in the writ petition is that, the appellate authority has kept the appeal proceedings pending for the last one and half year, and in the meanwhile the writ petitioner is losing his opportunity of getting promotion.

12. This Court is of the view that once the petitioner had preferred an appeal against the enquiry report, it is appropriate for him to proceed with the appeal until it reaches its logical conclusion. The petitioner is agitating the merits of the appeal in



this writ petition which this Court can't go under writ jurisdiction. The grievance of the petitioner is that in view of the pendency of appeal for the last one and half year, he was denied of his promotion. The petitioner cannot challenge the merits of the disciplinary proceedings in this Writ petition having filed an appeal which is pending before the competent authority.

13. This Court while exercising the power of judicial review, the Court cannot be oblivious to the conceptual difference between the appeal and review. In judicial review the courts ordinarily do not interfere with the findings of facts however grave they may be. It is only concerned with grave error of law which is apparent on the face of record. The error of law may arise when a Tribunal wrongfully rests admissible evidence or consider inadmissible evidence. The said proposition of law is laid down in the following decisions of Hon'ble Apex Court.

- 1) **Syed Yakoob vs K.S.Radha Krishnan and others (AIR 1964 SC 477)**
- 2) **Jagadish Prasad vs Smt Angoori Devi (AIR 1984 SC 477)**
- 3) **Commissioner of Income Tax, Calcutta vs Karamchand Thapar & Bros (P) Ltd (1989 SC 1045)**
- 4) **H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons (1992) 2 SCC Supp 312)**
- 5) **Surya Dev Rai v. Ram Chander Rai and others (AIR 2003 SC 3044)**

14. In the light of the above decisions the law laid down may be culled out as follows:

"In accordance with Clause(1) of Article 323-A of the Constitution of India, the Parliament enacted the



*Administrative Tribunals Act 1985. The jurisdiction in relation to all 'conditions of service' in the public employment was to be exercised by the Administrative Tribunal constituted under Chapter II of the said Act. A seven Judge Bench of the Supreme court in **L.Chandra Kumar v. Union India** (13) (1997)3 SCC 261, AIR1997 SC 1125 laid down that the jurisdiction of this Court under Articles 226/227as well as that of the Supreme Court under Article 323 cannot be ousted. Thus all the decisions of the Tribunals will be subject to judicial review before a Bench of the High Court. Of late, almost all decisions of the service tribunals are challenged on untenable grounds and this Court is forced to perform the role of the first appellate Court.*

*The Tribunal is vested with power to adjudicate upon matters including the vires of legislation and rules as well as to decide the disputes involving interpretation of Articles 14, 15 and 16 of the Constitution of India. Of course, all the disputes in relation to conditions of service are within the ambit of the jurisdiction of the Tribunals. The tribunal however is held to be not competent to decide the vires of the parent statute constituting it. Needless to say that like all the statutory Tribunals, the service tribunals exercise wide adjudicatory powers in relation to service disputes. As held by the Supreme Court in **SamPATH Kumar v. Union of India** (14) (1987) 1 SCC 124, AIR 1987 SC 386, **Samba Murthy v. Union of India** (15) (1987) 1 SCC 362, AIR 1987 SC 663, and **L Chandra Kuamr** (13supra) as per the theory of alternative institutional mechanism the tribunals are vested with the power of judicial review in service matters.*

*The difference between "appeal" and "review" is well established. An appeal continuation of the original proceedings and is concerned with the merits of the case. It requires with the merits of the case. It requires examination of the correctness of the findings of the both fact and law. Judicial review is not an appeal from a decision but a review of the manner in which the decision was made and that the judicial review is concerned not with the decision but with the correctness of the decision making process (Chief Constable of the North Wales Police vs. Evans (16) 1982(1) WLR 1155). In **R.V. Entry Clearance Officer, Bombay, Ex part Amin** (17)(1980)2 All ER 837,(1980) 1*



WLR 1530, 1983(2) AC 818 the House of Lords explained that judicial review is entirely different from an ordinary appeal and that it is concerned not with the merits of a decision but with the manner in which the decision was made. These principles have been quoted with approval in **Tata Cellular v Union of India** (18)(1994) 6 SCC 651, AIR 1996 SC 1)

From the above finding authorities, the law may be culled out as follows:

1). The High Court is not an appellate authority over the decision of the Administrative Tribunals. While exercising the power of judicial review, the High Court cannot be oblivious to the conceptual difference between appeal and review;

2). The petition for a judicial review would lie only on grounds of grave errors of law apparent on the face of the record and not on the ground of error of fact, however grave it may appear to be;

3). When the Tribunal renders a decision after determining the facts, no application for judicial review could be maintainable only on the ground that the Tribunal committed an error of fact, however grave it may appear, unless it is shown that such a finding of the Tribunal is based on no evidence and the error of fact itself can be regarded as error was rejected and inadmissible evidence was relied on;

4). The orders passed by the Tribunal by exercising discretion which judicially vests in it cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal in the sense the Tribunal did not follow an earlier decision of the Tribunal or binding authority of the High Court or the Supreme Court with reference to finding of facts and law;

5). When the Tribunal disposes of the original application by applying the binding precedents of High Court as well as Supreme Court; it cannot be said that the Tribunal has committed any error of law apparent on the face of the record; in such cases the limited review before the High Court would be whether the binding principle has been appropriately applied or not; The Tribunal's decision which is rendered in ignorance of the statutory law



including subordinate legislation as well as the law laid down by the Supreme Court must be held so suffer an error apparent on the face of the record and requires judicial review;

6). The grounds of judicial review of administrative action illegality, irrationality, impropriety and proportionality with necessary changes are equally applicable to cases of judicial review of the Tribunal's decision; and

7). A mere wrong decision without anything more is not enough to attract jurisdiction of High Court under Articles 226 and 227, and the supervisory jurisdiction conferred on High Court is limited to see that Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice.

8). We have carefully gone through the decisions and are convinced that they would not in any manner help the petitioner. We have subjected the impugned order of the Tribunal to judicial review by applying well settled principles. Except making an attempt to point out certain factual aspects, the petitioner failed to point to any grave error apparent on the face of the record. Therefore, we are convinced that no interference is called for.

N.Bhaskar Rao v. Government of A.P., represented by its Principal Secretary, Transport, Roads and Buildings. (AP-DB) : 2012(1) ALT 1.

15. Whether the enquiry was conducted in accordance with procedure laid down under Rule 20 of APCS (CCA) Rules 1991 or not, and whether the proceedings of the District Collector reveals that no specific reasons are given or not, have to be considered in the appeal, in the light of question of facts. In the light of the catena of decisions referred above, this Court can't step into the shoes of an appellate Court and decide the issues.

16. In view of the foregoing reasons, the appellate authority is directed to dispose of the appeal, preferably, within four (04)



weeks from the date of receipt of a copy of this order, and in the meanwhile, if any promotions are being affected, the name of the petitioner shall be considered for promotion, without reference to the imposition of punishment imposed in the impugned order, and the promotion shall be however subject to the result of the appeal.

17. With these observations, the Writ Petition is disposed of. No order as to costs.

Miscellaneous petitions, if any, pending shall also stand closed.

Date: 20.08.2020

Note : C.C. one week

(b/o)

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G. SHYAM PRASAD,J



HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION No.13055 OF 2020

Date: 20 .08.2020

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