2023:APHC:11720

HIGH COURT OF ANDHRA PRADESH

TUESDAY ,THE EIGHTEENTH DAY OF APRIL

TWO THOUSAND AND TWENTY THREE

PRSENT

THE HONOURABLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

WRIT PETITION NO: 14438 OF 2021

Between:

1. Budda Adinarayana Rao, S/o. Sri Jangamaiah, Aged about 45 years, Occ Government Service, R/o. Bhavanapadu Village, Srikakulam District, Andhra Pradesh

...PETITIONER(S)

AND:

1. The State of Andhra Pradesh, Rep. by its Secretary, Infrastructure and Investment (Ports) Department, A.P. Secretariat, Amaravati, Guntur District, Andhra Pradesh
2. The Chief Executive Officer, A.P. Maritime Board and Director of Ports, A.P., Kakinada, East Godavari District, Andhra Pradesh
3. The Director General Anti Corruption Bureau, Vijayawada, Andhra Pradesh

...RESPONDENTS

Counsel for the Petitioner(s): SIVARAJU SRINIVAS

Counsel for the Respondents: GP FOR SERVICES I

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

WRIT PETITION No. 14438 of 2021

ORDER:

This writ petition is filed to declare the orders of the 1st respondent issued in G.O.Rt.No.35, Infrastructure & Investment (Ports) Department, dated 05.07.2021, and the consequential Memo dated 30.10.2022, as illegal and arbitrary.

2. Heard Sri Sivaraju Srinivas, learned counsel for the petitioner, learned Government Pleader for Services-I appearing for respondent Nos.1 and 2, and Ms. A. Gayathri Reddy, learned standing counsel for ACB appearing for the 3rd respondent.

3. Briefly, the case of the petitioner is that he was initially appointed as a Port Officer in the Port Services on 15.11.2011 on contract basis for a period of one year. Later, pursuant to a notification No.22/2011 dated 27.12.2011 issued by the APPSC for regular appointment of Port Officers in the A.P. Port Services, he applied for the said post and on being selected, he was appointed as a regular Port Officer vide G.O.Ms.No.11, Infrastructure & Investment (Ports) Department, dated 20.07.2013 and accordingly,

he joined duty on 22.07.2013 at Kakinada Anchorage Port. Subsequently, on 20.07.2016 he was designated and posted as a Special Officer, Bhavanapadu Project vide G.O.Ms.No.89, energy, Infrastructure & Investment (Ports.II) Department, dated 20.07.2016. Thereafter, the 1st respondent constituted the A.P. Maritime Board at Kakinada on 16.12.2019 and Officers from the Port Services were absorbed into the Board.

i) The petitioner has been functioning as the Port Officer, Kakinada since November, 2019. As most of the boats, which were registered under the provisions of the A.P. Inland Vessels Rules, 2017, that are quite, stringent, the petitioner in the month of January, 2020 conducted counselling to majority of the boat and barge operators in the Kakinada Port. Having conducted extensive counselling for them and then they realised that it would not be practical for them being small operators to adhere to the Inland Vessels Act, 1917 or the A.P. Inland Vessels Rules, 2017 which are rigorous, the petitioner suggested them to convert their registrations into A.P. Harbour Craft Rules.

ii) While things stood thus, in the process of conversion of registrations into the A.P. Harbour Craft Rules, it appears that one owner of a Barge called "Sunny Glory" complained with the officers of the 3rd respondent on 05.02.2020 that Sri D.Venkat Rao, who was working as Port Conservator in the Kakinada Port under the petitioner had demanded a bribe of Rs.60,000/- on the pretext that Rs.50,000/- will be paid to the petitioner and the remaining amount will be equally shared by him and the harbour Craft Superintendent, for doing official favour i.e., to process the file pertaining to registration of his Barge "Sunny Glory" and to issue registration certificate duly signed by the Port Officer. Based on the said complaint, the 3rd respondent registered an F.I.R. No.4/RCT-RJY/2020 dated 06.02.2020 against said D.Venkat Rao as a sole accused under the provisions of the Prevention of Corruption Act, 1988. At the time of investigation by the 3rd respondent, the petitioner's name was also included as accused No.2 in the said crime. On that, the 2nd respondent issued a show cause notice dated 12.02.2020 calling upon the petitioner to show cause as to why

disciplinary action should not be taken against him, for which the petitioner submitted an explanation on 13.02.2020.

iii) In fact, the petitioner was never arrested by the respondent authorities and finally, he was granted anticipatory bail on 05.03.2021. Even after the registration of the crime, the petitioner has been continuing in service and discharging his duties as usual. While so, the 1st respondent issued orders vide G.O.Rt.No.35, Infrastructure & Investment (Ports) Department, dated 05.07.2021, placing the petitioner under suspension with immediate effect pending enquiry. Hence the writ petition.

4. Learned counsel for the petitioner would submit that the impugned proceedings dated 05.07.2021 were issued by the 1st respondent purely basing on the letter dated 16.03.2021 addressed by the 3rd respondent, after lapse of a period of 18 months from the date of the alleged incident, even though the petitioner cooperated for investigation as directed by the 3rd respondent. He would further submit that the alleged incident was caused by the Subordinate Officer of the petitioner without the knowledge of the petitioner and he demanded bribe as if the petitioner demanded. It

is not the case of the 3rd respondent that they filed any application seeking cancellation of the anticipatory bail granted to the petitioner. Moreover, the departmental proceedings are not yet initiated against the petitioner even after submission of his explanation. He would also submit that the impugned proceedings of suspension of the services of the petitioner is only a selective suspension and punitive in nature and except the petitioner, none others, who were involved in the offence, are suspended. As per the A.P. Civil Services (Classification, Control and Appeal) Rules, 1991 (for short "the CCA Rules, 1991"), the object of suspension is to keep away the delinquent or detenue from the records and witnesses who are working along with the petitioner. But in the instant case, the suspension was ordered after lapse of 18 months while continuing the petitioner in service all this period. Therefore, it is crystal clear that it is only a selective and punitive measure exercised against the petitioner by the respondent authorities. The learned counsel would submit that the 1st respondent shall assess the necessity and object of suspension being a Disciplinary Authority, but it cannot be guided by any other authority for doing so. But, in

the present case, on the recommendation of the 3rd respondent only, the petitioner was placed under suspension contrary to the object of the CCA Rules, 1991.

i) He would submit that in fact, there are no pending disciplinary proceedings against the petitioner for issuing the impugned proceedings under Rule 8 (c) of the CCA Rules, 1991. The 1st respondent issued G.O.Ms.No.86, General Administration (Ser.C) Department, dated 08.03.1994, to the effect that the order of suspension against a government servant should be reviewed at the end of every six months. But in the present case, neither the order of suspension was reviewed nor it was revoked. He would further submit that since no departmental proceedings are initiated against the petitioner under the CCA Rules, 1991, the continuation of suspension of the services of the petitioner for an indefinite period merely on the ground of pendency of a criminal case is illegal and arbitrary. In support of his contentions, he placed reliance on the decisions of the Hon'ble Apex Court in ***State of Orissa through its Principal Secretary, Home Department Vs. Bimal Kumar***

Mohanty*[1]*, Union of India Vs. Ashok Kumar Aggarwal*[2] *& K. Sukhendar Reddy Vs. State of A.P* [3] *& Ajay Kumar Choudhary Vs. Union of India*[4]** as well as the Division Bench of the composite High Court of Andhra Pradesh at Hyderabad in ***Mubashir Hussain Vs. Commissioner of Central Excise-III, Hyderabad*[5].** The ratio laid down in ***Ajay Kumar case (4 supra) was reiterated in ***State of Tamilnadu rep.by Secretary to Government (Home) Vs. Promod Kumar, IPS*[6].**

a) In ***Bimal Kumar Mohanty*** case (1 supra), the Hon'ble Supreme Court held as under:

> *"13. It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects*

[1] (1994) 4 SCC 126
[2] (2013) 16 SCC 147
[3] (1999) 6 SCC 257
[4] (2015) 7 SCC 291
[5] 2004 (7) ALT 289
[6] (2018) 17 SCC 677

and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations inputted to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or enquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending enquiry or contemplated enquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or enquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental enquiry or trial of a criminal charge."

b) In ***Ashok Kumar Aggarwal*** case (2 supra), the Hon'ble Supreme Court held thus***:***

"21. The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as vindictive misuse of power. Suspension should be made only in a case where there is a strong prima facie case against the delinquent employee and the allegations involving moral turpitude, grave misconduct or indiscipline or refusal to carry out the orders of superior authority are there, or there is a strong prima facie case against him, if proved, would ordinarily result in reduction in rank, removal or dismissal from service. The authority should also take into account all the available material as to whether in a given case, it is advisable to allow the delinquent to continue to perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry."

c) **In *K. Sukhendar Reddy*** case (3 supra), the Hon'ble Apex Court held as under:

"3. It was for the above reasons that the order of suspension was passed under Rule 3(3) of the All India Service (Discipline & Appeal) Rules, 1969. This order appears to have been passed on the letter of the Additional Director General of Police, C.I.D., Andhra Pradesh, addressed to the Chief Secretary to Government of Andhra Pradesh, in which it was suggested that the Government may consider taking suitable action against the appellant and if considered desirable, he may be placed under suspension in public interest pending enquiry into the matter.

5. Rule 3 of the All India Services (Discipline & Appeal) Rules, 1969 consists of two parts. The first part is contained in Sub-rule (1), which provides that a member of the All India Services can fee placed under suspension pending disciplinary proceedings against

him. The other part is contained in Sub-Rule (3) which provides that a member of the All India Services, who is involved in a criminal case, may be placed under suspension.

7. Another vital fact which has come on record is that in the criminal case a number of senior I.A.S. officers, even senior to the appellant, may be found involved, but nothing positive or definite can be said as yet as the investigation is likely to take time. The matter is pending with the Police since 1.12.1996 when the F.I.R. was lodged at Anakapalli Town Police Station. The investigation has not been completed although about two and half year has passed. We do not know how long will it take to complete the investigation. That being so, the officer of the rank of the appellant, against whom it has now come out that the disciplinary proceedings are not contemplated, cannot be kept under suspension for an indefinite period, particularly in a situation where many more senior officers may ultimately be found involved, but the appellant alone has been placed under suspension. The Govt. cannot be permitted to place an officer under suspension just to exhibit and feign that action against the officers, irrespective of their high status in the Service hierarchy, would be taken."

d) In ***Ajay Kumar Choudhary*** case (4 supra), the Hon'ble Supreme Court held thus:

"11. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing

up of the Memorandum of Charges, and eventually culminate after even longer delay.

12. Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his Department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of common law jurisprudence, antedating even the Magna Carta of 1215, which assures that-"We will sell to no man, we will not deny or defer to any man either justice or right." In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial. Article 12 of the Universal Declaration of Human Rights, 1948 assures that-"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks". More recently, the European Convention on Human Rights in Article 6(1) promises that "in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time...." and in its second sub article that "everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law".

21. We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the

Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us."

e) In ***Mubashir Hussain*** case (5 supra), the Division Bench of the composite High Court of Andhra Pradesh at Hyderabad held as follows:

> *"10. The disciplinary authority being a statutory authority must apply its mind to the fact of the matter and arrive at its own conclusion. The authority is not expected to pass an order at the dictation of the CVC nor CVC is expected to issue any direction in this regard. The matter need not be considered in great details by this Court in view of the decision of the Apex Court in Nagaraj Shivarao Karjagi V. Syndicate Bank, 1991 (2)*

SLR 784 = AIR 1991 Supreme Court 1507, wherein Jagannatha Shetty, J, upon taking into consideration the CVC manual also the directions of the Ministry of Finance, Department of Economic Affairs (Banking Division) dated 21-7-1984 and others held:

We are not even remotely impressed by the arguments of counsel for the Bank. Firstly, the Bank itself seems to have felt as alleged by the petitioner and not denied by the Bank in its counter that the compulsory retirement recommended by the Central Vigilance Commission was too harsh and excessive on the petitioner in view of his excellent performance and unblemished antecedent service. The Bank appears to have made two representations, one in 1986 and another in 1987 to the Central Vigilance Commission for taking a lenient view of the matter and to advice lesser punishment to the petitioner. Apparently, those representations were not accepted by the Commission. The disciplinary authority and the appellate authority therefore have no choice in the matter. They had to impose the punishment of compulsory retirement as advised by the Central Vigilance Commission. The advise was binding on the authorities in view of the said directive of the Ministry of Finance, followed by two circulars issued by the successive Chief Executives of the Bank. The disciplinary and appellate authorities might not have referred to the directive of the Ministry of Finance or the Bank circulars. They might not have stated in their orders that they were bound by the punishment proposed by the Central Vigilance Commission. But it is reasonably foreseeable and needs no elaboration that they could not have ignored the advice of the Commission. They could not have imposed a lesser punishment without the concurrence of the Commission. Indeed, they could have ignored the advice of the Commission and imposed a lesser punishment only at their peril.

The power of the punishing authorities in departmental proceedings is regulated by the statutory Regulation 4 merely prescribes diverse punishment which may be imposed upon delinquent officers. Regulation 4 does not provide specific punishments for different misdemeanours except classifying the punishments as minor or major. Regulations leave it to the discretion of the punishing authority to select the appropriate punishment having regard to the gravity of the misconduct proved in the case. Under Regulation 17, the appellate authority may pass an order confirming, enhancing, reducing or completely setting aside the penalty imposed by the disciplinary authority. He has also power to express his own views on the merits of the matter and impose any appropriate punishment on the delinquent officer. It is quasi-judicial power and is unrestricted. But it has been completely fettered by the direction issued by the Ministry of Finance. The Bank has been told that the punishment advised by the Central Vigilance Commission in every case of disciplinary proceedings should be strictly adhered to and not be altered without prior concurrence of the Central Vigilance Commission and the Ministry of Finance.

11. The Apex Court expressed its surprise as regards the directives issued by the Ministry of Finance and Economic Affairs (Banking Division) and inter alia observed:

The corresponding new bank referred to in Section 8 has been defined under Section 200 of the Act to mean a banking company specified in column 1 of the First Schedule of the Act and includes the Syndicate Bank Section 8 empowers the Government to issue directions in regard to matters of policy but there cannot be any uniform policy with regard to different disciplinary matters and much less there could be any policy in awarding punishment to the delinquent officers in

different cases. The punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or the Central Government. No third party like the Central Vigilance Commission or the Central Government could dictate the disciplinary authority or the appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer. (See De Smith's Judicial Review of Administrative Action, Fourth Edition, p 309). The impugned directive of the Ministry of Finance is, therefore, wholly without Jurisdiction and plainly contrary to the statutory Regulations governing disciplinary matters.

12. From the records, it appears that not only the proceedings were initiated at the instance of the CVC but, as noticed hereinbefore, despite the fact that the disciplinary authority had come to a conclusion to the effect that the petitioner should not be imposed with any punishment, the authority inflicted the aforesaid punishment only at the instance of the CVC. Such abdication of power by the disciplinary authority cannot be countenanced."

f) In ***Promod Kumar, IPS*** case (6 supra), the Hon'ble Supreme Court held as under:

"27. This Court in Ajay Kumar Choudhary v. Union of India [(2015) 7 SCC 291 : (2015) 2 SCC (L&S) 455] has frowned upon the practice of protracted suspension and held that suspension must necessarily be for a short duration. On the basis of the material on record, we are

> *convinced that no useful purpose would be served by continuing the first respondent under suspension any longer and that his reinstatement would not be a threat to a fair trial. We reiterate the observation of the High Court that the appellant State has the liberty to appoint the first respondent in a non-sensitive post."*

5. *Per contra*, learned Government Pleader for Services-I appearing for respondent Nos.1 and 2 would submit that the 3rd respondent is the Investigating Agency on behalf of the 1st respondent. The investigation so far conducted clearly established the involvement of the petitioner in the offence punishable under Section 7 (a) of the Prevention of Corruption (Amendment) Act, 2018. Having felt that the petitioner has not been cooperative for further investigation by the ACB, the same was reported to the 1st respondent and taking cognizance of the same, the 1st respondent placed the petitioner under suspension by the impugned proceedings invoking Rule 8 (c) of the CCA Rules, 1991 under which suspension of a delinquent is necessary for completion of the investigation. So, there is no illegality or arbitrary in suspending the petitioner. Moreover, G.O.Ms.No.86 dated 08.03.1994 also provides for review and extension of the period of suspension

against the petitioner. For which, he relied upon the decision of the Division Bench of the composite High Court of Andhra Pradesh at Hyderabad in ***Buddana Venkata Murali Krishna Vs. State of A.P.*** (W.P.No.7618 of 2015 dated 01.06.2015) wherein it is held thus:

> *"This Court may not, therefore, be justified in quashing the order of suspension following the judgment of the Supreme Court in Ajay Kumar Choudhary, as that would require it to ignore the Constitution bench judgments of the Supreme Court in Khem Chand, R. Kapur and V.P. Girdroniya; as also the other judgments of the Supreme Court in Ashok Kumar aggarwa.; Sanjiv Rajan; L.Srinivasan; and Deepak Kumar Bhola. The order of the Tribunal does not, therefore, necessitate interference.*
>
> *However, as it was decided in the review meeting held by the Government on 26.02.2015 that the suspension would be reviewed after three months i.e., after 26.05.2015, the respondents are directed to review the order of suspension and communicate their decision to the petitioner at the earliest, in any event not later than one month from the date of receipt of a copy of this order. Subject to the aforesaid directions, the Writ Petition fails and is, accordingly, dismissed."*

6. The learned Government Pleader would also submit that in a case of suspension, the scope of judicial review or interference by the Constitutional courts is limited as held in a case reported in ***Rahul Singh Vs. Union of India*** (2012 (13) SCC 147=

MANU/UP/0092/2017). Learned standing counsel for the 3rd respondent reiterated the contentions raised by learned Government Pleader for Services. Both the learned counsels, therefore, would submit that there are no merits in the writ petition and hence, the same is liable to be dismissed.

7. It is an admitted fact that the impugned suspension proceedings came to be passed after lapse of 18 months from the date of alleged offence. It is also an admitted fact that even though the criminal proceedings were initiated on 06.02.2020, but till date the investigation has not yet been completed. It is not in dispute that how long period would be taken for completion of the investigation. Therefore, continuation of period of suspension for long and indefinite period is nothing but awarding punishment and casting a stigma. Moreover, it is against public interest since his services are not available, no one can be posted and also loss to the exchequer. If he is acquitted after long time, he is entitled to all the benefits without any work.

8. The contention of the learned counsel for the petitioner that the petitioner, who is a higher officer in the department, cannot be

kept under suspension for an indefinite period, is sustainable for the reason that except the petitioner, none others, who were involved in the offence, were suspended and therefore, it can be said as a selective suspension or punitive in nature and the respondents cannot be permitted to resort to such a selective suspension. It appears, the impugned proceedings dated 05.07.2021 is not out of its discretion and to achieve the object as contemplated under the CCA Rules, 1991, but it is at the recommendation of the 3rd respondent vide his letter dated 06.03.2021 without application of mind by the 1st respondent being a disciplinary authority, despite the fact that the disciplinary authority kept quiet for a period of 18 months after the occurrence of the alleged offence. It is settled law that the disciplinary authorities have to exercise their judicial discretion having regard to the facts and circumstances of the case on hand. They cannot act under the dictation of the third party i.e., the 3rd respondent. More so, no third party like the 3rd respondent could dictate the disciplinary authority as to how to conduct and exercise their power and what punishment they can impose on the delinquent officer. But it is as per the wisdom of authority and

given facts and law. As such, the impugned direction is wholly without jurisdiction and contrary to the object of the suspension made under Rule 80 (c) of the CCA Rules, 1991. The disciplinary authority issued the impugned proceedings at the instance of the 3rd respondent and such abdication of power by the disciplinary authority cannot be countenanced and contrary to the settled principles of law. Further, in the absence of any departmental proceedings, the continuation of suspension of the petitioner for an indefinite period is against the ratio laid down by the Hon'ble Supreme Court as stated supra.

9. The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground just mere conferred power to do so or as vindictive misuse of power. Suspension should be made only in a case where there is a strong prima facie case against the delinquent employee and the allegations involving moral turpitude, grave misconduct or indiscipline or refusal to carry out the orders of superior authority are there or there is a strong prima facie case against him, if proved, would ordinarily result in reduction in rank, removal or dismissal

from service. Then only, the disciplinary authority should exercise the power of suspension. But in the instant case, such a strong prima facie case is not found for the reason that the petitioner continued in service for a period of 18 months after the alleged offence. However, the 1st respondent issued the impugned proceedings at the instance of the 3rd respondent pending criminal investigation. Therefore, the disciplinary authority should assess whether the employee should or should not continue in his office during the period of enquiry. As the suspension order constitutes a great hardship to the person concerned as it leads to reduction in emoluments, adversely affects his prospects of promotion and also carry a stigma, an order of suspension should not be made in a perfunctory or in a routine and casual manner, more particularly, at the instance of the 3rd respondent.

10. The contention of the learned Government Pleader that the impugned proceedings were issued under Rule 8 (c) of the CCA Rules, 1991 under which the disciplinary authority is empowered to suspend a delinquent employee pending enquiry and such discretionary power can be exercised by the disciplinary authority

for a limited period and therefore, the judicial review under Article 226 of the Constitution of India cannot be invoked in temporary suspension proceedings, is against the ratio laid down by the Hon'ble Apex Court as stated supra.

11. The other contention of the learned Government Pleader that the impugned suspension proceedings were reviewed as contemplated under the guidelines issued in G.O.Ms.No.86 dated 08.03.1994 and accordingly, the period of suspension was extended for a further period of six months vide proceedings 30.10.2022 and therefore, the impugned proceedings do not warrant any interference by this Court, is against the ratio laid down by the Hon'ble Supreme Court and also in view of non-completion of investigation even after lapse of three years from the date of offence and more so, there is no definite period for completion of investigation from the investigation authority.

12. For the foregoing discussion and the law laid down by the Apex Court, this Court is of the opinion that the impugned proceedings were not issued to achieve the object under Section 8 (c) of the CCA Rules, 1991 by the 1st respondent by assessing the

facts and circumstances of the case as warranted, but the same were issued at the advice or behest of the 3rd respondent. Further, the impugned proceedings were issued leaving the other employees, who were involved in the same crime, and exercising of such power after lapse of 18 months and at the recommendation of the 3rd respondent, is nothing but it is selective suspension and punitive in nature. Moreover, in the absence of any departmental proceedings, the continuation of suspension of the petitioner for an indefinite period is also against the public interest and also at cost of pubic exchequer and finally will hamper the prospects and future of the petitioner. Therefore, the impugned proceedings are illegal, arbitrary and unconstitutional and liable to be set aside.

13. Accordingly, the Writ Petition is allowed and the order of suspension of the petitioner issued by the 1st petitioner vide G.O.Rt.No.35 dated 05.07.2021 and the subsequent Memo dated 30.10.2022 issued by the respondents are hereby set aside. The respondents are directed to reinstate the petitioner into service within a period of four weeks from the date of receipt of a copy of this order. No order as to costs.

As a sequel thereto, interlocutory applications, if any pending, shall stand closed.

VENKATESWARLU NIMMAGADDA, J

18th April, 2023.

Note: LR copy be marked.

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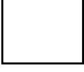

THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

W.P.No.14438 of 2021

18th April, 2023

cbs

*THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

+Writ Petition No. 14438 of 2021

% 18-04-2023

Budda Adinarayana .. Petitioner

Vs.

$ The State of Andhra Pradesh,
rep. by its Secretary,
Infrastructure & Investment (Ports) Department,
A.P.Secretariat, Amaravati,Guntur District,
Andhra Pradesh and others .. Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioner : Sri Sivaraju Srinivas

^ Counsel for respondent Nos.1 & 2 : The Govt. Pleader for Services-I

^ Counsel for respondent No.3 : Ms. A. Gayathri Reddy

? CASES REFERRED :

1. (1994) 4 SCC 126
2. (2013) 16 SCC 147
3. (1999) 6 SCC 257
4. (2015) 7 SCC 291
5. 2004 (7) ALT 289
6. (2018) 17 SCC 677

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

WRIT PETITION No. 14438 of 2021

Between:

Budda Adinarayana .. Petitioner

Vs.

$ The State of Andhra Pradesh,
rep. by its Secretary,
Infrastructure & Investment (Ports) Department,
A.P.Secretariat, Amaravati,Guntur District,
Andhra Pradesh and others .. Respondents

DATE OF JUDGMENT PRONOUNCED: 18.04.2023

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

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 Reporters/Journals? Yes/No
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

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VENKATESWARLU NIMMAGADDA, J