APHC010777992017

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3529]

WEDNESDAY, THE SIXTH DAY OF MAY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION No. 40324/2017

Between:

1. K. TYAGA RAJU,, S/O SATYAM,AGED ABOUT 50 YEARS, OCC:JR. ASSISTANT (UNDER SUSPENSION),AT PRINCIPAL JR. CIVIL JUDGE COURT, PALAKOL, WEST GODAVARI DIST., ANDHRA PRADESH.

...PETITIONER

AND

1. THE PRINCIPAL DISTRICT JUDGE, West Godavari, Eluru,Andhra Pradesh (Disciplinary Authority

...RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to

IA NO: 1 OF 2017(WPMP 50047 OF 2017

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the

impugned proceedings vide D.E.No: 01/2016 dt: 10.08.2017 issued by the respondent against the petitioner till the disposal of the writ petition,direct the respondent to pay the subsisting allowances to the petitioner and pass

IA NO: 2 OF 2017(WPMP 50049 OF 2017

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to dispense with presence of the certified copy of the Enquiry Report dt. 12-08-2016 in Dis.No.338 of Enquiry officer cum II Addl. Jr. Civil Judge, Tadepalligudem and to pass

IA NO: 5 OF 2017(WPMP 226965 OF 2017

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to grant leave and permit the Respondent to file counter affidavit in W.P.No.40324 of 2017 and pass

Counsel for the Petitioner:

1. K J V N PUNDAREEKAKSHUDU

Counsel for the Respondent:

1. P S P SURESH KUMAR

The Court made the following:

HON'BLE SRI JUSTICE RAO RAGHUNANDAN RAO

AND

HON'BLE SRI JUSTICE T.C.D. SEKHAR

WP No.40324 OF 2017

COMMON ORDER:- *(Per Hon'ble Sri Justice T.C.D. Sekhar)*

1. The present writ petition is filed questioning the proceedings in DE No.01/2016, dt.10.08.2017 issued by the respondent, whereunder the petitioner was imposed with penalty of dismissal from service as per Rule 9 of AP Civil Services (Classification, Control and Appeal) Rules, 1991.

2. The petitioner while working as Junior Assistant in Principal Junior Civil Judge, Palakol was placed under suspension by order dt.15.10.2015 issued by the respondent herein. He was placed under suspension on the allegation that he had been remanded to Judicial custody for more than 48 hours in Crime No.138/2015, on the file of Nidadavole Police Station for the offence punishable under Section 354 (A)(D) IPC.

3. Further, the respondent ordered to conduct regular departmental enquiry against the petitioner and the II

Additional Junior Civil Judge, Tadepalligudem was appointed as Enquiry Officer by proceedings dt.17.06.2016. The Enquiry Officer served the Article of charge to the petitioner and the same is reproduced hereunder:

> Article:- "That you (Sri K.Tyaga Raju) while working as Junior Assistant, Principal Junior Civil Judge's Court, Palakol on 28.08.2015 said to have approached a women by name Eluru Sunitha, W/o. Kiran Kumar in the presence of her aunt, caught hold her hand, misbehaved against her requiring her to satisfy your desire whereupon a complaint was lodged and a case in Crime No.138 of 2015 on the file of Nidadavole Police Station was registered and you were arrested and sent to remand on 09.10.2015 and you have been in Judicial custody for morethan 48 hours as per the information given by the Principal junior Civil Judge, Palakol, that your conduct and misbehavior against women within Nidadavole Court premises amounts to gross misconduct and also amounts to moral turpitude which is unbecoming of a Government Servant if proved; that your detention in prison for more than 48 hours with such an allegation is also a serious matter and that conduct of you is spoiling the dignity and discipline of the institution and hence actionable under Rule 3 of Conduct Rules, punishable under APCS (CCA) Rules, 1991."

4. After service of Article of charge, the petitioner denied the same and pleaded innocence. During the course of inquiry, the Enquiry Officer examined PWs.1 to 7 and marked Exs.P1 to P19. After completing the enquiry a report dt.12.08.2016 was submitted to the respondent for taking up further action against the petitioner herein as the charge

leveled against him was proved in the enquiry. Thereafter, the Enquiry Report was furnished to the petitioner asking him to submit written explanation. Accordingly, the petitioner submitted representation dt.03.09.2016 with a request to reinstate him into service. Thereafter, the respondent issued order dt.25.11.2016, to show cause as to why the punishment of compulsory retirement from service should not be imposed. The petitioner submitted written explanation dt.07.12.2016 to the respondent, requesting to exonerate him from the charge leveled against him. Subsequently, the impugned order came to be passed against the petitioner and he was imposed with the penalty of dismissal from service as the acts committed by the petitioner amounts to moral turpitude.

5. The respondent filed counter affidavit denying the averments made in the affidavit filed in support of the writ petition and supported the order under challenge stating that the same was passed after following the procedure contemplated under law. It was further stated that, the acts committed by the petitioner would fall under Rule 9 of Andhra Pradesh Civil Services (Classification, Control and Appeal)

Rules, 1991 as amended from time to time and therefore he was dismissed from service.

6. Heard counsel for the petitioner and Sri PSP Suresh Kumar, learned Standing Counsel appearing for the respondent.

7. Perused the record.

8. As per the Article of charge, it was alleged that the petitioner approached a women by name Eluru Sunitha on 28.08.2015 in the presence of her aunt, caught hold her hand, misbehaved with her asking to satisfy his desire. Upon which a crime has been registered against the petitioner and he was arrested on 09.10.2015. On the same day, he was sent to judicial custody by order of remand and later he was released on bail on 12.10.2015. As he was in judicial custody for more than 48 hours, he was placed under suspension and served with the above charge asking him to offer explanation. The petitioner submitted explanation denying the charge. The Enquiry Officer conducted enquiry and based on the evidence recorded through the witnesses examined by him, he came to

the conclusion that charge framed against the petitioner was proved.

9. A perusal of the Enquiry Report, especially the evidence of PW-4, Eluru Sunitha, on whose complaint, crime was registered against the petitioner would show that she filed maintenance case against her husband, apart from registering a case of dowry harassment and the same were pending adjudication on the file of Judicial Magistrate of First Class, Nidadavole. She further deposed that while attending the Court proceedings in the above cases, the petitioner introduced himself and assured her that he will see that maintenance is granted to her. In the said process, the petitioner got acquainted with PW-4 and made a proposal to her to live with him, as her husband already neglected her. She further deposed that the petitioner used to talk with her to satisfy his desires. The same was informed to her sister A. Nagamani. On 28.08.2015, PW-4 along with her sister and junior paternal aunt went to Nidadavole Court to attend adjournment, on the said day, at about 06:00 PM, when PW-4 went to get Photostat copies from a Xerox centre situated beside the Court, when she reached near Lavanya photo

studio, the petitioner asked her to come with him as he intends to look after her and in the said process the petitioner caught hold her hand, then she took back her hand and questioned the acts of petitioner and raised cries. Upon which, the sister of PW-4 and paternal aunt, who were at tea stall saw the said act of the petitioner and thereupon the petitioner left from the said premises.

10. PW-4, further deposed that by the acts of the petitioner, she suffered mental agony and after many deliberations with her family members gave complaint against the petitioner on 08.10.2015. She further deposed that the complaint could not be given immediately as her family reputation was involved in the matter and if the complaint is given, her husband may not accept her to join the matrimonial home. The other witnesses i.e., the sisters of the complainant deposed in similar lines.

11. On perusal of the evidence of the complainant (PW-4) and her sisters (PWs.5 & 6), there are many contradictions. A perusal of the evidence of PWs.5 & 6 would go to show that they never witnessed the alleged incident that

happened on 28.08.2015 nor they have seen the petitioner. Further, there is no plausible explanation offered as to why the complaint was not given against the petitioner till 08.10.2015, when the incident took place on 28.08.2015.

12. Though, it was stated that in view of the reputation of the family of the complainant, the same cannot be accepted. Further, the complainant did not examine any independent witness so as to establish the alleged acts committed by the petitioner. It is also not in dispute that, the alleged incident happened in a busy locality and it is obvious that many persons could have witnessed the alleged incident. For the reasons best known to the complainant (PW-4) no steps have been taken to examine any independent witness. The witnesses examined by the complainant (PW-4) were none other than her sisters and therefore their evidence cannot be considered. Despite pleading the same before the Enquiry Officer by the petitioner, it was brushed aside stating that mere non examination of independent witnesses cannot be sole basis to disbelieve the allegations leveled against the petitioner. The Enquiry Officer further observed that the evidence of the witness was free from blemish or suspicion

and the same inspired the confidence of the Enquiry Officer and therefore it was held that the charge was proved against the petitioner. Further, nothing is forthcoming from the complainant as to what action she had taken, if the petitioner was repeatedly approaching her to satisfy his desires. Though, it was deposed by the complaint that the same was informed to her sister A. Nagamani, admittedly no action was taken till the alleged incident took place on 28.08.2015.

13. Be that as it may, the crime registered against the petitioner was investigated into and charge sheet was filed in CC No.2 of 2016, on the file of Judicial Magistrate of First Class, Nidadavole. Upon trial, the petitioner was found guilty for the offences under Section 354 (A) (ii) and 354 (B) (i) IPC and he was sentenced to suffer rigorous imprisonment for a period of three (03) years. Aggrieved by the said judgment, the petitioner preferred appeal vide CRLA No.276 of 2017, on the file of IX Additional Sessions Judge, West Godavari District at Kovvur. After hearing the parties, the learned Sessions Judge vide Judgment dated 12.02.2018 allowed the appeal by setting aside the convictions and sentences imposed by the Judicial Magistrate of First Class, Nidadavole.

Further, a perusal of list of witnesses examined by the Enquiry Officer and the witnesses in criminal case are almost the same witnesses. Further, upon perusal of the charge leveled against the petitioner in the departmental enquiry and the criminal case is identical and the evidence and the witnesses are almost one and the same. Once the petitioner was acquitted in criminal proceedings after full consideration of the evidence of prosecution, it is always open to the Court to exercise its discretion by taking into consideration of the facts and circumstances of each case.

14. In the case on hand, as already stated supra, the complainant (PW-4) failed to examine independent witnesses and apart from the same, there is no explanation forthcoming for the delay caused in giving complaint against the petitioner. Further, the charge leveled against the petitioner is one and the same in departmental enquiry and in the criminal case. In such circumstances, if the Court has come to the conclusion that the disciplinary proceedings initiated against the petitioner which culminated in dismissal of service is bad and unsustainable, the same can be declared as null and void, inasmuch as the punishment of dismissal from service was

too harsh in the given facts and circumstances of the case. Further, this view of the Court is fortified by the Judgment of Hon'ble Apex Court in the case of "***Ram Lal Vs. State of Rajasthan & others"***[1].

15. A perusal of the record would go to show that, departmental proceedings were initiated against the petitioner as he was in judicial custody for more than 48 hours. In this context, it is pertinent to note that the offences alleged against the petitioner was under Section 354 (A) (D) IPC. Admittedly, the said offence is bailable. Despite the same, the petitioner was arrested without serving notice under Section 41-A Cr.PC Further, he was produced before the learned Magistrate, who in turn remanded him. Though, bail application was ordered on the same day i.e., 09.10.2015, the 2nd surety furnished by the petitioner was returned on one ground or the other despite requesting to accept the 2nd security on payment of cash. The series of events happened in the instant case would go to show that there is something more than what it appears in the matter. Further, the petitioner was remanded as a matter of routine without looking into the offences alleged to have been

[1] Civil Appeal No.7935 of 2023

committed by him as well as the procedure that was to be followed in the said circumstances. It is noteworthy that despite the judgments rendered by the Hon'ble Apex Court and this Court, time and again directing the Magistrates to follow the procedure contemplated under Section 41-A Cr.P.C., without adhering to the same, the accused were sent to remand without recording any reasons. Further, in the case on hand as already observed the surety furnished by the petitioner was rejected on flimsy ground, without taking into consideration of the fact that the petitioner was an employee working in the Court.

16. For the reasons recorded supra, this Court feels that the imposition of major penalty of dismissal from service against the petitioner is punitive, harsh and the same is unwarranted. As already observed supra, the charge and the witnesses examined in both departmental enquiry and as well as in the criminal case are more or less one and the same, and in view of the fact that the petitioner was acquitted in the criminal case by judgment dated 12.02.2018 in Criminal Appeal No.276 of 2017, on the file of IX Additional Sessions Judge, West Godavari at Kovvur, the impugned proceedings

in DE No.1 of 2016, dt.10.08.2017 issued by the respondent and Departmental Enquiry Report No.1 of 2016, dated 12.08.2016 are hereby set aside and the respondent shall reinstate the petitioner into service with immediate effect, with all consequential service benefits and continuity in service. In so far as, back wages are concerned, the respondent is directed to take appropriate decision in accordance with law, after affording opportunity of being heard to the petitioner as to whether he was gainfully employed or not during the period of suspension.

17. Accordingly, the writ petition is allowed. There shall be no order as to costs.

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

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JUSTICE RAO RAGHUNANDAN RAO

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JUSTICE T.C.D. SEKHAR

06.05.2026
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THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

AND

THE HONOURABLE SRI JUSTICE T.C.D. SEKHAR

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Dt.06.05.2026

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