

**\* THE HON'BLE SRI JUSTICE G. NARENDAR**  
**AND**  
**THE HON'BLE SRI JUSTICE NYAPATHY VIJAY**  
**WRIT PETITION No.10387 of 2022**

% 22.11.2023

# 1) State of Andhra Pradesh,  
represented by its Secretary to Government,  
Environment, Forests, Science & Technology  
Department, Secretariat Buildings,  
Velagapudi, Guntur.

2) The Principal Chief Conservator of Forests,  
& Head of Forest Force, Andhra Pradesh,  
Guntur.

.... Petitioners

Versus

\$ Sri Parvathaneni Sivaji, S/o Late P.Narasimha Rao,  
Aged 67 years, Retired Divisional Forest Officer,  
R/o Plot No.90, Eshwar Villas, Nizampet,  
Qutbullapur Mandal, Ranga Reddy District.

.... Respondent

! Counsel for the Petitioners : Sri G.V.S. Kishore Kumar, Learned  
Government Pleader for Services-I,  
GP [S]-I

! Counsel for the Respondent : Sri Chetluri Srinivas

< Gist:

> Head Note:

? Cases referred: 1) (2009) 2 SCC 570  
2) (2005) 6 SCC 636  
3) (2006) 5 SCC 88  
4) (2018) (14) SCC 92

**1** Nil

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DATE OF ORDER PRONOUNCED: 22.11.2023

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE G. NARENDAR**  
**AND**  
**THE HON'BLE SRI JUSTICE NYAPATHY VIJAY**

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|---------------------------------------------------------------------------|--------|
| 1. Whether Reporters of Local Newspapers may be allowed to see the Order? | Yes/No |
| 2. Whether the copies of Order may be marked to Law Reporters/Journals?   | Yes/No |
| 3. Whether Your Lordships wish to see the fair copy of the Order ?        | Yes/No |

**G. NARENDAR, J**

**NYAPATHY VIJAY, J**

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**ORDER:** *(Per Hon'ble Sri Justice Nyapathy Vijay)*

The present Writ Petition is filed questioning the Judgment in O.A.No.7068 of 2013 dated 01.08.2017, which was allowed.

2. The brief facts of the case leading to the present Writ Petition are as follows and the parties are described as in the Tribunal:-

The applicant was appointed as Forest Range Officer and subsequently promoted as Assistant Conservator of Forests. During the period 1.7.1993 to 14.3.1996, the applicant had worked as Divisional Forest Officer, Social Forestry, Kurnool.

3. On 29.11.1999, the applicant was issued Charge Memorandum under A.P.C.C.S (CCA) Rules, 1991 framing certain charges to the effect (i) Applicant did not submit records/information in connection with Circle Officer inspection by Chief Conservator of Forests (JFM) despite clear instructions; ii) Applicant allowed F.R.Os under his control to purchase Polythene Bags, Seedlings Barbed Wire, PVC Pipes, Cement and Stone Monolithic without submitting estimates; iii) Applicant failed to submit fortnightly diaries and log book extracts as prescribed under A.P. Forest

Department Code; iv) Applicant failed to submit information about District schemes, Accounts and Vouchers in respect of centrally sponsored schemes to conservation of forests.

4. On 07.07.2000, the Conservator of Forests was appointed as Enquiry Officer. About three (3) months thereafter, the Enquiry Officer was changed and Conservator of Forests, Wildlife Management was appointed as Enquiry Officer on 27.10.2000 and about two years thereafter, the Enquiry Officer was again changed and Conservator of Forests, Kurnool was appointed on 31.8.2002 as Enquiry Officer. The Enquiry Officer submitted his enquiry report on 21.6.2003 holding that Charge No.I as proved, Charge No.II as partly proved, Charge No.III as not proved and Charge No.IV was recommended to be dropped. About one year thereafter, show-cause notice was issued on 07.07.2004 calling for explanation from the applicant on the findings in the enquiry report. The applicant submitted his explanation thereto within five days i.e., on 12.7.2004 and the applicant retired from service on 31.07.2004. The applicant is being paid provisional pension @ 75% of basic.

5. An year thereafter, Memo dated 24.8.2005 was issued calling for explanation from the applicant proposing punishment of withholding pension in full, besides recovery of Rs.3,31,182/- under Rule 9 of A.P. Revised Pension Rules, 1980. This Memo dated 24.8.2005 was served on

04.02.2009 through the Divisional Forest Officer, Warangal *vide* Proceedings No.2097/2002/S2, dated 30.01.2009. Notwithstanding the explanation of the applicant, impugned G.O.Ms.No.75, dated 29.8.2013 was issued by Respondent No.1 withholding pension permanently, besides recovery of Rs.3,31,182/-. Hence, the O.A.No.7068 of 2013 was filed questioning the impugned proceedings.

6. In the O.A, the applicant apart from raising pleas on merits also pleaded that he suffered paralysis in 2008 due to brain hemorrhage and subsequently underwent by-pass surgery at Usha Mullapudi, Cardiac Centre, Hyderabad. The applicant had pleaded that the provisional pension @ 75% of basic was just not sufficient to meet the day-to-day expenditure for medication.

7. The Tribunal on 01.08.2017 passed a detailed order declaring the impugned G.O.Ms.No.75, dated 24.8.2013 as illegal and arbitrary and that the applicant is entitled to all consequential benefits of fixation of pension and arrears of pension.

8. Almost after a lapse of 5 years, the present Writ Petition was filed on 28.3.2022 questioning the orders of the Tribunal and the short excuse for delay that was given that due to non-tracing of the original records there was delay in filing Writ Petition.

9. The point that arises for consideration in this Writ Petition is whether the order of Tribunal is sustainable?

10. **On Merits of the charges:-** Firstly, coming to the merits of the enquiry, the Tribunal at Paras 14 and 16 of its order, after going through the enquiry report, opined that though the Annexure-II to Charge Memo cited 15 relied upon documents to establish the Charges against the applicant, the Annexure-III to the Charge-Memo cited "Nil" witnesses. In the enquiry report, there was no mention of any witness being examined and in that view, the Tribunal was of the opinion that the Enquiry Officer could not have donned the role of a witness and hold that the Charge No.I and sub-charges (v) & (iii) of Charge No.II against the applicant were established on his own understanding of the relied upon documents. In this Writ Petition, no plea was urged on this aspect.

11. The Charge No.I is with reference to non-submission of certain records like Plantation Register, Soil Suitability Certificate, Treatment Maps and other documents pursuant to inspection on 22.12.1995 and 9.1.1996 and the Conservator of Forests, SF, Kadapa could not monitor the works and that the applicant was negligent in discharge of duties. The enquiry report, impugned penalty pleadings of the Government before this Court as well as before the Tribunal do not speak of any

financial loss to the Government with reference to this Charge No.I. Therefore, this Charge No.I even if it is held to be established is of no consequence vis-à-vis a retired employee as there is no financial loss to the Government and no punishment of withholding pension in entirety and recovery of Rs.3,31,182/- could be imposed on this charge.

12. The Charge No.I does not speak of any intentional act of non-submission of the records by the applicant for any ulterior motive and further the Conservator of Forests, SF, Kadapa who allegedly could not monitor and review the works in SF Division, Kurnool due to non-submission of records was not named or cited as a witness. The Charge No.I does not take into consideration the annual audit and revision of works undertaken by the Department from time to time. Further, the other way of looking at the Charge No.I is the laxity of the Conservator of Forests, SF, Kadapa in monitoring the works by physically going to the office of applicant and verifying the records is sought to be overcome by blaming the applicant.

13. Coming to Charge No.II (ii and iv), the Tribunal referred to paras 12 and 13 of the Counter Affidavit filed therein and opined that the Charge was not established. Paras 12 and 3 of the Counter Affidavit are to the effect that the barbed wire pertaining to Charge II(ii) was purchased as per the instructions of District Collector, Kurnool and Chief

Executive Officer, Zilla Parishad, Kurnool. One of the items was purchased in the month of April, 1994 and other item was purchased in the month of August, 1994 and the deviation of rates was due to enhancement of rates and estimates. As regards Charge No.II(iv), it is submitted that the Forest Range Officers SF, Kurnool had prepared the voucher duly quoting the MB No.202 Batch No.7 and rated as Rs.39.10 per each stone. The said individual had paid the money and the Divisional Forest Officer i.e., the applicant had only scrutinized the bill and authorized the payment and no extra amounts were allowed. Further, it was also admitted that tenders could not be called for, for paucity of time due to then impending VIP visits as requested by CEO for immediate implementation of work. In effect, the Charge as said to be proved in the enquiry report was virtually nullified by the Counter Affidavit.

14. Apart from the merits of Charge Nos.I and II, the Enquiry Officer had missed out on adhering the fundamental principles of conducting enquiry. Therefore, Charge No.II (ii and iv) cannot be sustained. The Charge Nos.I and II are regarding negligence/insubordination and such Charges require documents to be supported by oral witnesses and these are not inferable charges. In the absence of any witness, the enquiry report is unsustainable.

15. The Hon'ble Supreme Court in ***Roop Singh Negi v. Punjab National Bank and others***<sup>1</sup>, while considering a case where the department did not cite any witness in support of the allegations opined at para 14 there under:-

*“14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. **No witness was examined to prove the said documents.** The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence.”*

16. Therefore, the findings on Charge Nos.I and II (ii and iv) are patently perverse as there is no material to establish the same. The view taken by the Tribunal on this aspect is sustained.

17. ***Pension and Proportionality.*** The pension as is well known is an insurance for employees in the last quarter of their life and to withhold the pension, a finding beyond mere preponderance of probabilities is an absolute requirement. A mere fancy of the enquiry officer and the disciplinary authority on the usual concept of probability is

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<sup>1</sup> (2009) 2 SCC 570

not sufficient. A distinction has to be borne in mind while imposing punishment on retired employees wrt withholding pension as the fundamental right to independent life with dignity and access to quality medical care are at stake and those rights cannot be wished away mechanically.

18. ***Delay in initiation, conclusion and litigation:*** On the aspect of abnormal delays in initiation, conclusion and litigation needs to be emphasized. The allegations herein pertain to the order 1994-95, the Charge memorandum was issued on 29.11.1999 about three enquiry Officers were appointed spanning over a period of four years, the enquiry, even in the absence of any witnesses took about four years for submission of enquiry report. The first show cause notice calling for the explanation of the applicant on the enquiry report was for the year 2004, final show cause notice of the year 2005 served on the applicant in 2009 as mentioned supra and the punishment was imposed in the year 2013 and the Tribunal order is of the year 2017, challenged before this Court by way of this writ petition in 2022.

19. The facts in the above para disclose chronic delays at every stage of enquiry and the proceedings were pending with the authorities for nine (9) years after the retirement of the applicant. The mental agony and suffering of an employee, who is retired due to protracted disciplinary proceedings, is much more than the eventual punishment.

20. The denial of full pension on trivial charges is unfathomable. The Hon'ble Supreme Court in ***P.V.Mahadevan v. MD.T.N.Housing Board***<sup>2</sup> at para 11 opined that the chronic delays need to be given quietus in the interest of department as well as delinquent.

***Para 11:*** .....*Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.*

Similar view was also taken in ***M.V.Bijlani v. Union of India and others***<sup>3</sup> and in ***UCO Bank vs. Rajendra Shankar Shukla***<sup>4</sup>

21. Though, the aspect of delay in the disciplinary proceedings is to be decided on a case to case basis, the chronic delay at every stage in the present case makes the entire disciplinary proceedings liable to be set aside, more so, in a disciplinary enquiry where there are no witnesses and no complicated facts warranting extended time to conduct the enquiry. The enquiry proceedings against this applicant is liable to be quashed on this aspect of delay also.

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<sup>2</sup> (2005) 6 SCC 636

<sup>3</sup> (2006) 5 SCC 88

<sup>4</sup> (2018) (14) SCC 92

22. ***The delay in filing the WP:*** The Tribunal had passed an order on 01.08.2017 expressing strong opinion in the initiation and conclusion of the enquiry and in spite of the same, the present writ petition was filed in March, 2022 after a lapse of nearly five years. The only explanation given in the writ petition was that the original files were misplaced. This lethargic and indolent approach especially in cases where there is a chronic delay at every stage of the proceedings warrants imposition of costs.

23. For the foregoing reasons, there are absolutely no merits in the case and the Writ Petition is dismissed with costs of Rs.1,00,000/-. The petitioners are directed to pay the entire pensionary benefits, costs and all other dues to the applicant/Respondent with interest as applicable within a period of two (2) months from today and report compliance to the registry. As a sequel, pending applications, if any, shall stand closed.

24. ***Litigation policy:*** The facts narrated above, disclose a dire need of litigation policy for the State and such a policy would help the Law Officers and the authorities concerned as to what kind of cases need to be challenged in higher judicial fora. Considering the reality of cost and delays in the Courts, the Union of India has developed a National litigation policy with a single platform for monitoring litigation i.e Legal Information Management & Briefing System (LIMBS). Some of the States have also developed their own litigation policies and this is imperative.

25. For ready reference, Clause 6.8 of the Punjab Dispute Resolution and Litigation Policy, 2020 issued by the Department of Home Affairs and Justice published in Gazette on 25.6.2020 specifically deals with Appeals in service matters and refrains from filing any Appeals from decisions with regard to pension and retirement benefits unless it does not set any precedent nor it involves any principle. The Litigation policy is comprehensive and the Appellant State may examine the policy and such other policies of other States and also of the Union of India and evolve its own policy at the earliest, both in the interest of the State, this institution and the citizenry.

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**G. NARENDAR, J**

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**NYAPATHY VIJAY, J**

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