

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI
HON'BLE Mr. JUSTICE ARUP KUMAR GOSWAMI, CHIEF JUSTICE
&
HON'BLE Mr. JUSTICE NINALA JAYASURYA

WRIT APPEAL No.1899 of 2013

(Through Video-Conferencing)

Visakhapatnam Port Trust, represented by its
Deputy Chairman, Port Area, Visakhapatnam,
and another ... Appellants

Versus

E. Subrahmanyam, S/o. Balarama Murthy,
R/o. DLB Quarters, Type 111/26, Khailasapuram,
Visakhapatnam ... Respondent

Counsel for the appellants : Mr. P. Veerraju

Counsel for the respondent : Mr. J. Sudheer

Date of hearing : 02.09.2021

Date of judgment : 23.09.2021

JUDGMENT

(Arup Kumar Goswami, CJ)

This writ appeal is presented against an order dated 28.08.2013 passed by the learned single in W.P.No.23350 of 2012 setting aside the order dated 24.07.2012, whereby penalty of removal from service was imposed upon the petitioner (respondent herein) and providing that for all practical purposes, the petitioner shall be deemed to have continued in service of Visakhapatnam Port Trust (VPT) and shall be entitled for all benefits with costs of Rs.5,000/-.

2. Heard Mr. P. Veerraju, learned counsel for the appellants and Mr. J. Sudheer, learned counsel for the respondent/petitioner.

3. Respondent in the present appeal shall be referred to as the petitioner.

4. The case of the petitioner as presented in the writ petition, in short, is that he had joined Visakhapatnam Dock Labour Board in the year 1982 as a Clerk and later on, was promoted as Junior Assistant. Subsequently, he was promoted to the post of Vigilance Inspector in the year 2005. In the year 2008, Visakhapatnam Dock Labour Board was merged with VPT and then from that point onwards, it is known as Cargo Handling Division (CHD) of VPT headed by the Traffic Manager, who is the disciplinary authority of the employees of the CHD. He was felicitated with a Citation of Merit by the Chairman on 26.01.2009 for being instrumental in investigating eight cases which were sensitive in nature. An employee by the name of Smt. E. Sanyasamma, working as Sanitary Khalasi in the CHD, applied for voluntary retirement under a Special Voluntary Retirement Scheme (SVRS) vide an application dated 05.06.2010. The same was approved by the Chairman of VPT on 11.06.2010. The application was marked to the petitioner by the Assistant Vigilance Officer on 17.06.2010. On examination of records, finding that no disciplinary proceedings are pending/contemplated against the concerned employee, the petitioner put up a note accordingly, which was approved by the Chief Vigilance Officer, and, accordingly, he addressed a letter stating that there were no vigilance cases pending against her.

5. Some information was received that because of ill-health, Smt. E. Sanyasamma had expired and, accordingly, it came to light that the said lady died on 16.06.2010 in Care Hospital, Visakhapatnam.

6. A memo dated 08.10.2010 was issued against the petitioner under Regulation 10 of the Visakhapatnam Port Employees (Classification, Control & Appeal) Regulations, 1968 (for short, "Regulations of 1968"), essentially

for issuing vigilance clearance despite ill-health of Smt. E. Sanyasamma.

The article of charge reads as under:

“That Sri E. Subrahmanyam, while functioning as Vigilance Inspector, CHD, Traffic Department in Vigilance Department, VPT, Smt. E. Sanyasamma, Sanitary Khallasi, Emp.No.606339, CHD, was posted to work at his office as Khallasi and Sri E. Subrahmanyam, Vigilance Inspector, CHD used to recommend her leaves whenever she applies. Smt. E. Sanyasamma had applied for SVRS on 05-06-2010 and in the meantime, due to prolonged sickness, Smt. E. Sanyasamma expired on 16-06-2010. Sri E. Subrahmanyam also knew the fact that she is ill and the case is not fit for Special VRS, where the financial benefits are more. Sri E. Subrahmanyam suppressed the facts of her illness and recommended the case for Vigilance Clearance to undergo Special Voluntary Retirement Scheme. He also asked Sri K. Subbarao, J.A. of Personnel section of CHD on 17.06.10 to come to Vigilance department to collect the Vigilance clearance letter issued in respect of Smt. E. Sanyasamma, Sanitary Khallasi. Despite knowing the facts, Sri E. Subrahmanyam, Vigilance Inspector, CHD has processed the case for issuance of Vigilance clearance in respect of Smt. E. Sanyasamma, Sanitary Khallasi, Emp. No.606339, CHD, Traffic Department for Special Voluntary Retirement Scheme.

Being a responsible employee looking after the Vigilance works of CHD, Sri E. Subrahmanyam should have verified the facts and health conditions of the above SVRS applicant before processing the Vigilance clearance. But he did not do so and

processed for approval in granting SVRS to Smt. E. Sanyasamma.

By the above facts, Sri E. Subrahmanyam, Vigilance Inspector, CHD of Traffic Department, has exhibited gross misconduct, unbecoming of a public servant and as such, he failed to maintain absolute integrity and devotion to duty.

Thus, he violated Regulation 3(1) and Regulation 3 (3-A) of VPE Conduct Regulation, 1964.”

7. In the written statement, the petitioner denied the allegations and prayed for dropping of the proceedings. Not being satisfied with the written statement submitted, an inquiry officer was appointed vide order dated 15.12.2010 along with a presenting officer. During the inquiry proceedings, eight witnesses were examined on behalf of the appellants and the petitioner examined no witness.

8. The inquiry officer, on consideration of the oral and documentary evidence, held that the charge framed against the petitioner is proved and, accordingly, submitted inquiry report on 12.04.2012. A letter dated 02.05.2012 was issued to the petitioner by the competent authority, i.e. Deputy Chairman, VPT, enclosing a copy of the inquiry report and in the said letter, it was communicated that petitioner may make a representation in writing to the competent authority within 15 days. The petitioner submitted representation to the aforesaid inquiry report on 18.05.2012. The Deputy Chairman, VPT, on consideration of the materials on record, by order dated 24.07.2012, imposed a deterrent punishment of removal from service to make it exemplary.

9. It is pertinent to mention that while admitting the writ appeal by order dated 20.01.2014, no interim order was granted and, accordingly,

petitioner was reinstated into service and, later on, he superannuated on 30.11.2019.

10. The contention of Mr. Veerraju, learned counsel for the appellants, is that under Visakhapatnam Port Employees (Conduct) Regulations, 1964 (for short, "Regulations of 1964"), which were framed under Section 126 read with Section 28 of the Major Port Trusts Act, 1963, an appeal would lie to the appellate authority against the order imposing penalty and despite there being alternative remedy available, the petitioner did not avail such remedy and, therefore, the writ petition was liable to be dismissed and the learned single Judge was not justified in entertaining the writ petition. It is submitted that materials on record clearly establish that the charge had been proved and, therefore, the learned single Judge was wholly in error and, as such, even otherwise, the order of the learned single Judge is liable to be set aside and quashed. In support of his aforesaid contention, he has drawn the attention of the Court to the findings recorded by the inquiry officer as well as the observations of the Deputy Chairman, VPT while imposing the penalty by order dated 24.07.2012.

11. Mr. J. Sudheer, learned counsel for the petitioner, submits that as the petitioner was reinstated in service, the writ appeal has become infructuous. It is further submitted by him that till now, pensionary benefits have not been released to the petitioner though one and a half year has passed from the date of retirement. He also contends that in any view of the matter, no interference is called for with regard to the impugned order passed by the learned single Judge.

12. We have considered the submissions of the learned counsel for the parties and have perused the materials on record.

13. Part V of the Regulations of 1968 is on the subject "Discipline". Regulation 8 deals with "Penalties", which can be either minor penalties or major penalties. It is provided that penalties may be imposed on an employee for good and sufficient reasons.

14. The sum and substance of the allegation against the petitioner is that he being an employee looking after the vigilance works of CHD, should have verified the facts and health condition of the SVRS applicant Smt. E. Sanyasamma before processing the vigilance clearance, but he did not do so and processed the SVRS application for approval in granting SVRS to Smt. E. Sanyasamma and thereby he had exhibited gross misconduct, unbecoming of a public servant and he had failed to maintain absolute integrity and devotion to duty and thus he violated Regulation 3(1) and Regulation 3 (3-A) of the Regulations of 1964. However, it is not indicated which clause of Regulation (3-A) (a) to (f) is violated by the petitioner.

15. Regulation 3 and Regulation 3 (3-A) read as under:

"3. GENERAL:

1. Every employee shall, at all times, maintain absolute integrity and devotion to duty.

2. No employee shall use his position or influence directly or indirectly to secure employment for any member of his family in any company or firm.

3. No employee holding a Class-I post shall except with the previous sanction of the Board, permit his son, daughter or any other dependent to accept any employment with any firm or company with which he has dealings in his capacity as such

employee or with any other firm having dealings with the Board. Provided that where the acceptance of such employment by the son, daughter or other dependent of such employee cannot await the prior permission of the Board or is otherwise - considered urgent; the matter shall be reported by the employee to the Board and the employment may be accepted provisionally subject to the permission of the Board.

(a) (1) Every employee holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all employees for the time being under his control and authority.

(2) No employee shall, in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior and shall, where he is acting under such direction, obtain the direction in writing, wherever practicable, and where it is not practicable to obtain the direction in writing, he shall obtain written confirmation of the direction as soon thereafter as possible.

(3) Oral instructions should not, as far as possible, be issued .by senior officers to their subordinates, if the oral instructions are issued by any senior Officer they should be confirmed by him in writing immediately thereafter.

(3-A) (a) Act in a manner prejudicial to the interest of the Port.

(b) Be absent without sanctioned leave.

(c) Neglect work or show negligence in the performance of work including slowing down the work.

(d) Commit any act which is subversive of discipline or of good behaviour.

(e) Abet or attempt to abet any act which amounts to misconduct.

(f) Act in in-subordination or dis-obedience in combination with others".

16. Along with the article of charge dated 08.10.2010, a statement of imputations and misconduct or misbehaviour against the petitioner was annexed. However, the statement of imputations and misconduct or misbehaviour is described as articles of charge. It will be relevant to take note of the aforesaid statement of imputations also, which read as under:

"That Sri E. Subrahmanyam, while functioning as Vigilance Inspector, CHD, Traffic Department in Vigilance Department, VPT, has processed the case for issuance of Vigilance clearance in respect of Smt. E. Sanyasamma, Sanitary Khallasi, Emp. No.606339, CHD, Traffic Department for Special Voluntary Retirement Scheme. The applicant had applied for SVRS on 05-06-2010 and in the meantime, due to prolonged sickness, Smt. E. Sanyasamma expired on 16-06-2010. Despite knowing the fact that Smt. E. Sanyasamma who was posted to work at his office situated at erstwhile VDLB office as Khallasi was a sick person and not attending to duties due to her ill health, Sri E. Subrahmanyam has recommended as if she is healthy and attending her regular duties. Thereby, he has suppressed the facts and processed the case for Vigilance clearance.

Though her case is not fit to undergo Special Voluntary Retirement Scheme where the financial benefits are more when compared with medical invalidation. He asked Sri K. Subbarao, JA of Personnel Section of CHD on 17-06-2010 to come to Vigilance department to collect the Vigilance clearance letter issued in respect of Smt. E. Sanyasamma, Sanitary Khallasi.

Being a responsible employee looking after the Vigilance works of CHD, Sri E. Subrahmanyam should have verified the facts and health conditions before processing the Vigilance clearance. But he did not do so and processed for approval in granting SVRS to Smt. E. Sanyasamma. In fact, Smt. E. Sanyasamma was posted to work at V.I.'s office situated at erstwhile VDLB building.

Further, Sri E. Subrahmanyam, Vigilance Inspector, CHD concealed the fact that he is maintaining a separate room at erstwhile VDLB building while having a room at Vigilance Department. He has also concealed the fact that he is maintaining imprest amount though he is not eligible. He is also not signing in the Attendance Register every day and not submitting leaves through CVO. These acts tantamount to failure to be a Vigilance person.

By the above acts, Sri E. Subrahmanyam, Vigilance Inspector, CHD of Traffic Department, exhibited gross misconduct, unbecoming of a public servant and as much as, he failed to maintain absolute integrity and devotion to duty.

Thus, he violated Regulation 3(1) and Regulation 3(3-A) of VPE Conduct Regulation, 1964."

17. In the said statement of imputations, further allegation is levelled that the petitioner is maintaining a separate room at erstwhile VDLB Building while having a room at Vigilance Department and he has also concealed the fact that he is maintaining imprest amount though he is not eligible and that he is also not signing in the Attendance Register every day and not submitting leaves through CVO, which tantamount to failure to be a vigilance person.

18. A comparison of the articles of charge and the statement of imputations of misconduct would go to show that the statement of imputations of misconduct has travelled beyond what is indicated in the articles of charge. The statement of imputations of misconduct are materials in support of the charge. Such statement of imputations of misconduct cannot go beyond the allegations forming part of the articles of charge.

19. Though the inquiry officer noticed that charges were framed in articles of charge – Annexure I, at paragraph 10 of the inquiry report, it was held as follows:

“Therefore, the charge framed that being a responsible employee looking after the vigilance works of CHD, Sri E. Subrahmanyam should have verified the facts and health condition before processing the Vigilance clearance, but he did not do so and processed for approval in granting SVRS to Smt. E. Sanyasamma, and concealing the fact of maintaining a separate room in CHD/maintaining imprest account in CHD, not signing in the attendance registers everyday and not submitting leaves through CVO, **clearly established** as per the evidence of SW-1, 2, 3, 4, 5, 6, 7 & 8.”

20. Thus, though no charge was laid against the petitioner regarding concealing the fact of maintaining a separate room at erstwhile VDLB Building while having a room at Vigilance Department, concealing the fact that he is maintaining imprest amount though he is not eligible and that he is also not signing in the Attendance Register every day and not submitting leaves through CVO, the same were also held to be established by the inquiry officer.

21. The Deputy Chairman, who is the competent authority, however, based the order of removal of the petitioner on the basis of the charge as contained in the charge memo and it is in that context, the learned single Judge had observed that 'mercifully', the Deputy Chairman has not accorded his approval to the otherwise unsustainable findings recorded by the inquiry officer in connection with the imputations against the petitioner and confined his consideration only with regard to the allegation made in the charge memo. It will be relevant to extract the findings of the Deputy Chairman/competent authority, which is as follows:

"The undersigned after having gone through the case file in detail and perused the charge sheet, inquiry report as well as the replies of Sri E. Subrahmanyam, Vigilance Inspector, CHD, at various stages, in the case finds that-

1. The charged officer in this case was performing a dual role:
 - (i) as, Vigilance Inspector, CHD,
 - (ii) as, leave sanctioning officer for Smt. E. Sanyasamma
2. Though there is no bar for sick people, not to be granted SVRS, it is the bounden duty of the leave

controlling officer to perform, atleast perfunctionary” a Cost-benefit analysis” of each individual case, which applied for SVRS and then put up to his/her HoDs for approval/rejection.

3. Being a Vigilance Inspector he should have been doubly careful in processing such cases. That he has not appraised all factors to his controlling authority is a serious lapse. The undersigned fully agrees with the Inquiry officer in this regard.
4. Also, that Vigilance Clearance was obtained and SVRS granted on same day i.e., 17.06.2010, without following the “dak” procedure (which, however, is not mandated) leads to strong suspicion, though it is not substantiated. While giving the charged officer “benefit of doubt” in this aspect, and in other related issues, **the charged officer cannot be absolved from the proven charge of not being “vigilant” enough in dealing with this particular SVRS case, wherein the employee was directly working under him.**
5. The charged officer has wilfully suppressed the facts to CVO, while forwarding the SVRS case to Vigilance department. Being a Vigilance Inspector, himself, that he has done so, is shocking.

The undersigned, after taking into consideration all the above facts, and the gravity of offence committed by the charged officer, a deterrent punishment is thus being imposed to make it “exemplary” for all such Officers /

Staff. Thus impose a punishment of "removal from service" on Sri E. Subrahmanyam, Vigilance Inspector, CHD, Traffic Department.

The Appellate Authority in this case is the Chairman/VPT and appeal, if any, shall be preferred by him within 45 (forty five) days from the date of receipt of these proceedings.

22. The Deputy Chairman recorded a finding that there is no bar to grant SVRS to sick people, but observed that it is the bounden duty of the leave controlling officer to perform at least a perfunctory (written as perfunctionary) "Cost-benefit analysis" of each individual case who applied for SVRS and he has not apprised all factors to his controlling authority for approval/rejection, which is a serious lapse, thereby introducing elements which were not part of the charge memo. The learned single Judge, in this context, observed as follows:

"To say the least, the failure of the writ petitioner to indulge in cost-benefit analysis is not even forming part of the charge laid against him. Therefore, a new limb of charge has crept into the area of consideration as reflected in the impugned order than what has been contained actually in the charge memo dated 08.10.2010. Further, no witness examined spoke of the necessity or requirement of any such analysis to be carried out by a Vigilance Inspector. The impugned order is obviously not alive to the circular instructions issued on 13.03.2010 by the Visakhapatnam Port Trust offering special voluntary retirement scheme benefits for

the surplus employees of the Cargo handling Division (former Dock Labour Board), to be weeded out. It is apt to remember that this circular was issued based upon the decision taken by the Board of Trustees of the Visakhapatnam Port Trust. It is hard to believe that the Board of Trustees would have taken any such decision without properly weighing the cost-benefit analysis when they ordered for sanction of SVRS benefits exclusively for CHD of Visakhapatnam Port Trust. The only condition requisite contained therein is that the candidate should not be rendering essential services to the CHD. Therefore, there is no sanction or approval granted by the Board of Trustees to grant SVRS benefits only after cost-benefit analysis is done in each case.

This apart, any such analysis is what is liable to be carried out by the ultimate decision making/VRS accepting authority, as he has a right of rejection of the offer. Such a decision cannot be carried out by a Vigilance Inspector. It is clearly beyond the scope of exercise of power by a Vigilance Inspector.”

23. It was further observed by the learned single Judge as follows:

“The impugned order brings out, to the fore, as to the fundamental question as to whether while offering a vigilance clearance, the health and other aspects of an employee are also needed to be set out at all. No one has spoken about any such requirement or, is it a part of the duty of those who offer vigilance clearance. When

once it is conceded, in principle, that there is no bar for a person who is not maintaining good health to seek voluntary retirement and for accepting any such offer as well, it passes my comprehension, as to how the lack of a statement with regard to the health condition of the applicant is in any manner material or relevant for the consideration of the request of the applicant for voluntary retirement. I am clearly of the view that the respondent has exceeded the authority vested in him in finding the petitioner guilty of the charge.

24. It is not the allegation that the petitioner was aware of the death of E. Sanyasamma and despite knowing the same, he has processed her SVRS application. It is in that context, it is observed by the learned single Judge as follows:

“It is apt to remember that, when the application of Smt. E. Sanyasamma is handled, no one had the actual benefit of the information of her death. Information in that regard had percolated only due to the subsequent correspondence entered into with the Care Hospital by the Visakhapatnam Port Trust. As was already noticed, it is no part of a duty of the Vigilance Inspector to talk of the fragile health condition of the applicant of a Voluntary Retirement Scheme. If I may observe, if any had talked of any such feature about the applicant, it would be reflective of the petty mindedness on the part of such an employee. Taking any such factor into account or consideration would also be completely

beyond the scope of the scheme sanctioned by the Board of Trustees itself. I am therefore, not able to accept the contention of Sri Sriram, that the petitioner has committed misconduct particularly in view of the legal regime noticed supra.”

25. In connection with the submission advanced by the learned counsel for the applicants regarding alternative remedy, the learned single Judge held that availability of alternative remedy is not an absolute bar for entertaining a writ petition and in the case on hand, when the petitioner was sought to be penalised for an allegation which was not forming part of the charge memo and there was no good or sufficient reason for imposition of penalty, discretion was exercised to entertain the writ petition. In the attending facts and circumstances of the case, we are of the opinion that the order of the learned single Judge cannot be set at naught on the ground that the petitioner ought to have been relegated to pursue alternative remedy.

26. On due consideration, we are in agreement with the view taken by the learned single Judge and we see no good ground to interfere with the order of the learned single Judge.

27. The writ appeal is, accordingly, dismissed. No order as to costs. Pending miscellaneous applications, if any, shall stand closed.

ARUP KUMAR GOSWAMI, CJ

NINALA JAYASURYA, J

MRR