The State of Andhra Pradesh and Another Vs Sri Y.V. Ramana, T.P.S. and Another

Court: Andhra Pradesh High Court

Date of Decision: Nov. 22, 2013

Citation: (2014) 1 ALD 757 : (2014) 1 ALT 652

Hon'ble Judges: L. Narasimha Reddy, J; Challa Kodanda Ram, J

Bench: Division Bench

Advocate: J. Sudheer, for the Respondent

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.
These two writ petitions are filed challenging the common order, dated 25.03.2009, through which, O.A. Nos.

10623 and 10788 of 2008 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad, (for short "the Tribunal"), were allowed. The

individual respondents (for short "the respondents") are working as Town Planning Supervisors in Visakhapatnam and Madanapalli Municipalities,

respectively. Disciplinary proceedings were initiated against them by the Director of Town and Country Planning, Hyderabad, the 2nd petitioner

herein, alleging certain irregularities. After conducting the disciplinary enquiry, the 2nd petitioner passed orders, dated 02.02.2008, imposing the

punishment of stoppage of two annual grade increments with cumulative effect. The appeals preferred by the respondents before the 1st petitioner

herein, were dismissed through orders, dated 05.06.2008. Thereupon, the respondents filed O.A. Nos. 10623 and 10788 of 2008 before the

Tribunal. The said O.As. were allowed by the Tribunal through common order, dated 25.03.2009, following the order, dated 16.10.2008, passed

by it in O.A. Nos. 7912 and 7889 of 2008. Hence, these two writ petitions.

2. Learned Government Pleader submits that the facts of the case in O.A. No. 7912 of 2008 are substantially different from those in the present

cases and that the Tribunal has mechanically allowed the O.As. filed by the respondents. He contends that the issue that fell for consideration in

O.A. No. 7912 of 2008 was as to whether a disciplinary authority can straight away differ with the findings recorded by the Enquiry Officer, and

in the instant cases, show cause notices were issued by the 2nd petitioner before he differed with the findings of the Enquiry Officer. According to

him, the procedure prescribed under law and in particular Rule 20 of the Andhra Pradesh Civil Services (Classification, Control and Appeal)

Rules, 1991, was strictly followed.

3. Learned counsel for the respondents, on the other hand, submits that the Enquiry Officer submitted a report clearly holding that none of the

charges are proved and still the 2nd petitioner issued memos, dated 24.03.2005, straight away disagreeing with the findings. He contends that by

treating the said memos as show cause notices, the 2nd petitioner passed orders imposing the punishment. He submits that the procedure adopted

by the 2nd petitioner was contrary to law.

4. The charges framed against the respondents were in relation to their failure to prevent unauthorized constructions within the respective

municipalities. Charge memos were issued specifying the instances, and alleging the acts of misconduct. Explanation was submitted by the

respondents and not satisfied with that, the disciplinary authority appointed an Enquiry Officer. After conducting a detailed enquiry, the Enquiry

Officer submitted a report holding that the charges are not proved. On receipt of the enquiry report, the 2nd petitioner issued memos, dated

24.03.2005, indicating his disagreement with the findings. The respondents submitted their explanation to the memos. Thereupon, the orders of

punishment were passed. Identical situation arose in O.A. Nos. 7912 and 7889 of 2008. The Tribunal passed a detailed order therein, duly

referring to the judgments of the Supreme Court in Ranjit Singh Vs. Union of India (UOI) and Others, and Yoginath D. Bagde Vs. State of

Maharashtra and Another, The order impugned therein was set aside. However, it was left open to the disciplinary authority to take further steps in

accordance with law.

5. In the instant cases, it is no doubt true that the 2nd petitioner indicated his disagreement with the findings. However, there is slight deviation from

the settled principles of law. In case the disciplinary authority intends to take a different view, he has to issue a show cause notice to the delinquent

employee requiring him to explain as to why a different view be not taken, from the one taken by the Enquiry Officer. It is only when the

explanation submitted by the employee is not found to be satisfactory that a decision to differ with the decision of the Enquiry Officer was taken in

the memos, dated 24.03.2005. The 2nd petitioner straight away took the view that the charges are proved. It was almost an empty formality that

the respondents were required to show cause. Once a conclusion is arrived at differing with the findings of the Enquiry Officer, there is not much

the employee can do. Further, in Yoginath D. Bagde''s case (supra), the Supreme Court held that an independent hearing must be conducted, in

case the disciplinary authority intends to differ with the findings of the Enquiry Officer. Therefore, the view taken by the Tribunal vis-a-vis the

orders of punishment, cannot be found fault with.

6. The Tribunal, however, did not leave it open to the petitioners herein to take further steps in accordance with law. The procedural irregularity

that crept into an order of punishment cannot be a devise to set at naught, the entire proceedings. The disciplinary authority must be given liberty to

take steps in accordance with law. Viewed from that context, though the order of punishment was liable to be set aside, the matter ought to have

been left to the 2nd petitioner for fresh consideration and disposal.

7. After hearing learned counsel for the parties and on perusing the record, we find that the punishment imposed against the respondents was the

one of stoppage of two annual grade increments with cumulative effect. But for the fact that the stoppage of increments was with cumulative effect,

it would have been a minor penalty. The remanding of the matter at this stage to the 2nd petitioner would result in further wastage of time, and

there is every likelihood of the relevant record not being available. We are of the view that the modification of the punishment to the one of without

cumulative effect, would meet the ends of justice, as a substitute for remanding and fresh consideration.

8. Hence, the writ petitions are disposed of, directing that the punishment imposed upon the respondents in the respective O.As., shall be treated

as the one without cumulative effect and not constituting any bar for further promotions in the service. There shall be no order as to costs. The

miscellaneous petitions filed in these writ petitions shall also stand disposed of.