(2001) 10 AP CK 0018

Andhra Pradesh High Court

Case No: Writ Petition No. 8801 of 2001

Chief Executive Officer, Zilla Parishad		APPELLANT
	Vs	
T. Durga Rao		RESPONDENT

Date of Decision: Oct. 11, 2001

Acts Referred:

- Administrative Tribunals Act, 1985 - Section 19
- Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 - Rule 8

Hon'ble Judges: S.B. Sinha, C.J; V.V.S. Rao, J

Bench: Division Bench

Advocate: J.R. Manohar Rao, for the Appellant; Y.S. Venkat Rao, for the Respondent

Final Decision: Allowed

Judgement

S.B. Sinha, C.J.

FACTS:

1. The 1st respondent herein was working as a junior assistant in the Mandal Parishad, Chagallu, West Godavari district. Allegedly he was involved in issuing bogus appointment orders as second grade teachers. He was placed under suspension together with various other persons on the aforementioned ground.

2. When no enquiry report was served upon the 1st respondent pursuant to a departmental proceeding, he filed O.A. No. 5049 of 1999 and the Tribunal, by an order dated 26.8.1999, directed:

In view of the facts and circumstances of the case and the discussion referred to above, the respondents are directed to furnish the enquiry report to the applicant along with second show cause notice and after calling for the explanation of the applicant final orders be passed and depending upon he final orders, further action be taken against the

applicant. This exercise should be completed by the official respondents within one month from the date of receipt of this order. We make it clear that it is , however open to the official respondents to take further action against the applicant regarding the pendency of the criminal case before II AJFCM, Kovvuru in Cr. No. 62/98 u/s 420, 467, 468, 471 r/w 34 IPC of Chagallu police station.

3. In the mean time, the Zilla Parishad, adopted a resolution that they be reinstated and transferred from the office of Zilla Parishad to the other offices in the district. When the said resolution was forwarded to the State for its approval, it passed an order in Memo No. 2169/Estt.V/A2/99-1, dated 23.4.1999 revoking the order of suspension which reads thus:

....

4. The Chief Executive Officer, Zilla Parishad, West Godavari District in his letter 2nd cited has further reported that the Zilla Parishad, West Godavari district has resolved a resolution that the suspended employees may be reinstated into service pending enquiry against them and permit the Chief Executive Officer, Zilla Parishad, West Godavari district to transfer them other than Zilla Parishad office within the district.

5. The Government after examining the matter hereby direct the Chief Executive Officer, Zilla Parishad, West Godavari district to reinstate the individuals referred to I para (1) above pending disciplinary action against them. The Government also permit the Chief Executive Officer Zilla Parishad, West Godavari district to transfer the said individuals within the district i.e., out of the Zilla Parishad office purely on administrative grounds in relaxation of the ban orders, and pending disciplinary action against them, while doing so, he should decide the matter, after weighing the pros and cons.

6. The Chief Executive Officer, Zilla Parishad, West Godavari district is therefore requested to take necessary action accordingly.

7. The said order was not implemented by the writ petitioner herein allegedly as the Superintendent of Police informed him that the 1st respondent was involved in a criminal case and had been arrayed as accused No. 7 for the commission of offences under Sections 420, 467, 468, 471 read with Section 34 of the Indian Penal Code. Having regard to the involvement of the 1st respondent, the petitioner addressed a letter on 12.6.1999 to the Government informing it thereabout and requested to ratify his action by directing him to keep the 1st respondent under suspension. As the order of the State dated 23.4.1999 was not implemented the 1st respondent filed an application u/s 19 of the Administrative Tribunals Act, 1985 seeking a direction to the petitioner to reinstate him which is marked as O.A. No. 2816 of 2000 which was allowed by the Tribunal by an order dated 12.6.2000.

8. However, a review application was filed by the petitioner in O.A. No. 2816 of 2000 which was marked as R.A. No. 1582 of 2000 and the same was dismissed at the

admission stage with liberty to him to take appropriate further action against the 1st respondent in accordance with the rules with regard to the pendency of the criminal case.

9. The State thereafter by an order dated 9.4.2001 modified its earlier order dated 23.4.1999 stating:

The Chief Executive Officer, Zilla Parishad, West Godavari district in his report has stated that Sri T. Durga Rao, Junior Assistant has not been reinstated. At the time of implementation of the Government orders, the fact of arrest of Sri T.Durga Rao, Junior Assistant, M.P. Chagallu came to light. As per the report of the Superintendent of Police, West Godavari district C. No. 662/SB/VI/98 dated 20.5.1999 he is involved in bogus teachers appointment orders case in Crime No. 62/1998 u/s 420, 467, 468, read with 34 IPC of Chagallu Police Station as A.7 and arrested on 27.1.1999 and sent for remand. Subsequently, he was released on bail and case was registered on 29.1.1999 in the court of II AJFCM. The enquiry of the Parishad Education Officer of Zilla Parishad, West Godvari district has also proved that he was involved in the bogus teachers appointment case, whereas in case of other (9) members there are no criminal charges and hence, they have been reinstated. The Chief Executive Officer, Zilla Parishad, West Godavari district has therefore requested Government to issue necessary orders as a contempt case was filed by the individual for non-implementation of Government orders.

10. Government after careful examination of the matter felt that it is not proper to reinstate Sri T.Durga Rao, Junior Assistant, who is involved in the criminal case and as grave charges are pending against him, Government hereby decided to continue Sri T.Durga Rao, Junior Assistant under suspension along with others who are continuing under suspension due to criminal charges pending against them. The orders issued in the referenced 1st cited are hereby modified to keep Sri T.Durga Rao, Junior Assistant, M.P. Chagallu under suspension.

11. In the meantime the 1st respondent filed a contempt case against the petitioner. Despite the fact that the petitioner has brought to the notice of the Tribunal the said fact, it by reason of the impugned order dated 12.6.2000 without assigning any reason directed:

In view of the facts and circumstances of the case and considering the submissions made, the C.E.O., Z.P., W.G. District who is the 1st respondent herein is directed to reinstate the applicant forthwith in pursuance of the Government Memo dt 23.4.99 within one week from the date of receipt of this order provided if the said memo is neither cancelled or modified.

SUBMISSIONS:

12. Mr J.R. Manohar Rao, the learned counsel appearing on behalf of the petitioner, would submit that having regard to the fact that the State itself had rectified its mistake, the impugned order could not have been passed.

13. Mr Y.S. Venkat Rao, the learned counsel appearing on behalf of the 1st respondent, on the other hand, would submit that from a perusal of the order passed by the learned Tribunal it would appear that it passed an order upon taking into consideration the fact situation obtaining in the matter.

14. The learned counsel has taken us through the history of litigation and would submit that when the interim order of suspension merged with the order of reinstatement, a subsequent order of suspension is bad in law. The learned counsel submits that the order of the State amounts to annulling the order of the Tribunal which is subversive of judicial discipline.

FINDINGS:

15. An employee of a Zilla Parishad can be placed under suspension in terms of rule 8 of the A.P. Civil Services (Classification, Control and Appeal) Rules, 1991.

16. The State has a power of review. But it is not the case of the parties that the State has exercised the said power. The order of the State dated 23.4.1999 emanated from the resolution passed by the Zilla Parishad itself so as to enable them to be transferred to other Zilla Parishad offices within the district pending departmental proceedings. The 1st respondent herein did not prefer any application before the State Government for review of the order passed by the Zilla Parishad. The State had to be approached as the Chief Executive Officer could exercise his power of transfer only on administrative grounds in relaxation of the ban orders.

17. In the aforementioned situation, the question of reinstatement of the 1st respondent had arisen before the State Government. The petitioner has categorically contended that he was not aware of the pendency of the criminal cases against the 1st respondent which he came to learn only on 20.5.1999 whereafter the said letter had been issued.

18. The 1st respondent herein does not deny and dispute the said contention. It is also not in dispute that the 1st respondent could be suspended even in view of the pendency of the criminal case against him in terms of Rule 8 aforementioned.

19. In the aforementioned situation, we are of the opinion that the mistake committed by the State as also the petitioner herein was capable of being rectified.

20. The petitioner had requested for revocation of the order darted 23.4.1999 passed by the State not only in respect of the 1st respondent but also in respect of other persons also who were being proceeded against in the aforementioned criminal case. It may be true that normally when an order of interim suspension is revoked, a fresh order has to be passed for placing the employee under suspension. However, in the instant case, the order of suspension was passed by the Zilla Parishad. The revocation order, therefore, could be passed only by it. The State Government, in law had no say in the matter in terms of the provisions of the said Rules particularly in view of the fact that it is nobody''s

case that the State had exercised its jurisdiction of review in terms of the rules.

21. As no order of revocation was passed by the petitioner, the applicability of the doctrine of merger in this case does not arise.

22. Keeping in view the peculiar situation as obtaining herein, we are of the opinion that the learned Tribunal has failed to apply its mind as regards the validity or otherwise of the order passed by the State. In this situation we are unable to accept the contention of Sri Venkat Rao that the order of the State Government amounts to nullifying the order of the Tribunal. Furthermore, the 1st respondent did not question the order of the State Government dated 9.4.2001. Unless the said order was set aside, the learned Tribunal could not have issued the impugned direction.

23. It may be true that an order of suspension should not be unduly prolonged. In a case of this nature, however, a prolonged suspension cannot be said to be an arbitrary act. We, however, would like to observe that in the facts and circumstances of this case, the learned Judge before whom the criminal case is pending should consider the desirability of disposing of the matter as early as possible.

24. Sri Venkat Rao states that the amount of subsistence allowance should be directed to be increased from 50% to 75%. This being within the domain of the petitioner herein, we are of the opinion that such an order can be passed only by the petitioner. The petitioner, however, may take into consideration the facts and circumstances of the case and may pass an appropriate order in accordance with law. The writ petition is allowed. There shall be no order as to costs.