

A. Bala Kameswara Rao Vs Govt. of A.P., Legislative Affairs and Justice and Another

Court: Andhra Pradesh High Court

Date of Decision: Sept. 12, 2001

Acts Referred: Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1963 " Rule 19(2), 8
 Constitution of India, 1950 " Article 235

Citation: (2002) 2 ALT 284

Hon'ble Judges: S.R. Nayak, J; S. Ananda Reddy, J

Bench: Division Bench

Advocate: K.V. Satyanarayana, for the Appellant; Govt. Pleader for Home (Courts) for Respondent No. 1 and C.V. Nagarjuna Reddy, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.R. Nayak, J.

This writ petition is filed by a former District Munsif assailing G.O.Ms.No. 42 Law (LA and J) Courts-C Department

dated 29-2-2000 imposing punishment of compulsory retirement from service with immediate effect as a disciplinary measure for a proved

misconduct. The challenge to the proceedings Roc. No. 449/93/Vigilance Cell/B. Spl. dt.2-4-1996 issued by the Registrar (General), High Court

of Andhra Pradesh, Hyderabad, the 2nd respondent herein, is misconceived inasmuch as the said order was subsequently set aside by the High

Court itself on the representation made by the petitioner dated 8-7-1996 by its order dated 21-10-1999. The petitioner has also sought for

quashing of the extension of periods of suspension pending departmental enquiry by orders dated 3-1-1994, 28-7-1994, 31-1-1995, 1-8-1995

and subsequent similar orders issued from time to time up to 29-2-2000.

2. The petitioner while working as Munsif-Magistrate, Zahirabad, Medak District was suspended pending enquiry on 14-7-1993 by proceedings

issued by the 2nd respondent dated 20-7-1993. The 2nd respondent appointed Mr. M. Venkateswara Reddy. Addl. Chief Judge, City Civil

Court, Secunderabad as Enquiry Officer to conduct regular departmental enquiry against the petitioner after framing necessary charges on the basis

of the report of the District Judge and the enclosures appended thereto. Accordingly, the Enquiry Officer issued a Charge Memo dated 16-10-

1993 containing as many as 8 charges. The charges are the following:

(1) You as the Presiding Officer of the Munsif Magistrate Court, Zahirabad ever since you took charge was in the habit of asking financial help and

co-operation from the members of the Bar Association, Zahirabad pleading that you were getting only a sum of Rs.2000/- as salary every month

and you had donated one of your kidneys to your son and spent lot of amount for the operation etc., and you were unable to meet your financial

needs.

(2) You had secured loans from Central Bank of India and State Bank of India, Zahirabad exercising undue influence on Sri Chincholikar,

Standing Counsel for Central Bank of India and Sri Digamber Rao Joshi, Standing Counsel for State Bank of India respectively.

(3) (a) You had demanded money from Mr. Mir Rayasat Ali, Advocate, appearing for the accused in STC Nos. 47 to 49/91 filed against the

management of the Sugar Factory for violation of some of the provisions under Factories Act and Rules etc., and as the said Advocate refused to

accede to your demand you had delayed pronouncement of Judgment in the matter;

(b) You had demanded money from Sri Venkatareddy, Advocate, appearing for the petitioner in LA. 380/92 in Election OP. 1/92 (between 17-

3-93 to 29-3-93) for doing favour and as the said advocate refused to accede to your demand, you had delayed pronouncement of judgment in

the above matter.

(4) (a) You had demanded Mr. Muktadar, Advocate son of Mr. M.A. Gafoor, advocate to present either a transistor or tape recorder for the

marriage of your daughter and you had taken audio cassettes free of cost from Mr. Mukatadar, Advocate.

(b) You had taken supply of onions, potatoes and jaggery from Mr. G.R. Swamy, advocate and sent the same through Ramdas Transport Service

to Tirupati in connection with the marriage of your daughter;

(c) You had taken supply of food daily from the house of Sub Inspector of Police, Zahirabad from September, 1992 to 27th May, 1993.

(5) You as the Presiding Officer of the Munsif Magistrate Court, Zahirabad, had threatened Mr. Safiuddin, Advocate on 18-11-1992 in open

Court in the presence of advocates that you would report against him to the Bar Council for his absence on 17-11-1992 when the judgment was

pronounced by you in O.S. 23/91 on the file of the M.M. Court, Zahirabad. You had also threatened the same advocate on 9-4-1994 when he

made a request for grant of time to pay deficit Court fee in O.S.No. 105/91 in which a check-slip was issued for Rs.285/- by the High Court of

A.P. stating that you would report that matter to the Bar Council for taking disciplinary action.

(6) You are not able to discharge the functions and duties of a judicial officer of a Court of law and you had committed acts of omission and

commission which are unbecoming of a judicial officer.

(7) You are in the habit of adjourning the cases posted for judgments or orders from time to time creating suspicion in the minds of the advocates

and the parties that you are expecting illegal gratification from them for granting favourable orders.

(8) During your tenure as the Presiding Officer of Munsif Magistrate's Court, Zahirabad, you were in the habit of leaving headquarters on every

Friday on one pretext or the other and returning back to the headquarters on the next Court working day i.e., Monday that too attending Court

late.

The Enquiry Officer after holding a regular departmental enquiry held that only charges 1, 3(a), 3(b), 4(b), 4(c), 6 and 8 are proved and the

remaining charges are not proved. The High Court, on receipt of the findings recorded by the Enquiry Officer and after due application of mind,

found that charge No. 6 framed against the petitioner-delinquent is also not proved. The resultant position is that only charges 1, 3(a), 3(b), 4(b),

4(c) and 8 are proved. Having regard to the gravity of the proved misconduct, the High Court thought it fit to impose the penalty of compulsory

retirement on the petitioner. Accordingly, by its order dated 2-4-1996, imposed penalty of compulsory retirement from service as a disciplinary

measure. The petitioner subsequently submitted a representation dated 8-7-1996 contending that the High Court was not competent to pass the

order imposing the penalty of compulsory retirement as a disciplinary measure and such order could validly be passed only by the Governor in the

light of the Judgment of the Supreme Court in T. Lakshmi Narasimha Chari Vs. High Court of Andhra Pradesh and another, . The High Court, on

consideration of the representation of the petitioner dated 8-7-1996 and in the light of the Judgment of the Supreme Court in T. Lakshmi

Narasimha Chari Vs. High Court of Andhra Pradesh and another, case, by its order dated 21-10-1999 set aside the earlier order dated 2-4-

1996. The enquiry report and the recommendation of the High Court were forwarded to the Governor and the Governor accepting the

recommendation of the High Court passed the impugned G.O.Ms.No. 42 dated 29-2-2000 imposing the penalty of compulsory retirement on the

petitioner as a disciplinary measure. Hence this writ petition assailing the validity of the said order.

3. Sri K.V. Satyanarayana, learned Counsel appearing for the petitioner would place two contentions before us while assailing the validity of the

impugned G.O., viz., (i) under Rule 19(2)(a) of the A.P. Civil Services (Classification, Control and Appeal) Rules, 1963 (for short, the CCA

Rules), where it is proposed to impose, on a member of a service, any of the penalties classified in items (iv), (v), (vi) and (vii) in Rule 8, which

includes the penalty of compulsory retirement, only the competent authority to impose that penalty shall appoint an Enquiry Officer and in the

instant case, admittedly the Enquiry Officer was appointed by the High Court, whereas in law, the penalty of compulsory retirement as a

disciplinary measure could be imposed validly only by the Governor, and on that count itself, the enquiry conducted against the petitioner is vitiated

and the subsequent action taken on the report submitted by such incompetent Enquiry Officer would also fall to the ground; and (ii) that the order

of the Governor is not a speaking order and it does not disclose reasons in support of the order.

4. Let us first dispose of the second contention first. It is true that in the impugned G.O., the Governor except referring to the enquiry conducted

against the delinquent officer, findings recorded by the Enquiry Officer and the High Court, and the recommendation of the High Court, has not

given any independent reasons in support of the impugned order. It is now, well settled by a catena of decisions of the Supreme Court, that in

disciplinary proceedings, the recommendations made by the High Court bind the Governor and he is left with no discretion except to act according

to the recommendation of the High Court. If this is the settled position in law, we are at a loss to understand how the non-disclosure of reasons by

the Governor in addition to the finding recorded by the Enquiry Officer and the High Court would vitiate the impugned order. We say this because

the very object behind insistence for disclosure of reasons is that the author of the order should apply discretion vested in him to the facts and

circumstances of each case and pass appropriate and just order. In other words, discretion should be brought to bear on facts and circumstances

of each case in the decision-making. Since the Governor is deprived of any such discretion to differ with the view or the recommendation made by

the High Court, he giving independent reasons in support of the order would not arise. In that view of the matter, the second contention of the

learned Counsel Mr. K.V. Satyanarayana is not acceptable to us and it is accordingly rejected.

5. This takes us to the first contention of the learned Counsel for the petitioner. It is true that Rule 19(2)(a) of the CCA Rules, 1963 provides that

where it is proposed to impose major penalties like compulsory retirement, the authority competent to impose such penalty shall alone appoint the

Enquiry Officer. The question for consideration is whether this provision would control the power of the High Court under Art.235 of the

Constitution of India. Article 235 reads-

235. The control over District Courts and Courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons

belonging to the judicial service of a State and holding any post inferior to the post of a District Judge shall be vested in the High Court, but nothing

in this Article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the

conditions of his service or as authorizing the High Court to deal with him otherwise than in accordance with the conditions of this service

prescribed under such law.

6. The words "control over Courts" occurring in Article 235 fell for consideration in large number of cases decided by the Apex Court. The Apex

Court has opined that the words "control over Courts" is wide and comprehensive enough to include general superintendence of the working of the

subordinate Courts, disciplinary control over the Presiding Officers of the subordinate Courts, recommendation of imposition of penalty including

suspension for the purposes of disciplinary enquiry, transfer, confirmation, promotion etc. In other words, the control vested in the High Court

under Article 235 of the Constitution is complete control subject only to the power of the Governor in the matter of appointment, including posting

and promotion of District Judges. The State of West Bengal Vs. Nripendra Nath Bagchi, , Chief Justice of Andhra Pradesh and Others Vs.

L.V.A. Dixitulu and Others, , Yoginath D. Bagde Vs. State of Maharashtra and Another, . The High Court of Punjab and Haryana and Others Vs.

The State of Haryana and Others, , High Court of Judicature at Bombay through its Registrar Vs. Shirish Kumar Rangrao Patil and another, , are

the authorities to state that the High Court can hold enquiries, impose punishment other than dismissal, removal and reduction in rank, and only the

High Court can hold disciplinary proceedings against its officers. Holding disciplinary proceedings against delinquent officer includes power to

appoint Enquiry Officer and issuance of Charge Memo. It is trite to state that enquiry commences with issuance of a Charge Memo and ends with

or culminates in passing the final order imposing penalty. The entire and complete power of disciplinary action, except in a case where it is

proposed to impose the penalty of dismissal, removal or reduction in rank against an official vests in the High Court.

7. Secondly, it is very pertinent to notice in the instant case that the petitioner did not raise any objection when he was served with the charge

memo dated 16-10-1993 about the incompetency of the High Court to appoint Mr. M. Venkateswara Reddy, as Enquiry Officer. He participated

in the enquiry proceedings and suffered an adverse order at the hands of the High Court. Further, even in his representation dated 8-7-1996

submitted to the High Court, he did not raise this plea. The only contention in the representation was that in view of the Judgment of the Supreme

Court in David Wilson's case (1 supra), only the Governor is competent to impose the penalty of compulsory retirement as a disciplinary measure

and not the High Court. Looking from that angle also, the technical plea taken by the petitioner in this writ petition for the first time cannot be

countenanced and on that ground that disciplinary action taken against him on the proved misconduct cannot be nullified.

8. Before concluding, another prayer made by the petitioner in the writ petition to quash the extension of periods of suspension vide orders dated

3-1-1994, 28-7-1994, 31-1-1995, 1-8-1995 and subsequent orders of similar nature till 29-2-2000 be noted. We do not think it necessary to

deal with the question whether there was any justification for extension of suspension period from time to time, in the present proceeding. Answer

to that question may be a relevant consideration in passing the consequential order by the High Court in pursuance of the order of the Governor.

At the time of hearing, we pointedly asked the learned Counsel for the petitioner whether any consequential order has been made by the High

Court in pursuance of the order of the Governor dated 29-2-2000 and the learned Counsel would inform us that no such order has been yet

passed by the High Court. Therefore, there is no necessity for us to deal with the legality and the merit of the extension of suspension period vide

orders dated 3-1-1994, 28-7-1994, 31-1-1995, 1-8-1995 and subsequent orders till 29-2-2000 in the present proceedings. We leave that

question open and it is open for the petitioner to make necessary representation to the High Court in that regard.

9. In the result and for the foregoing reasons, we do not find any merit in the writ petition and it is accordingly dismissed with no order as to costs.