

(1980) 2 ALT 233 : (1980) 2 AnWR 358

Andhra Pradesh High Court

Case No: Criminal Miscellaneous Petition No. 798 of 1980

M. Venkata Krishna
Rao

APPELLANT

Vs

The Divisional
Panchayat Officer,
Gudivada and AnotherRESPONDENT

Date of Decision: Aug. 20, 1980**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 409, 466, 467, 468, 471

Citation: (1980) 2 ALT 233 : (1980) 2 AnWR 358**Hon'ble Judges:** Madhusudan Rao, J; Jayachandra Reddy, J**Bench:** Division Bench**Advocate:** K.V. Subrahmanya Narsu, for the Appellant; Public Prosecutor, for the Respondent

Judgement

Madhusudan Rao, J.

The short question for decision in this miscellaneous case is whether a criminal prosecution launched against a retired public servant governed by the Andhra Pradesh Pension Code is barred by limitation, if such prosecution is launched after the retirement of the public servant in regard to misconduct which took place more than four years before the launching of the prosecution. Our learned brother, Muktadar, Justice opined that on account of the importance of the question, the case may be heard and decided by a Division Bench and that is why this miscellaneous case has come up before us.

2. The facts of the case are : The petitioner worked as the Executive Officer of the Guraja Gram Panchayat from 1-7-1973 to 9-8-1975. On the allegation that he committed grave irregularities involving forgery and misappropriation which took place on 2-12-1974 and 29-1-1975, the Collector (Panchayat Wing), Krishna, initiated proceedings against him on 5-11-1978 while he was working as Executive Officer of Tarakatur Gram Panchayat. While the disciplinary proceedings were pending, the petitioner was permitted to retire

from service on superannuation on 31-3-1979. The disciplinary proceedings have not so far been completed. Even so, on 13-2-80, the Divisional Panchayat Officer, Gudivada, filed a complaint against the petitioner under Sections 409 and 471, I.P.C. in the court of the Additional Judicial First Class Magistrate, Gudivada, in regard to the two incidents which took place on 2-12-1974 and 29-1-1975. On the complaint having been taken on the court's file as C.C. No. 14 of 1980, the petitioner came up to this court with the instant petition u/s 482 of the Code of Criminal Procedure for quashing the proceedings in the court of the Additional Judicial First Class Magistrate, Gudivada.

3. Admittedly, the petitioner retired from service on reaching superannuation on 31-3-1979. Though certain departmental proceedings were initiated against him while he was in service, no judicial proceedings were initiated before his retirement. The judicial proceeding by way of a criminal prosecution was initiated against him for the first time in the Court of the Additional Judicial First Class Magistrate, Gudivada, on 13-2-1980 in regard to the incidents which took place on 2-12-1974 and 29-1-1975. The incidents in question took place more than four years before the institution of the judicial proceeding. Sri K. V. Subrahmanya Narsu, the petitioner's learned counsel, contends that, if no criminal prosecution is initiated against a public servant governed by the Andhra Pradesh Pension Code during the tenure of his office or re-employment, no criminal prosecution can be launched against him after his retirement in regard to misconduct of more than four years old by the date of the prosecution. In support of this submission, reliance is placed on the proviso (c) to Article 351-A of the Andhra Pradesh Pension Code and that proviso reads :

"No such judicial proceeding, if not instituted while the officer was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution."

The proviso relied refers only to "such judicial proceeding and not to all judicial proceedings or any judicial proceeding." The proviso deals only with "such judicial proceeding" as is contemplated in the main Article 351-A. As can be seen from Article 1(1) of the Andhra Pradesh Pension Code, "the regulations are intended to define the conditions under which pension is earned by a person who is a member of a civil service of the State or holds a civil post under the State and the manner in which it is calculated". The provisions in the Pension Code are intended only to regulate the pension of retired employees and do not have any bearing on the operation or enforcement of the general criminal law. Article 351-A merely reserves to the Govt. a right to withhold or withdraw a pension or any part of it permanently or for a specified period under certain circumstances. The provision was incorporated in 1973 as an additional right to the Government to secure the good conduct of its employees. The immediately preceding Article 351 reads as follows :

"351. (1) Future good conduct shall be an implied condition of every grant of pension. The pension sanctioning authority may, by order in writing, withhold or withdraw a pension or part thereof whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct;

Provided that no order shall be passed under this clause by an authority subordinate to the authority competent to make an appointment to the post held by the pensioner immediately before his retirement from service.

(2) Where a pensioner is convicted of a serious crime by a Court of Law action under clause (1) shall be taken in the light of the judgment of the court relating to such conviction.

(3) In cases not falling under clause (2) if the competent authority under Clause (1) considers that the pensioner is prima facie guilty of the grave misconduct, it shall, before passing an order under clause (1) -

(a) serve upon the pensioner a notice specifying the action proposed to be taken against him

(b) take the representation, if any submitted by the pensioner under sub-clause (a) into consideration.

(4) and (5)

Explanation : In this article, the expression "serious crime" includes a crime involving an offence under the Official Secrets Act, 1923 (Central Act No. 19 of 1923) and the expression "grave misconduct" includes the communication or disclosure of any secret official code or password"

The above article provides for withholding or withdrawal of a pension or part thereof by reference to future good conduct and also past good conduct. Article 351-A may now be examined and it reads :

"The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government and to the local authority if, in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement :

Provided that -

(a) such departmental proceeding, if instituted while the officer was in service, whether before his retirement or during his re-employment shall, after the final retirement of the

officer, be deemed to be a proceeding under this article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer has continued in service.

(b) such departmental proceeding, if not instituted while the officer was in service, whether before his retirement or during his re-employment :-

(i) shall not be instituted save with the sanction of the Government;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the State Government may direct

(c) no such judicial proceeding, if not instituted while the officer was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which took place more than four years before such institution; and

(d) the Andhra Pradesh Public Service Commission shall be consulted before final orders are passed".

4. It is abundantly clear that the proviso (c) refers only to the judicial proceeding referred to in the main Article 351-A and does not take in its ambit all judicial proceedings so as to include general prosecution under the ordinary criminal law for the purpose of punishment under that law. Under Article 351 the Pension Sanctioning Authority may withhold or withdraw a pension or part thereof if the pensioner was convicted of a serious crime or is found guilty of grave misconduct. Under Article 351-A the State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it permanently or for a specified period and also the right of ordering the recovery from a pension the whole or part of any pecuniary loss caused to Government or to the Local Authority if, in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence committed during the period of his service. The "judicial proceeding" in Article 351-A includes a criminal prosecution. What all proviso (c) to Art. 351-A says is that the judicial proceeding in respect of which power can be exercised under Article 351-A should be one as was instituted while the officer was in service, whether before his retirement or during his re-employment, or, if instituted after his retirement, it should be one instituted in respect of a cause of action which arose or an event which took place within four years before such institution. The prohibition against the institution of a judicial proceeding in respect of cause of action which arose or an event which took place more than four years before such institution, as contained in the proviso (c) is only for the purpose of exercising the power reserved under the main Article 351-A and not for any other purpose. No judicial proceeding shall be instituted in respect of a stale cause of action which arose more than four years before such institution after the officer has retired, if power is sought to be exercised under Article 351-A. The

prohibitory words in the proviso (c) cannot be construed as a bar against criminal prosecutions in general.

5. The general law is that there can be no period of limitation for the prosecution of a crime, though inordinate delay in the prosecution had always weighed with the Courts in judging the truth of a case. In the new Code of Criminal Procedure of 1973 (Act 2 of 1974) period of limitation was prescribed for taking cognizance of certain offences under the newly-introduced Chap. XXXVI. Under the previous Code, no period of limitation was prescribed for launching a criminal prosecution and the court could not throw out a complaint or a police report solely on the ground of delay, though, as already observed, long delay without proper explanation was considered to be a good ground to doubt the prosecution version. Section 468 of the new Code provides the period of limitation gradedly for certain offences. The other provisions in the Chapter provide for the mode of computation of the period of limitation. Even under the new Code, period of limitation is prescribed only for offences which are punishable with imprisonment which may extend to three years and not upwards. There may be, no doubt, certain other special offences under special enactments and periods of limitation for taking cognizance of those offences may be prescribed under those enactments in the light of the gravity or otherwise of the offences contemplated under those special enactments. But as pointed out already, the Andhra Pradesh Pension Code merely contains provisions which regulate the pension of the members of a civil service of the State or those who hold a civil post under the State. It also provides for the manner in which pension is to be calculated. The only penal provisions that are available in the Andhra Pradesh Pension Code are withholding or withdrawing permanently or for a specified period the whole or part of a pension and there is no provision which has any bearing on the general liability of an employee or a retired employee for criminal prosecution. The petitioner cannot raise any objection to his prosecution in a regular criminal court basing the same on any provisions of the Pensions Code, as no provision of that Code has any bearing on the operation of the general law. An objection based under the proviso (c) to Article 351-A of the Pension Code can validly be made only against an order withholding or withdrawing a pension or recovering any amount from the pensioner - retired employee, if such an order is made or sought to be made with reference to a judicial proceeding instituted after the retirement of the employee for an event which took place more than four years before the institution of the judicial proceeding. The complain against the petitioner in the instant case, as pointed out already, is for offences punishable u/s 409 and 471, I.P.C. The offence under the former section is punishable with imprisonment for ten years or even for life and there is no period of limitation prescribed for the prosecution of such a grave offence. Even the offence u/s 471, I.P.C. would be punishable with imprisonment for seven years or ten years according as the forged document in question is punishable under Sections 466, 468 or 467, I.P.C.

6. For the reasons recorded, we do not find any substance in this petition and it is accordingly dismissed.

7. Petition dismissed.