



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3329]

THURSDAY, THE NINETEENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

WRIT PETITION NO: 27210/2021

Between:

1.A RATHNAM, S/O. A. PAPAIAH, AGED 59 YEARS, PROH. AND
EXCISE INSPECTOR / DISTILLERY OFFICER, SNJ DISTILLERY,
SARVEPALLI VILLAGE, SPSR NELLORE DISTRICT, R/O FLAT
NO.201, ROYAL RESIDENCE, BANK COLONY, HARANATHPURAM,
4TH LINE, NEAR AJEEJ ICE FACTORY, SPSR NELLORE.

...PETITIONER

AND

- 1.THE STATE OF ANDHRA PRADESH, REP. BY PRINCIPAL
SECRETARY, REVENUE (EXCISE) DEPARTMENT, SECRETARIAT
BUILDING, VELAGAPUDI, AMARAVATI, GUNTUR DISTRICT.
- 2.THE COMMISSIONER OF PROHIBITION AND EXCISE,
GOVERNMENT OF ANDHRA PRADESH, PRASADAMPADU,
VIJAYAWADA, KRISHNA DISTRICT.
- 3.THE TRIBUNAL FOR DISCIPLINARY PROCEEDINGS TDP, FOR THE
STATE OF ANDHRA PRADESH, REP. BY ITS SECRETARY,
NAMPALLI, HYDERABAD.

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of Mandamus declaring the action of the respondents in not concluding the disciplinary proceedings initiated vide TEC No.453 of 2013,

dated 29.11.2018 as illegal, arbitrary and in violation of Articles 14, 16 and 21 of the Constitution of India apart from violation of instructions issued in GO Ms.No.679, GA (Ser-C) Department, dated 01.11.2008 and consequently set aside the proceedings vide TEC No.453 of 2013, dated 29.11.2018 and pass such other orders.

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Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the charge memo vide TEC No.453 of 2013, Dt.29.11.2018, pending disposal of the writ petition and pass such other orders.

Counsel for the Petitioner:

1.MANOJ KUMAR BETHAPUDI

Counsel for the Respondent(S):

1.GP FOR SERVICES I

The Court made the following:

THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

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ORDER:

The present Writ Petition came to be filed under Article 226 of the Constitution of India seeking the following relief:-

“.....to issue a writ in the nature of Certiorari or any other appropriate writ order or direction by declaring the entire action of the 1st respondent in rejecting the genuine claim of the petitioner for counting of contingent service rendered by him for the purpose of pensionary benefits is as highly illegal, arbitrary, unjust, improper and contrary to Hon“ble Apex Court judgment decided between B.Srinivasulu Vs. Nellore Municipal Corporation in Civil Appeal No.6318 of 2015 dated 17.08.2015 r/w judgment of this Court decided between Government of A.P., Vs. N.Venkaiah and others reported in 2018(4) ALD 590 DB and consequently to direct the respondents to extend the benefit of past service rendered by the petitioner prior to his regularization for the purpose of his pension and pensionary benefits by duly taking into consideration of judgment of Hon“ble Apex Court decided between B.Srinivasulu Vs. Nellore Municipal Corporation in Civil Appeal No.6318 of 2015 dated 17.08.201 without reference to the present impugned order issued in Rc.No.Accts-III/Pensions/51810/2017 dated 19.07.2018 and to pass such other orders in the circumstances of the case....”

2. The brief facts of the case are that: the incident for which the petitioner is charged took place in December, 2011 and January, 2012. Learned counsel for the petitioner submits that the Tribunal Enquiry Case No.453 of 2013 was registered against the petitioner. After the case was registered in 2013, on 29.11.2018 a charge memo was issued fixing date of hearing on 20.12.2018. Thereafter, learned counsel submits that no proceedings have taken place and the Tribunal did not hold any proceedings whatsoever. On the ground of this delay, learned counsel submits that the petitioner is entitled to the relief

and that the entire proceedings should be quashed. He further submits that as per the G.O.Ms.No.679 General Administration (Ser.C) Department, dated 01.11.2008, wherein a time limit of six months period is fixed for disposal of complicated cases. In fact, he argues that in case of abnormal delay in conducting the disciplinary proceedings, action should be taken against the “Enquiry” Officer in terms of this G.O. He also submits that this Court passed number of orders in the years 2019 and 2020, for quashing the proceedings on the ground of delay alone. Therefore, learned counsel prays for quashing of the proceedings against the petitioner.

3. In reply to this, learned Government Pleader for Services-I opposes granting of any relief. He submits that as the Tribunal for Disciplinary Proceedings is not functioning, the petitioner cannot take advantage of the alleged delay and claim exoneration/a writ of Mandamus dismissing the charges. He points out that even if there is delay, at best, this Court can direct the Tribunal for Disciplinary Proceedings to conclude the enquiry, but it cannot quash the charges.

4. After hearing the counsels for some time and noticing the law on this subject, this Court posted the matter for further hearing to enable the counsels to argue whether (a) this Court can only give a direction to the Enquiry Officer/Tribunal to complete the proceedings within a time frame or (b) it can also include a default clause in the order by which the proceedings would be automatically closed in case they are completed as directed.

5. In reply, the learned counsel for petitioner submits that the Courts have a duty to quash the proceedings due to the delay. He also points out that despite the provisions of the A.P. Civil Services (Disciplinary Proceedings Tribunal) Act, 1960, the respondent-State did not take any action to expedite and complete the enquiries. He argues that even after the learned single Judges passed a series of orders, which are filed as material papers, the respondents did not take steps to expedite the matters. Therefore, he submits that this is a fit case to quash all further proceedings.

6. The alleged incident for which the petitioner is charged; took place in December 2011 and January 2012. The allegations are essentially in the nature of dereliction of duties. It is alleged that the wine shop owners/dealers were allowed to sell liquor beyond the maximum limit, beyond the MRP permitted beyond the stipulated time and also the sale of loose liquor etc., by the Officer. It is alleged that he is allowing consumption of alcohol near the wine shops. Lastly, it is alleged that the Officer allowed unauthorized licensed shops (BELT shops) to run. These are the gist of the offences charged against the petitioner and many others from the Excise Department. For instances that took place in December, 2011 and January, 2012, the charge memo was issued on 29.11.2018 fixing the hearing on 20.12.2018. It is clear that the first hearing was fixed almost five years after the alleged incident took place. Registration of the case itself was in the year 2013. Thereafter, till January, and February, 2017 nothing has been done. From 2017 to 2021, (i.e. for another four years), proceedings did not take place. Therefore, as things

stand, there is no conclusion if the petitioner is guilty of the alleged incidents that took place in December, 2011 and after 2012. More than 9 years have elapsed without finality being reached. The Government Order on which the learned counsel for the petitioner has relied upon is G.O.Ms.No.679 which is the subject matter of a number of decisions. A reading of the said G.O. makes it clear that the enquiry should be completed within six months of its initiation in case of delay, action can also be taken against the Enquiry Officer.

7. In the case on hand, the proceedings were given to Tribunal in disciplinary proceedings, which was constituted under the A.P. Civil Services (Disciplinary Proceedings Tribunal) Act, 1960 (herein after referred as "Act"). The Government in its wisdom decided to allot these cases to Tribunal. Section 4(a) of the Act also authorizes the Government to withdraw any case referred to the Tribunal at any time before the enquiry is conducted. Learned counsel for the petitioner also rightly points out that the orders of the learned single Judges which are filed along with the writ petition is in between the dates 07.09.2020 to 24.12.2020. He points out that despite the orders being passed continuously and consistently by the High Court, the respondents have not taken any steps to ensure that the proceedings against the petitioner are heard/proceeded with let alone disposed of. He also rightly argues that the power under Section 4(a) of the Act to withdraw the case has not been exercised. He submits that the respondents are not acting despite the orders passed by this Court quashing other proceedings on the ground of delay. Therefore, he argues that this is a fit case for this Court to pass orders on the

following among other grounds. (a) initial delay of at-least two years in referring the matter to the Tribunal. (b) delay in the Tribunal from 2013 (when case was registered) to date of first hearing (February, 2017). (c) enormous delay by the Tribunal in concluding the proceedings from February, 2012 till date (more than five years) (d) lastly, failure of the Government to act in terms of G.O.Ms.No.679 and to heed the warning issued by the learned single Judges of quashing of proceedings.

8. In reply to this, the Government Pleader again submits that as the Tribunal is not in existence, the petitioner cannot take advantage and seek a dismissal of the entire case. He argues that the Tribunal for Disciplinary Proceedings should be allowed to conclude its proceedings. In ***P.V.Mahadevan Vs. MD Tamilnadu Housing Board***¹ case, there was a delay of 10 years in initiating the action. Relying upon other cases which are referred, the Hon'ble Supreme Court clearly held as follows:

11. Under the circumstances, I am of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government

¹ (2005) 6 SCC 636

employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

Ultimately, the Hon'ble Supreme Court quashed the proceedings.

9. In the case of **Secretary, Ministry of Defence & others Vs. Prabash Chandra Mirdha**², it is clearly held that before the charge sheet is quashed, this Court must consider the gravity of the charge and all other relevant factors before coming to the said conclusion. Same view is reiterated in other cases also.

10. Heard learned counsel for the petitioner and learned Assistant Government Pleader for Services-I, perused the material available on record, this court is of considered view that the charges against the present petitioner are not of a very serious nature. It can be broadly termed as charges involving dereliction of duty as petitioner is said to have allowed unauthorized sale of liquor, sale beyond the stipulated limit etc., along with a large number of other Officers. The fact remains that from 2011 December to January, 2012, till date, no "conclusions" have been reached. From that date, till now, the

² (2012) 11 SCC 565

petitioner is under the imminent threat of punishment. The petition itself refers to the “Sword of Damocles” hanging over his head.

11. As argued by the learned Government Pleader, the petitioner cannot take advantage of the non-functioning of a Tribunal at this stage. However, the fact remains that in terms of G.O.Ms.No.679, the case should have finished in a time bound manner. Even otherwise, a series of orders quashing proceedings have been passed by the learned single Judges from September, 2020 onwards till date. Despite the orders being passed and the proceedings being quashed, as a consequence of the order, the respondents have not taken any steps to ensure that the disciplinary proceedings are started also. In the opinion of this Court; this gross inaction on the part of the ‘State’ is enough to put an end to the mental agony of the petitioner.

12. As pointed out by the Hon’ble Supreme Court, employees, particularly those in senior positions, cannot work under constant and imminent threat of disciplinary proceedings. The very purpose of fixing time schedules like in G.O.Ms.No.679 will be defeated. Even under 1960 Act, no time limit is fixed, but it is mentioned that in such cases, whether this 1960 Act is silent, A.P.CCA Rules will apply. The CCA Rules and the departmental instructions issued there under, make it very clear that the respondents are duty bound to dispose these proceedings within a time stipulated. The same is not done in this case. A right to a speedy trial and conclusion of proceedings are now recognized as a provision of Article 21 of the Constitution of India. The same is violated.

13. Therefore, for all these reasons, this Court is of the opinion that directing the Tribunal to complete the proceedings is not really called for. The inaction on the part of the respondents is glaring and striking. The petitioner is under imminent threat since December, 2011-2012. His agony cannot be extended further. Lastly, this Court also notices that no material has been filed to show that the petitioner is responsible for the delay.

14. For all the above reasons, the writ petition is allowed. There shall be an order as prayed for and the disciplinary proceedings vide Tribunal Enquiry Case Nos.453/2013 dated 29.11.2018 is quashed. No order as to costs.

As a sequel, the miscellaneous petitions, pending if any, shall stand closed.

VENKATESWARLU NIMMAGADDA, J

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