

Government Of A.P. And Ors vs V. Appala Swamy on 25 January, 2007

Author: S.B. Sinha

Bench: S.B. Sinha, Markandey Katju

CASE NO.:

Appeal (civil) 393 of 2007

PETITIONER:

Government of A.P. and Ors.

RESPONDENT:

V. Appala Swamy

DATE OF JUDGMENT: 25/01/2007

BENCH:

S.B. Sinha & Markandey Katju

JUDGMENT:

JUDGMENT S.B. Sinha, J.

1. Leave granted.

2. This appeal is directed against a judgment and order dated 28.2.2005 passed by a Division Bench of the High Court of Andhra Pradesh at Hyderabad, in Writ Petition No. 9412/1998 questioning the correctness of the judgment and order dated 17.4.2003 passed by the Andhra Pradesh Administrative Tribunal in O.A.No. 4866/2001 and C.A. No. 758/2001.

3. The basic fact of the matter is not in dispute.

4. Respondent herein was working as a Principal in various colleges, situated in the State of Andhra Pradesh. On or about 18.7.1990, several charges of misconduct were framed against him. A departmental proceedings was initiated. In the said departmental proceedings, the Inquiry Officer submitted his report on 8.1.1992. However, before any action could be taken pursuant to and in furtherance of the said report, the respondent retired on 30.6.1992.

5. A proceeding was initiated against the respondent upon service of a notice to show cause as to why 50% of the provisional pension fixed in his favour in terms of an interim order dated 18.3.1993 in O.A. No. 1992/1993 passed by the Director of Intermediate Education, Hyderabad, or part thereof should not be withheld. Respondent filed his reply to the said show cause notice on 20th November, 1997. During the pendency of the said departmental proceeding, an original application was filed by

him before the Andhra Pradesh Administrative Tribunal which was marked as O.A.No. 4866/2001.

6. By reasons of its order dated 17.4.2003, the Andhra Pradesh Administrative Tribunal directed the State to conclude the departmental proceeding within a period of three months. The said order came to be questioned by the respondent herein before the High Court. In the meantime, a recovery proceeding was also initiated against him. The correctness or validity of the said recovery proceeding was also questioned by the respondent before the High Court. The High Court by its order dated 16.2.2005 passed in Writ Petition No. 110/2005, directed the third appellant herein to be personally present in court and explain the reasons as to why the amount of pension payable to the respondent to the respondent herein had not been paid despite the earlier directions of the High Court. The original respondent No.3 (appellant No. 3 herein) submitted his explanation. However, by reason of the impugned judgment the High Court, on the premise that the pension payable to the respondent has illegally been withheld for a payable to the respondent has illegally been withheld for a long time, directed:

"Accordingly the writ petition is disposed of directing the Government to release full pension to the petitioner from 01.07.1992 duly giving credit to the pension already paid to him. The pension, as directed above, shall be released to the petitioner within a period of two (02) months from the date of receipt of a copy of this order. The arrears of pension shall carry interest at the rate of 12% per annum from 01.07.1992 till date of payment."

7. The writ petition filed by the respondent herein questioning a part of the order of the Tribunal was also dismissed.

8. The principal issue which falls for our determination, in view of the rival contentions advanced by the learned counsel appearing on behalf of the parties, is; whether the High Court was justified in passing the impugned judgment quashing the disciplinary proceedings and issue a direction to the appellant to pay all pensionary benefits to the respondent herein, only on the ground of delay in concluding the departmental proceedings.

9. The charges made against the respondent are as under:

"Charge-1. That Sri V. Appala Swamy, while working as Principal, Govt. Junior College, Kurupam had falsified and tampered with certain records of the college and irregularly drawn the salaries for certain period without being regulated.

Charge-2. That Sri V. Appala Swamy while working as Principal, Govt. Junior College, Kurupam had misappropriated the funds and committed serious financial irregularities in flagrant violation of rules and regulation thereon, causing pecuniary loss to the Government.

Charge-3. That Sri V. Appala Swamy while working as Principal, Govt. Junior College, Kurupam was found to be very negligent and highly irresponsible in

discharging of his duties."

10. It was found that the respondent while working in different institutions have committed acts of misappropriation, the details whereof are as under:

(1) Govt. Junior College, Chodavaram Rs. 1,92,754=45 (2) Govt. Junior College, Chinthapalli Rs. 15,121=50 (3) Govt. Junior College, Pedurthi Rs. 36,879=60 (4) Govt. Junior College, Kurupam Rs. 40,801=70 (Disciplinary case) (5) Incremental arrears irregularly sanctioned Rs. 7,572 (6) Excess HRA drawn at GJC, Chodavaram, Rs. 9,240=00 (7) Surrender leave salary due to irregular Rs. 1,386=40 credit of earned leave for Panchayat Raj Election in 1980-81 (8) Govt. Junior College, Parvathipuram Rs. 1,43,538=00 Total Rs. 4,50,293=00

11. It may be true that there was some delay on the part of the appellants to conclude the departmental proceedings. The Tribunal did not accept the contention raised on behalf of the respondent that only by reason thereof the entire departmental proceedings became vitiated. The High Court thus, in our opinion, was required to consider the question as to whether, in the facts and circumstances of this case particularly in view of the nature of the charge levelled against the respondent as also the explanation offered by the appellants in this behalf, it was a case where the entire proceedings should have been quashed. The High Court in its impugned judgment did not address itself the said question. It, as noticed hereinbefore, from the very beginning proceeded on the premise that the pension was payable to the respondent on his retirement. The High Court furthermore did not determine the question as to whether a proceeding could have been initiated against the respondent in terms of Rules 9 of the Andhra Pradesh Civil Service (CCA) Rules, 1963. If it is held that the second proceeding was maintainable in terms of the extant rules, ordinarily, the Tribunal or the High Court should not have interfered therewith. This aspect of the matter is concluded by the decisions of this Court in *State of Uttar Pradesh v. Braham Dutta Sharma and Anr.*, [1987] 2 SCC 179 and *State of U.P. v. Harihar Bhole Nath*, (2006) 11 SCALE 322.

12. So far as the question of delay in concluding the departmental proceedings as against a delinquent officer is concerned, in our opinion, no hard and fast rule can be laid down therefor. Each case must be determined on its own facts. The principles upon which a proceeding can be directed to be quashed on the ground of delay are:

(1) Where by reason of the delay, the employer condoned the lapse on the part of the employee;

(2) where the delay caused prejudice to the employee.

Such a case of prejudice, however, is to be made out by the employee before the Inquiry officer.

13. This aspect of the matter is now squarely covered by the decisions of this Court in *Secretary to the Govt. Prohibition & Excise Deptt. v. L. Srinivasan*, [1996] 3 SCC 157; *P.D. Agrawal v. State Bank of India and Ors.*, (2006) 5 SCALE 54; *Deputy Registrar, Co-op Societies. Faizabad v. Sachindra*

Nath Pandev & Ors., [1995] 3 SCC 134.

14. Learned Council appearing on behalf of the respondent, however, placed strong reliance on a decision of this Court in M.V. Bijlani. v. Union of India & Ors., [2006] 5 SCC 88. That case was decided on its peculiar facts. In that case. even the basic material on which a departmental proceedings could be initiated was absent. The departmental proceedings was initiated after 6 Years and continued for a period of 7 years. In that fact situation, it was held that the appellant therein was prejudiced.

15. Bijlani (supra) therefore, is not an authority and, in fact, as would appear from the decision in P.D. Agrawal (supra), for the proposition that only on the ground of delay the entire proceedings can be quashed without considering the other relevant factors therefor.

16. The High Court did not consider any of the aforementioned aspects.

17. For the reasons aforementioned, the impugned judgment of the High Court cannot be sustained and it is set aside accordingly. we, however, direct the appellants to conclude the departmental proceeding at an early date but not later than six months from the date of communication of this order. It is open to the respondent herein to file additional representation before appropriate authority within a period of four weeks from date.

18. However, till a final decision is taken in the matter by the State, the recovery proceedings shall remain stayed.

19. This appeal is allowed with the aforementioned observations and directions . In the facts and circumstances of the case. there shall be no order as to costs.