

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No. 13401 of 2020

Between:

S.Chandra Sekhar Reddy

... Petitioner

And

The State of Telangana and others

... Respondents

JUDGMENT PRONOUNCED ON: 25.04.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : yes

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 13401 of 2020**

% 25.04.2023

Between:

S.Chandra Sekhar Reddy

..... Petitioner

And

\$ The State of Telangana and others

.....Respondents

< Gist:

> Head Note:

! Senior Counsel for the Petitioners: Sri S.Satyanarayana Rao

^ Standing Counsel for Respondents : G.P. for Services II

? Cases Referred:

1. (2007) 13 SCC 270
2. (2006) 12 SCC 33
3. 2008 (3) SCC 44

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 13401 of 2020

ORDER:

Heard learned counsel for the petitioner and learned Government Pleader for Services II.

2. This Writ Petition is filed to issue an appropriate writ order or direction more particularly one in the nature of writ of Mandamus by declaring the entire action of the respondents, particularly the entire action of the 1st respondent, in issuing present impugned order vide G.O.Rt.No.83, Scheduled Caste Development (Vig.) Department, dated 25.06.2020, wherein withdrawing the earlier punishment orders issued vide G.O.Rt.No.85, SCD (Ser.A2) Department, dated 17.04.2019 by way of review by invoking Rule 40 of TS (CC&A) Rules, 1991 and thereon issuing memo No.5008/SCD.Vig./2012, dated 25.06.2020, (communicated on 12.08.2020) wherein imposition of 100% cut in pension besides withholding entire gratuity and recovery of misappropriated amount is as highly illegal, arbitrary and violative of all principles of natural justice, to that of Rule 40 of TS (CC&A) Rules, 1991, the petitioner being

pensioner is impermissible and set aside both the impugned orders and consequently direct the respondents to forthwith release his pension and other retiral benefits of the petitioner with penal interest from the date of issuing earlier punishment orders in G.O.Rt.No.85 SCD (Ser.) Department, dated 17.04.2019 of the 1st respondent till actual payment is made @ 24 per annum for unnecessary delay caused by the respondents without reference to the present impugned orders dated 25.06.2020 of the 1st respondent.

3. The case of the petitioner, in brief, is as follows:

a) The petitioner was initially appointed as Typist w.e.f 12.04.1983 in the BC Welfare Department and subsequently promoted as Senior Assistant during the year 1986 and further promoted as Superintendent in the year 2005. Later the petitioner services were transferred to respondent organization. The petitioner retired on 31.03.2014 on attaining the age of superannuation.

b) While the petitioner was working in the office of Deputy Director (SW) Nalgonda District, he was placed under suspension vide proceedings dated 18.04.2012 by the 2nd respondent. Subsequently, departmental proceedings were

initiated vide proceedings dated 29.10.2012. The petitioner submitted explanations on 21.01.2013 and 23.06.2016 denying the alleged charges and ultimately requested to drop further action.

c) The 1st respondent issued orders vide G.O.Rt.No.212, dated 31.03.2016 for inaction of common departmental proceedings against nine individuals. As per G.O.Rt.No.213, dated 13.04.2016 one Smt Uma Devi, Joint Director was appointed to conduct regular enquiry and one Sri P.Rajasekhar was appointed as presenting officer. The enquiry officer submitted report vide letter dated 03.12.2016. The 2nd respondent requested the Government to issue necessary orders against the individuals.

d) The Government vide memo dated 12.12.2018 enclosing report of the enquiry officer issued show cause notice to the petitioner proposing to impose penalty of 5% cut in pension for a period of three years and called for explanation. As such the petitioner submitted explanation on 20.12.2018 requesting to reconsider the issue and drop proceedings. Without considering the said request, final order vide G.O.Rt.No.85, dated 17.04.2019 had been issued.

e) Thereafter, the petitioner made a representation dated 24.04.2019 to the Minister concerned, to set aside the penalty imposed against him. On receipt of the representation of the petitioner with their endorsement of Minister was forwarded to the Government. The Government vide its memo No. 729/SCD.Ser.A2/2019-1, dated 31.05.2019, requested the 2nd respondent to furnish a detailed report in the manner of remarks on the appeal of the petitioner made to the Minister. The 2nd respondent vide his letter Rc.No.A1/1993/2012, dated to 02.11.2019 furnished detailed report to the 1st respondent with regard to appeal of the petitioner requesting the Government to take lenient view on the appeal petition of the petitioner.

f) In the meanwhile, the Petitioner made another representation to the 2nd respondent on 19.12.2019 requesting to regularise the suspension and to enable him to draw his pension and other retiral benefits on the ground that he and his family members are suffering due to delay in settling the appeal and the same was forwarded to the 1st respondent for necessary orders.

g) while matters stood thus, the first respondent issued impugned GO.Rt.No. 83 dated 25.06.2020 where in the earlier penalty orders were withdrawn by mentioning rule 40 of TS (CC&A) Rules 1991 stating that the Government reviewed the said orders the same was communicated to the petitioner on 30.07.2020 contrary to rule 40 of TS (CC&A) rules 1991.

h) On 25.06.2020 vide Memo No. 5008/SCD.Vig./2012 the first respondent issued consequential show cause notice by invoking rule 9 of TS Revised Pension rules 1980 indicating a penalty of 100% cut in pension besides withholding of entire gratuity and recovery of misappropriated amount and further calling explanation from the Petitioner. A bare perusal of the show cause notices shows that the first respondent was predetermined and issued the show cause notice as an empty formality.

i) The Government already imposed punishment against the petitioner by invoking power under Rule 9 of TS Revised Pension Rules, 1980 and therefore, invoking power of review under Rule 40 of TS(CC&A) Rules, 1991 against a pensioner does not arise as the said rule is applicable only in case of a

Government servant serving in the department. Further, the government has already imposed a punishment of 5% cut in pension for a period of three years. The retired government employees are governed by the revised pension rules and Rule 9 will operate and therefore, there is no power under said rule to enhance 100% cut in pension and hence, he showing the show cause notice to enhance the punishment is impermissible and without jurisdiction as, the punishment imposed under Rule 9 of CCA Rules can be revised or reviewed under Rules 40 & 41 of CCA Rules only in respect of government servant who is in service.

j) Since the petitioner had already retired from the service, Government cannot enhance the penalty by invoking revision under Rule 40 of TS CCA Rules especially when the said rules don't speak of action on the retired person making the proposed revision contrary to the law and the same is without jurisdiction, illegal and as per Rule 41 of CCA government has to give reasonable opportunity of making representation against the proposed penalty to the Government servant and cannot withdraw the earlier order and it should issue show cause notice proposing punishment

of 100% cut in pension as the same is not mentioned under Rule 41.

J) The petitioner retired from service with effect from 31.03.2014 on attaining the age of superannuation and the 1st respondent issued punishment orders vide GO.Rt.No.85 dated 17.04.2019, withholding his pension and other retiral benefits even after imposing penalty is certainly bad in law and the petitioner is entitled for interest over the retiral benefits at the rate of 24% per annum from the date of imposing the above punishment till actual payment is made.

k) Hence the action of the 1st respondent in withdrawing the earlier punishment orders dated 17.04.2019 by invoking Rule 40 and issuing the impugned orders vide GO.Rt.No. 83, dated 25.06.2020 is bad in law and the consequential show cause notice for enhancement of punishment to 100% cut in pension besides holding entire gratuity and recovery of misappropriate amount is unsustainable in the eye of law and illegal. Hence the writ petition.

4. The case of the Respondents, in brief, is as follows:

a) On noticing certain irregularities in purchase of material and supplies during the year 2010 - 2012 in the office of Deputy Director of Social Welfare, Nalgonda District, an enquiry report was obtained. Grave irregularities such as misappropriation of funds in purchase and irregular promotions were revealed in the said preliminary enquiry report and accordingly, Commissioner placed Deputy Director and others under suspension and the petitioner was one among them.

b) Disciplinary action was initiated on nine delinquent officers including the petitioner by framing charges. The charges framed against the petitioner are misappropriation of materials, misappropriation of transport charges and misappropriation of stitching charges and the procedural lapse in affecting promotions etc.

c) As more than two Government servants of different services were involved in this case Government in exercise of the powers conferred under sub-Rule one and two of Rule 24 of AP Civil Service Rules CCA 1991 vide GO.Rt.No.212 Scheduled Caste Development (Ser.A2) Department dated

13.04.2016 ordered disciplinary action on all the delinquent officers in a common proceeding.

d) After examining the report of the enquiry officer and after following due procedure issued in GO.Rt.No.85 Schedule Caste Development dated 17.04.2019 under rule 9 of Telangana State Revised Pension Rules 1980 a penalty of 5% cut in pension for a period of three years was imposed against the petitioner.

e) Under Sub-Rule 9(X) of Rule 9 of A.P. Civil Services (CCA) Rules, 1991, in all proved cases of misappropriation and bribery, bigamy and corruption, the penalty of dismissal from service shall be imposed and as per sub-Rule 3 of Rule 9 of Telangana Revised Pension Rules, 1981 withholding the entire pension and gratuity or both can be imposed against the retired Government servant upon being found guilty for the offence of grave charges of misappropriation, bribery, bigamy, corruption, moral turpitude and misconduct.

f) The report submitted by enquiring authority against the charge of misappropriation of Government funds was proved against the petitioner and the government accordingly, after considering the entire case found that the penalty imposed

was not in accordance with the Government orders and revised the penalty thereon.

g) As per Rule 40 of AP State Civil Services (CCA) Rules, 1991 Government is empowered to revise the orders and confirm modify reduce enhance or set aside the proposed order and that no order imposing or enhancing penalty shall be made unless Government servant concerned has been given a reasonable opportunity of making a representation against the proposed penalty.

h) As per the powers vested on the Government, the Government took a decision to withdraw the orders and to enhance the penalty as per the prevailing rules and also a notice was shared to the petitioner calling for his explanation on the proposed penalty of hundred percent cut in pension besides withholding of entire gratuity and recovery of misappropriated amount and thus, the action of the 1st respondent is within the powers conferred under relevant rules.

i) The petitioner retired from service on 31.03.2014 on attaining the age of superannuation and as such any penalty shall be as per the Telangana Revised Pension Rules, 1980

only, but the procedure laid down in AP Civil Services CCA Rules 1991 shall be followed before imposition of such penalty and moreover, Rule 9 of Telangana Revised Pension Rules, 1980 specifies procedure to be followed for taking up departmental action against retired government employees and imposition of penalties.

j) As per Rule 9(2)(a), the departmental proceedings if instituted while government servant was in service whether before his retirement or during his reemployment shall, after the final retirement of the government servant be deemed to proceed under this rule and shall be continued and concluded by the authority in the manner as if the government servant had continued in the service and the disciplinary action against the petitioner is initiated while he is in service and hence, any action on disciplinary case pending against the petitioner shall be taken in the same manner as if he has continued in service.

k) Hence, the action of the first respondent hearing reviewing the earlier order vide Rule 40 of AP civil services rules 1991 is within powers. Hence as the writ petition is devoid of merits the same is liable to be dismissed and the

interim orders passed by this honourable court in IA.1 of 2020 in writ petition 13401 of 2020 be vacated as well.

PERUSED THE RECORD

5. The impugned order vide G.O.Rt.No.83 Schedule Caste Development (VIG.) Department dated 25.06.2020 reads as under:

In the reference read above, orders were issued imposing penalty of 5% cut in pension for a period of three (3) years on Sri S.Chandrasekhar Reddy, Superintendent (Retired) O/o the Deputy Director (SW), Nalgonda District on the proved charges of misappropriation of funds in purchase of materials and supplies, while he was working as Superintendent O/o the Deputy Director (SW), Nalgonda District.

2. Now, Government after review the penalty imposed in the G.O. read above under powers conferred under rule 40 of TS (CC & A) Rules, 1991 hereby decided to withdraw and to enhance the penalty as per rules in force.

3. Accordingly, Government hereby has withdrawn the penalty imposed in G.O.Rt.No.85, SCD (Ser.A2) Dept., Dt.17.4.2019 on Sri S.Chandrasekhar Reddy, Superintendent (Retired) and to order to follow further action as per rules in force.

6. Memo No.5008/SCD.Vig./2012, dated 25.06.2020 issued by the Scheduled Castes Development Department, Government of Telangana, reads as under:

The Commissioner of Social Welfare, Hyderabad initiated disciplinary action against Sri S.Chandrashekar Reddy, Superintendent (Retired), O/o the Deputy Director (SCD), Nalgonda District, on the alleged irregularities said to have been committed by him in purchase of Material and Supplies and misappropriation of Government funds. The Joint Director, O/o. Director, S.C.Development, Telangana, Hyderabad was appointed as an Enquiry Officer and she has submitted enquiry report.

2. Government, after following due procedure concluded the disciplinary action by imposing penalty of 5% cut in pension for a period of three (3) years on Sri S.Chandrashekar Reddy, Superintendent (Retired), in G.O.1st cited.

3. In the instant case, the charge of misappropriation of Govt. funds has been proved during the enquiry. As per orders issued in G.O.Ms.No.25, G.A.(Ser.C) Department dated 03.02.2004 in all proved cases of misappropriation the penalty shall be not less than dismissal from service.

4. Government, subsequently having reviewed the entire matter have withdrawn the above orders issued in G.O. 1st cited and taken a provisional decision to

impose 100% cut in pension besides with holding of entire gratuity and recovery of misappropriated amount.

5. Therefore, Sri S.Chandrashekar Reddy, Superintendent (Retired), is directed to show cause as to why a penalty of 100% cut in pension besides with holding of entire gratuity and recovery of misappropriated amount should not be imposed against him for the irregularities committed by him under Rule 9 of TS Revised Pension Rules, 1980. His explanation should reach the Government within (15) days from the date of receipt of the memo, failing which it will be construed that he has no explanation to offer and necessary action will be taken against him based on the material available with the Government.

7. It is very much evident from a plain reading of Rule 40 and 41 of T.S. (CC&A) Rules, 1991 that the conditions precedent for pressing into service, the said provisions of law is the availability and existence of new material which could not be produced or was not available at the time of passing order. But, the case on hand however does not disclose the discovery of any new material or availability of any new material and in the considered opinion of this Court having regard to the mandatory requirement of Rule 41 of the above

Rules, the impugned action initiated against the petitioner by way of issuing the impugned show cause notice dated 25.06.2022 vide Memo No.5008/SCD.Vig./2012 is totally malafide, vitiated and without jurisdiction and the same cannot be sustained in the eye of law. It is well settled proposition of law that when a thing is to be done in a particular way, it has to be done in that way only therefore, the power conferred on the Government under Rule 40 needs to be exercised in the manner prescribed in the said rule but not otherwise.

8. On 21.08.2020 in I.A.No.1 of 2020 in W.P.No.13041 of 2020 the High Court passed orders observing as under:

"Prima facie, Government has no power to review or revise decision made in exercise of powers vested under Telangana State Revised Pension Rules by invoking Rule 40 of Telangana State (Classification Control and Appeal) Rules, 1991. Balance of convenience is in favour of the petitioner. Interim suspension of G.O.Rt.No.83, Scheduled Caste Development (VIG) Department, dated 25.06.2020 and Memo No.5008/SCD.Vig/2012, dated 25.06.2020. This order does not come in the way of Government for intending

to revise the proceedings under challenge and take any other course of action."

DISCUSSION AND CONCLUSION:

9. This Court opines that once a Government Employee retires, the Government employee will be governed by the revised pension rules, 1980. It is borne on record that the Government already imposed punishment against the petitioner/a pensioner by invoking power under Rule 9 of Telangana State Revised Pension Rules, 1980 vide G.O.Rt.No.85 SCD (Ser.) Department, dated 17.04.2019 and therefore invoking power of Review under Rule 41 of Telangana State (CC&A), 1991 against a pensioner does not arise. A bare perusal of Rule 40 of the Telangana State (CC&A) Rules, 1991 clearly indicates that the same is applicable only in the case of the Government Servant serving in the department or under the department.

10. This Court opines that the Government having imposed punishment of 5% cut in pension for the period of three (03) years by invoking Rule 9 of

Telangana State Revised Pension Rules, 1980 on 17.04.2019 vide G.O.Rt.No.85 had no power to enhance to 100% cut in pension. In view of the simple fact that the punishment imposed under Rule 9 of CCA Rules can be revised or reviewed applying Rule 40 and 41 of CCA Rules in respect of the Government Servant who is in service. Therefore, withdrawing the earlier orders by invoking rule 40 of Telangana State (CC&A) Rules, 1991 and issuing show cause notice to the petitioner to enhance the punishment is in itself impermissible and without jurisdiction as well as contrary to revised pension rules, 1980.

11. This Court opines that the plea of the counsel for respondent No.1 as pleaded at para 8 of the counter affidavit filed by the respondent No.1 that according to Rule 9(2)(a) of the rules, the departmental proceedings, if instituted while the Government Servant was in service whether before his retirement or during his reemployment, shall, after the final retirement of the Government Servant, be deemed to be proceedings under this rule and shall be continued and concluded by

the authority by which they were commenced in the same manner as if the Government Servant had continued in service is not tenable, in view of the simple fact that Rule 40 and 41 of the Rules have application to employees who are in service and the very invocation of the said provisions of the CCA Rules for the purpose of invoking review of earlier orders passed against the petitioner is without jurisdiction and there cannot be any justification for invoking the same as pleaded at para 8 of the counter affidavit.

12. A bare perusal of Rule 41 of Telangana State (CC&A) Rules, 1991 clearly indicates that the said Rule mandates that no order imposing or enhancing any penalty shall be made by the Government over the in service employee, unless the Government servant concerned has been given reasonable opportunity for making representation against the penalty proposed. It is true that the Government can review the order after giving reasonable opportunity to the Government Servant concerned, but cannot withdraw the order already passed and issue show cause notice proposing

punishment of 100% cut in pension and in the present case the same had been done without jurisdiction, Rule 40 of Telangana State (CC&A) Rules, 1991 does not speak of action on a retired person. This Court opines that even as per Rule 40 of TS (CC&A) Rules, 1991, the power of representation can be exercised either on the reference made by the HOD, if any evidence or new material, which could not be produced or was not available at the time of passing order under review or when revision petition is preferred by the Government Servant or on *suo motu*, in the case of enhancing any penalty after affording reasonable opportunity to the Government servant for the purpose of imposing major penalties specified under Rule 9 of CCA Rules.

13. In the present case, admittedly as borne on record HOD submitted his remarks to take lenient view over the petitioner on his appeal and in such circumstances, this Court opines that invoking Rule 40 of CCA Rules over the petitioner who is a retired employee is totally unjust, illegal, irrational and above all unwarranted.

14. This Court takes into consideration the fact that the petitioner retired from service on 31.03.2014 on attaining the age of superannuation and the 1st respondent ultimately by concluding the departmental proceedings issued punishment orders vide G.O.Rt.No.85 date 17.04.2019 and therefore, in these circumstances withholding the petitioner's pension and other retiral benefits even after imposing penalty is certainly vindictive.

15. The Hon'ble Apex Court in Judgment reported in "Union of India v. Vicco Laboratories" in (2007) 13 SCC 270 observed in para 26 as under:

*"Normally, the writ court should not interfere at the stage of issuance of show cause notice by the authorities. In such a case, the parties get ample opportunity to put forth their contentions before the concerned authorities and to satisfy the concerned authorities about the absence of case for proceeding against the person against whom the show cause notices have been issued. Abstinance from interference at the stage of issuance of show cause notice in order to relegate the parties to the proceedings before the concerned authorities is the normal rule. However, the said rule is not without exceptions. **Where a Show Cause notice is issued either***

without jurisdiction or in an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of issuance of show cause notice. *The interference at the show cause notice stage should be rare and not in a routine manner. Mere assertion by the writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication would be necessary, interference is ruled out."*

16. The Hon'ble Apex Court in Judgment reported in "M/s. Seimens Limited v. State of Maharashtra" in (2006) 12 SCC 33 observed in para 10 as under:

"Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including State of Uttar Pradesh v. Brahm Daft Sharma and another, AIR 1987 SC 943, Special Director and another v. Mohd. Ghulam Ghouse and another, (2004) 3 SCC 440 and Union of India and another v. Kunisetty Satyanarqyana, 2006 (12) SCALE 262], but the question herein has to be considered from a

different angle, viz., when a notice is issued with pre-meditation, a writ petition would be maintainable. In such an event, even if the courts directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose [See K.I. Shephard and others v. Union of India and others (1987) 4 SCC 431 : AIR 1988 SC 686]. It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter affidavit as also in its purported show cause."

17. In S.K. DUA v State of Haryana reported in 2008(3) SCC 44 the Apex Court at para 14 observed as under:

"But even in the absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retrial benefits are not in the nature of bounty is in our opinion, well founded and needs no authority in support thereof."

18. This Court opines that the impugned show cause notice issued to the petitioner vide Memo No.5008/SCD.Vig./2012 dated 25.06.2020 cannot be sustained since the Court is of the considered opinion that the very action of issuing show

cause notice under Rule 40 of the Rules is totally one without jurisdiction.

19. Taking into consideration of all the above referred facts and circumstances, and the law laid down by the Apex Court in (1) **Union of India v. Vicco Laboratories” in (2007) 13 SCC 270** (2) **M/s. Seimens Limited v. State of Maharashtra” in (2006) 12 SCC 33** (3) **S.K. DUA v State of Haryana reported in 2008(3) SCC 44**, the writ petition is allowed, setting aside the impugned order vide G.O.Rt.No.83 Schedule Caste Development (Vig.) Department dated 25.06.2020 and also the consequential Memo No.5008/SCD.Vig./2012 dated 25.06.2020. The respondents are further directed to release all the retiral benefits due to the petitioner at the rate of 24% per annum from the date of imposing the punishment dated 17.04.2019 till actual payment is made, within a period of three weeks from the date of receipt of a copy of the order. However, there shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

SUREPALLI NANDA, J

Date: 25.04.2023

Note: L.R.Copy to be marked.
b/o
Yvkr