

**\*THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO****+W.P. No.27062 OF 2018**

% 06-01-2023

#Shaik Riyaz Baba

....petitioner

Vs.

\$ State of Telangana, rep. by its Principal Secretary to Government, Revenue  
(VIG-II) Department, Telangana Secretariat , Hyderabad and others

.... Respondents

!Counsel for the petitioner : J. Sudheer

Counsel for the Respondents : G.P for Services-I

<Gist :

>Head Note:

? Cases referred:

IN THE HIGH COURT FOR THE STATE OF TELANGANA

HYDERABAD

\* \* \* \*

WP. No.27062 OF 2018

Between:

Shaik Riyaz Baba

....petitioner

Vs.

\$ State of Telangana, rep. by its Principal Secretary to Government, Revenue  
(VIG-II) Department, Telangana Secretariat , Hyderabad and others

... Respondents

**ORDER PRONOUNCED ON: 06.01.2023**

**THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

1. Whether Reporters of Local newspapers  
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be  
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to  
see the fair copy of the Judgment? : Yes

**NAMAVARAPU RAJESHWAR RAO, J**

**HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**  
**WRIT PETITION No.27062 OF 2018**

**ORDER:**

This Writ Petition is filed for the following relief:

“...to set aside the proceedings dt.07.12.2015 through which the petitioner was dismissed from service by the 3<sup>rd</sup> respondent and consequential proceedings of the 2<sup>nd</sup> respondent dt.27.07.2016 through which the appeal of the petitioner was rejected and also the proceedings of the 1<sup>st</sup> respondent dt.12.03.2018 through which the review petition of the petitioner was rejected; by issuance of Writ of Mandamus and pass.....”

2. It has been contended by the petitioner that, he was working as Excise Police Constable in Kacheguda Police Station, and upon the complaint of one Kethavath Ramiya Naik, an auto driver, on 20.12.2018 alleging that the Sub-Inspector of Police had demanded a bribe of Rs.15,000/- for releasing his auto which was seized by the Prohibition & Excise Police, Kacheguda. As such, a raid was conducted by the Anti-Corruption Bureau on 21.12.2008 at Mishal Café located at Ali Cafe “X” roads, Amberpet, Hyderabad, where an amount of Rs.3,000/- was recovered from the petitioner and it was alleged that he received

the same on behalf of V. Venkata Chary, S.I. of Police, and phenolphthalein test was conducted on the petitioner and found positive and on the ground that tainted amounts were recovered from the petitioner and pursuant to it, the petitioner, and two SIs of Police were arrested and remanded to judicial custody and they were suspended.

2.1. It has further been contended by the petitioner that, a crime vide Cr.No.38/ACB-CR.I/2008 was registered against the three excise police, however, a final report dated 19.09.2012 was filed closing the crime recommending to initiate Departmental action instead of prosecution. The petitioner was reinstated into service in the year 2010 and departmental proceedings were initiated by citing V. Venkata Chary, S.I. of Police, as Charged Government Servant-1, the petitioner as Charged Government Servant-2, and N. Leander, S.I. of Police as Charged Government Servant-3 by duly appointing Enquiry Officer. Upon extensive enquiry, evidence, cross-examination of witnesses, the departmental proceedings were concluded and the Enquiry Officer vide his report dt.12.03.2015 found that charge against Charged Government Servant-1 and Charged Government Servant-3 were held not proved, whereas the charge against the

petitioner was held to be proved and the petitioner was terminated from service vide proceedings of 3<sup>rd</sup> respondent dt.07.12.2015 and consequential proceedings of the 2<sup>nd</sup> respondent dt.27.07.2016 through which the appeal of the petitioner was rejected and the proceedings of the 1<sup>st</sup> respondent dated 13.03.2018 through which the review petition of the petitioner was rejected. Aggrieved by the same, the present writ petition.

3. Respondents filed counter by contending that the charge against the petitioner was proved as the petitioner accepted an amount of Rs.3,000/- from the complainant towards bribe and the same was proved upon chemical tests on the currency notes and the fingers of the petitioner. The respondents further contended that no recovery was made from the other accused and the claim of the petitioner that the accused no.1 was the kingpin of the bribery was discarded and the charge against the other accused is not proved, as such, no punishment was imposed upon them. The respondents reiterated the observations and conclusion of the report of the Enquiry Officer, Appellate Authority and the Reviewing Authority opposed the case of the

petitioner. Therefore, there are no merits in the case and the same is liable to be dismissed.

4. Heard Sri J. Sudheer, learned Counsel for appearing for the petitioner, and learned Government Pleader for Services-I appearing for the respondents. Perused the record.

5. Learned counsel for the petitioner vehemently argued that injustice was meted out to the petitioner as the very complaint was made against the S.I of Police with the allegation of bribery who was cited as Accused No.1 in the Crime and such Accused No.1 along with Accused No.3 was declared to be innocent in the departmental proceedings, no question would arise as to the involvement or guilt of the petitioner.

5.1 Learned counsel for the petitioner brought to the notice of this Court that, in the common enquiry, the witnesses are one and the same and when it was found that no charge was proved against the Charged Government Servant Nos.1 and 3, and held that the petitioner alone is found guilty and contended that the same is illegal, arbitrary and discriminatory and the same is liable to be set aside.

5.2 Learned counsel for the petitioner further contended that the recovered amount of Rs.3,000/- from the petitioner was thrust into his pocket by the complainant and the petitioner never demanded any amount or facilitated for the alleged bribery, and even assuming that the complainant's allegations are true, the S.I V. Venkatachari and another S.I of Police were left scot-free and for the sins of others, the petitioner cannot be put to loss. Further, the appellate and reviewing authorities have not discussed about these issues and have mechanically rejected the appeal and review of the petitioner and confirmed the dismissal orders. Hence, prayed to pass appropriate orders by setting aside the impugned orders.

6. On the other hand, learned Government Pleader for Services-I contended that the charge against the petitioner was proved as the petitioner accepted an amount of Rs.3,000/- from the complainant towards bribe and the same was proved upon chemical tests on the currency notes and the fingers of the petitioner. The findings given by Enquiry Officer, Appellate Authority and the Reviewing Authority are genuine and no interference is required by this Court and prayed to dismiss the Writ Petition.

7. This Court having considered the rival submissions of the parties is of the considered view that, the respondents erred in passing the impugned inquiry report by holding the charge against the petitioner to be proved while the charges against the Charged Government Servant No.1 and 3 were held to be not proved. It is an admitted fact that the complainant made a complaint against the Charged Government Servant-1 that he demanded an amount of Rs.15,000/- towards bribe for releasing of the seized auto of the complainant. Upon perusal of the entire record, it is also evident that it is alleged that Charged Government Servant-1 agreed to reduce the bribe amount to Rs.6,000/- and when the version of the complainant was discarded in the inquiry and it was held that the Charged Government Servant Nos.1 and 3 were innocent of the charged offences, no question would arise that the petitioner accepted any bribe towards releasing of the seized auto and the case of the respondents that the petitioner was found guilty basing on preponderance of probability is not justified.

8. It is settled law that in every case where the main accused is found to be innocent, the other accused must be given the benefit of doubt when the allegations against the other



accused are read in totality of the alleged offence and the same witnesses and evidence is relied up on. Further, assuming that the petitioner was really guilty of the charge made against him, the concept of preponderance of probability was not invoked against the other Charged Government Servants as the very complaint was made against the Charged Government Servants No.1 and 3 who were left scot-free, which goes to show that when all the three Charged Government Servants of same department are involved in the alleged bribery, and when the other two Charged Governments Servants who are superiors to the present petitioner were left scot-free as the charge against them was not proved, the petitioner cannot be made a scapegoat and terminated from service, which is illegal. When the respondents failed to prove the charges against Charged Government Servants No.1 and 3, no question would arise that the petitioner was guilty of the charged offences.

9. In view of foregoing discussion, the Writ Petition is liable to be allowed.

10. Accordingly, the Writ Petition is allowed by setting aside the impugned proceedings dt.07.12.2015 through which the petitioner was dismissed from service by the 3rd respondent,

consequential proceedings of the 2<sup>nd</sup> respondent dt.27.07.2016 through which the appeal of the petitioner was rejected and the proceedings of the 1<sup>st</sup> respondent dt.12.03.2018 through which the review petition of the petitioner was rejected. No order as to costs.

Miscellaneous applications if any, pending, shall stand closed.

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**NAMAVARAPU RAJESHWAR RAO, J**

***6<sup>th</sup> day of January, 2023***

BDR