

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No. 40829 OF 2018

Between:

Vembati Ranjith Kumar

... Petitioner

And

The State of Telangana and others

... Respondents

JUDGMENT PRONOUNCED ON: 05.06.2023

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

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> Head Note:

! Counsel for the Petitioner : Mrs K.Uday Sri

^ Counsel for the Respondents: Spl.G.P. for Home

? Cases Referred:

1. 2016(8) SCC 471
2. 2023 SCC online SC 27
3. 2021 (2) SCC 612
4. 2005 (6) SCC 321

HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 40829 OF 2018****ORDER:**

Heard the Learned counsel for the petitioner and the learned Government Pleader for Home.

2. This Writ Petition is filed praying to issue a Writ of Mandamus declaring the action of the respondents 2 to 5 in terminating the petitioner's service as bad, arbitrary, illegal and against the principles of natural justice by setting aside the Order C No.2848/A1/2016-18, C.O.No.2075 of 2018 dated 27.10.2018 of the 5th Respondent and consequential order C No.E1/175/2018-RO No. 744/2018 dated 29.10.2018 of the 2nd respondent and direct the respondents to reinstate the petitioner forthwith with all consequential service benefits by treating the interregnum period as on duty for all purposes including salary.

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

a) Petitioner's father died while working as Constable in Warangal Rural and the petitioner has been appointed as

Junior Assistant on Compassionate Grounds in Warangal District Police Office against roster point (73-OC) vide order dated 03.10.2016, SP, Warangal and the petitioner was subsequently working in the office of DIG Range Office, Warangal.

b) The Petitioner had been terminated from services by the orders of the Commissioner of Police dated 27.10.2018 for alleged involvement in a criminal case u/s. 290, 324 r/w 34 of Indian Penal Code of Nallibelli PS during the time of petitioner's appointment.

c) By another consequential order, dated 29.10.2018 from the office of IGP, North Zone, Telangana petitioner had been terminated from services which are bad, arbitrary and illegal, as the petitioner had not been given notice before terminating the petitioner from services.

d) Moreover, the criminal charges against the petitioner have been acquitted in CC No. 440 of 2016 and the same was closed on the file of Judicial Magistrate, 1st Class, Narsampet vide its judgment 08.07.2017 and the petitioner was released on probation of good conduct and no punishment is pending

against the petitioner and hence the same was not mentioned during the petitioner's appointment into service.

e) The Petitioner since his employment into service has been discharging his services to the utmost satisfaction of the petitioners superiors and terminating petitioner on irrelevant grounds is unjust and unreasonable, as the petitioner had been appointed on compassionate grounds. Hence, the Writ Petition is filed.

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

a) The Petitioner has been appointed into service as Junior Assistant on Temporary Basis vide C.No.2842/A1/2016 D.O.No.2753/2016 dated 03.10.2016 and reported to duty on 07.10.2016, under compassionate grounds of Rule 10(a)(i) of TS State and Subordinate Service Rules 1996 and is subjected to be terminated without any prior notice and without assigning any reason, subject to verification and outcome of his character and antecedents.

b) On Verification, it was found out that the Petitioner was involved in the Criminal Case as A1 in Cr.No 72/2016 u/s 290,

324 r/w 34 of Indian Penal Code of Nallbelli PS and charge sheet was filed on 17.07.2016 vide CC.No.440 of 2016 dated 08.07.2017. The Court of Judicial Magistrate, 1st Class, Narsampet passed judgment and the accused had made an application of "Plea Bargaining" and since the victim refused to take the compensation, the Petitioner was ordered to be released on probation of good conduct under section 4 of Probation of Offenders Act, 1958.

c) The case had been disposed of under section 265 E of Code of Criminal Procedure and the Petitioner had suppressed the fact of his involvement in the criminal case at the time of submitting the attestation form even though, the petitioner was involved in the criminal case prior to his appointment.

d. The Petitioner being appointed on temporary basis subject to the outcome of his character and antecedents, the petitioner was terminated from services as his continuance in Government Service is unjust and improper, when the involvement of the petitioner in a criminal case as Accused A1 has come to the notice of the Employer. Hence, the Writ Petition is devoid of merits and is liable to be dismissed.

5. Reply Affidavit filed by the Petitioner, para 11 in particular, is as follows:

a) The petitioner has been appointed in the year 2016 and after working for a considerable length of time. The petitioner was given an attestation form on 20.05.1017, directing the petitioner to fill up all the columns, including column, 11 which states that "Have you been arrested by the police, convicted by court of law or detained?" And as on the date of filing of that station form, the petitioner was never arrested by the police nor was the petitioner convicted by court of law, nor was the petitioner detained and hence there was no necessity to fill up the column, but the respondents without taking all these things into consideration had issued, impugned proceedings, alleging that the petitioner suppressed the fact of involvement in criminal case, which is not at all asked by the respondent in the attestation form. Moreover, these citations/judgments cited in the memorandum is not at all relevant to the given case and hence the Writ Petition has been filed questioning the Impugned Proceedings which are illegal, arbitrary and bad in law.

PERUSED THE RECORD :

6. The relevant last five paragraphs of the Proceedings of the Commissioner of Police, Warangal i.e., the 5th Respondent in C.No.2842/A1/2016-18, C.O.No.2075/2018, dt. 27.10.2018 read as under :

"Sri Vembati Ranjith Kumar S/o late V.Cheralu, PC 1193 was appointed as Junior Assistant purely on temporary basis on compassionate grounds under Rule 10 (a) (i) of TS State and Sub-Ordinate Service Rules, 1996 and liable to be terminated at any time without prior notice and without assigning any reasons subject to the verification and outcome of his character and antecedents vide reference 1* cited and he reported for duty on 07-10-2016.

On verification of his character and antecedents, it was noticed that, he was involved in a Criminal Case as A1, vide Cr.No.72/2016, U/s 290, 324 r/w 34 IPC of Nallabelly PS and the Charge Sheet was filed in the above case on 17-07-2016 vide CC No.440/2016. On 08-07-2017, the Hon'ble Court of the Judicial Magistrate of First Class, Narsampet pronounced judgment. The above case is taken up for consideration under "Plea Bargaining" on the application of the accused and the Hon'ble Court awarded a compensation of Rs.5,000/-to the victim (LW.2). but, the victim (LW.2) refused to take the same and the Hon'ble Court ordered to be released on probation of good conduct under section 4

of the Probation of Offenders Act, 1958 and the case is disposed of accordingly under section 265 E of the Code of Criminal Procedure. No property.

Where as, Sri V.Ranjith Kumar, Jr.Asst has suppressed the fact of his involvement in the criminal case at the time of submitting the attestation form by the individual. He was AI in the said criminal case and the case was pending trial.

In this matter, the Chief Office issued clarification vide reference 2nd, cited and informed that, with regard to suppression of information of involvement in the criminal cases, in Civil Appeal No. 1155 of 2006 between Devender Kumar vs State of Uttaranchal and Ors, the Hon'ble Supreme Court of India has ruled that The Courts below have recorded a finding of fact that the appellant suppressed material information sought by the employer as to whether he had ever been involved in a criminal case. Suppression of material information sought by the employer or furnishing false information itself amounts to moral turpitude and is separate and distinct from the involvement in a criminal case".

Further, the Chief Office vide reference 3rd cited has instructed to take action against Sri V.Ranjith Kumar, Jr.Asst under Rule 10 (e) of TS & SS Rules, 1996.

In view of suppression of fact of his involvement in the criminal case at the time of submitting the attestation forms as he was the AI

in a Criminal case and the case was pending trial and as per the Chief Office instructions, the services of Sri V.Ranjith Kumar, Jr.Asst. of erstwhile Warangal District, now working in Range Office, Warangal are terminated with immediate effect under Rule 10 (e) of Telangana Sate & Sub-Ordinate Service Rules, 1996.

7. Order dated 29.10.2018 of the 2nd Respondent herein in C.No.E1/175/2018, R.O.No.744/2018 reads as under :

"The services of Sri Vembati Ranjith Kumar, Jr. Asst. of erstwhile Warangal District now working in Range Office, Warangal are hereby terminated under Rule 10(e) of TS&SS Rules, 1996 for suppression of factual information of his involvement in Cr.No.72/2016 U/s 29, 324 r/w 34 IPC of Nallabelly PS in the Attestation Forms, as per the orders of the Commissioner of Police, Warangal vide reference cited."

8. The counter affidavit filed by the Respondent, in particular, paras 3, 4 and 6 read as under:

"3. It is respectfully submitted that the back drop of the case are that Sri Vembati Ranjith Kumar S/o V.Cheralu, PC 1193 was appointed as Junior Assistant purely on temporary basis under compassionate grounds under

Rule 10 (a)(1) of TS State and Subordinate Service Rules 1996 and liable to be terminated at any time without prior notice and without assigning any reasons subject to verification and outcome of his Character and antecedents vide this office C.No.2842/A1/2016 D.O.No2753/2016 dated 03-10-2016 and he reported for duty on 07-10-2016.

4. It is further submitted that on verification of his Character and antecedents, it was noticed that, the Writ Petitioner Vembati Ranjith Kumar was involved in a criminal case as A1 in Cr.No 72/2016 U/s 290,324 r/w 34 IPC of Nallabelly PS and charge sheet was filed in the above case on 17-07-2016 vide CC.No.440/2016 dt.08-07-2017, the Hon'ble Court of Judicial Magistrate of First Class, Narsampet pronounced judgment in the above case which was taken up for consideration under "Plea Bargaining" on the application of the accused and the Hon'ble Court awarded a compensation of Rs.5,000/- to the victim (LW.2), but, the Victim (LW.2) refused to take the same and the Hon'ble Court ordered to be released on probation of good conduct under Section 4 of Probation of Offenders Act, 1958 and the case was disposed of accordingly under section 265 E of Code of Criminal Procedure. **Whereas, the Writ Petitioner Vembati Ranjith Kumar, Jr.Asst has suppressed the fact of his involvement in the Criminal Case at the time of submitting the attestation form though he was involved in the**

Criminal Case prior to his appointment as he was A1 in the said criminal case and the case was pending trial.

6. It is respectfully submitted that, herein the Writ Petitioner V.Ranjith Kumar, was appointed as Jr.Asst purely on temporary and on conditional basis subject to the outcome of his character and antecedents and his services were terminated vide this office proceedings C.No 2842/A1/2016-18 C.O.No.2075/2018, dt 27-10-2018 as his continuance in Government service was unjust and Improper when the fact of his involvement in a criminal case as A1 came to notice of the employer.

9. Rule 10 (a) and (i) of Telangana State and Sub-ordinate Service Rules, 1996 reads as under :

"10. TEMPORARY APPOINTMENT INCLUDING APPOINTMENTS BY DIRECT RECRUITMENT, RECRUITMENT / APPOINTMENT BY TRANSFER OR BY PROMOTION:

a) Where it is necessary in the public interest to fill emergently a vacancy in a post borne on the cadre of a service, class or category and if the filling of such vacancy in accordance with the rules is likely to result in undue delay, the appointing authority may appoint a person temporarily, otherwise than in accordance with the said rules, either by direct recruitment or by promotion or by appointment by transfer, as may be specified as the method of appointment in respect of that post, in the special rules.

i) Temporary posts requiring special qualifications: Notwithstanding anything contained in these rules or special rules, if and when, a temporary post is created

as an addition to the cadre of any service, class or category and the holder thereof is required by the State Government to possess such qualifications, knowledge or experience, any person who possesses such qualifications, knowledge or experience and who is considered to be the most suitable person to discharge the duties of such post may, irrespective of other considerations, be appointed temporarily to that post by the appointing authority; but the person so appointed shall not, by reason only of such appointment, be regarded as a probationer in such service, class or category nor shall he acquire thereby any preferential right to future appointment to such service, class or category.

10. Rule 17 (a)(ii) of Telangana State and Sub-ordinate Service Rules, 1996 reads as under :

“17. SUSPENSION, TERMINATION OR EXTENSION OF PROBATION:-

(a)(ii) The appointing authority may, at any time, before or after the expiry of the prescribed period of probation either extend by not more than one year, whether on duty or otherwise, the period of probation of a probationer, in case the probation has not been extended under sub-rule (b) of this rule or terminate his probation and discharge him from service after giving him one month's notice or one month's pay in lieu of such notice, on account of unsatisfactory performance or progress during training or unsatisfactory performance of duties or unsatisfactory conduct or for any other sufficient reason to be recorded in writing.”

11. The relevant last 3 paras of the order dated 08.07.2017 passed in C.C.No.440 of 2016 on the file of Judicial Magistrate of First Class, Narsampet, reads as under :

"The offence alleged against the petitioner/ A1 to A5 herein is under section 290. 324, R/W 34 of the Indian Penal Code. The A1 to AS herein are examined as required under Section 265-D of the Code of Criminal Procedure and they have accepted the plea bargaining for the offence under section 290, 324 r/w 34 of the Indian Penal Code.

When the A.1 to A.5 are questioned with regard to quantum of sentence they pleaded mercy of the court, and requested to release them by extending the benefit of the provisions of the Probation of Offenders Act. The Court awarded a compensation of Rs.5,000/- to the victim (Lw.2). But the victim (Lw.2) refused to take the same.

Having regard to the facts and circumstances and above submission of the accused, they are ordered to be released on probation of good conduct under section 4 of the probation of offenders act, 1958, on their entering into a bond to be with good conduct for a period of six months from today. If they fail to observe the conditions of the said bond, during the period, they will be dealt with under Section 9 of the Probation of Offenders Act."

12. Proceedings of the Director General of Police in Rc.No.298/ME3/2018, dated 11.10.2018 reads as under :

Attention is invited to the references cited. After verifying the letter and the enclosures received, the CP, Warangal is informed and requested to take action as mentioned below:

a) Sri V. Ranjith Kumar was A1 in CC No.440/2016 in the Court of the Judicial Magistrate of First class at Narsampet.

1. The FIR No.72/2016 was filed on 03.07.2016.
2. Charge Sheet on 17.07.2016.
3. Judgment issued on 08.07.2017 under section 265-E of the code of Criminal Procedure.

b) The individual is well aware of his criminal case which was pending in the Court of the Judicial Magistrate of First Class at Narsampet, at the time of appointment (i.e. 07.10.2016).

c) It is clear that the individual has suppressed the fact of his involvement in the criminal case. He was A1 in the said criminal case and the case was pending trial at the time of submitting the attestation form by the individual on 20.05.2017 e). after lapse of (7) months of his appointment

d) With regard to suppression of information of involvement in the criminal cases, in Civil Appeal No. 1155 of 2006 between Devender Kumar vs State of Uttaranchal and Ors, the Hon'ble Supreme Court of India has ruled that:

"The Courts below have recorded a finding of fact that the appellant suppressed material information sought by the employer as to whether he had ever been involved in a criminal case. Suppression of material information sought by the employer or furnishing false information itself amounts to moral turpitude and is separate and distinct from the involvement in a criminal case".

e) Take action against Sri V. Ranjith Kumar s/o late V. Cheralu, PC 1193 as per Rule 17 (ii) of TS&SS Rules, 1996 (ie. termination of his probation and discharge him from service after giving him one month's notice or one month's pay in lieu of such notice, on account of his unsatisfactory conduct of suppression of his involvement in criminal case).

f) Appropriate action may be initiated against all the staff concerned of O/o the CP. Warangal and SP, Mahabubabad dist. whoever lead to such delay and lapses.

g) Instruct the staff concerned of Establishment section of the Unit to be careful in future while processing appointment files.

DISCUSSION AND CONCLUSION :

13. A bare perusal of the order impugned dt. 27.10.2018 of the 5th Respondent herein passed under

Rule 10(e) of Telangana State and Sub-ordinate Service Rules, 1996 indicates that it is an order passed upon the instructions of the Chief Office to take action against the Petitioner herein. It is the specific case of the 5th Respondent that the Petitioner herein a Junior Assistant had suppressed the fact of his involvement in the criminal case at the time of submitting the attestation form by the Petitioner and further that the Petitioner was A1 in the said criminal case and the case was pending trial. The 5th Respondent herein as per the Chief Office instructions terminated the services of the Petitioner with immediate effect under Rule 10(e) of Telangana State and Sub-ordinate Service Rules, 1996.

14. A bare perusal of the consequential orders of the 2nd Respondent herein dated 29.10.2018 in C.No.E1/175/ 2018, R.O.No.744/2018, indicates that the 2nd Respondent terminated the services of the Petitioner Under Rule 10(e) of Telangana State and Sub-ordinate Service Rules, 1996 for suppression of factual information of Petitioner's involvement in Crime No.72/ 2016 U/s.290, 324, r/w 34 IPC of Nallabelly PS,

in the attestation forms as per the orders of the Commissioner of Police, Warangal.

15. A bare perusal of Column No.11 of the attestation form No.4588 filled up by the Petitioner on 20.05.2017 issued by the Respondent Authority to the Petitioner which is a declaration signed by the Petitioner reads as under :

Column 11 : Have you ever been arrested by the police, convicted by a Court of law or detained under any state/central preventive detention laws for any offence? Whether such conviction sustained in the Court of Appeal or set aside by the Appellate Court, if appealed against.

(Note : If detained, convicted, debarred etc., subsequent to the completion of and submission of this form, the details should be communicated immediately to the concerned Department or the authority to whom the Attestation Form has been sent earlier, as the case may be, failing which it will be deemed to be suppression of factual information). If the answer is 'Yes', the full particulars of the conviction, sentences and detention should be given.

16. This Court takes note of few relevant dates

(i) that the order of appointment of the Petitioner is dated 03.10.2016.

(ii) the date when the petitioner filled up the details in the attestation form is dt. 20.05.2017.

(iii) the date of disposal of CC No.440/2016, dt. 08.07.2017 ordering that the accused i.e., the Petitioner and few others be released on probation of good conduct U/s.4 of the Probation of Offenders Act, 1958, on their entering into a bond to be with good conduct for a period of 6 months from the date of the said order and if they fail to observe the conditions of the said bond, during the period they will be dealt with U/s.9 of the Probation of Offenders Act.

17. A bare perusal of the attestation form dt. 20.05.2017 filled up by the Petitioner in particular Col.No.11 (referred to and extracted above), clearly indicates that the Petitioner had been called upon to furnish the details pertaining to the query if the Petitioner had been detained, convicted, debarred etc., and it is the specific case of the Petitioner as specifically averred in the reply affidavit para 11 filed in February, 2022, that as on 20.05.2017 when the Petitioner filled up the said attestation form, the petitioner was neither detained nor convicted by Court

of Law nor arrested by the Police, debarred etc., and therefore the Petitioner answered the specific queries accordingly, and the answers are in fact, correct as per the queries put forth to the Petitioner.

18. A bare perusal of the contents of the Memorandum dated 11.10.2018 in Rc.No.298/ME3/2018, clause (e) referred to and extracted above indicates that the Director General of Police, had instructed the Commissioner of Police, Warangal to take action against the Petitioner Sri V.Ranjith Kumar, S/o. Late V.Cheralu, PC-1193 as per Rule 17 (ii) of TS & SS Rules, 1996 (i.e., termination of his probation and discharge him from service after giving him one month's notice or one month's pay in lieu of such notice, on account of his unsatisfactory conduct of suppression of his involvement in criminal case).

19. The Counsel for the Petitioner places reliance on the Division Bench judgement of the Apex Court dated 02.03.2022 in Umesh Chandra Yadav Vs. The Inspector General & Chief Security Commissioner, RPF, Northern

Railway, New Delhi & Others and in particular paras 8, 14 and 19 (extracted below) and contends that the Petitioner is entitled for the relief as prayed for in the present Writ Petition.

"8. In the instant facts and circumstances, when there was an order of discharge passed by the Court of competent jurisdiction neither he was said to be prosecuted nor he was arrested and, thus, the information which was tendered by him in reference to clause 12 of the attestation form filled by him, was not a case of misrepresentation or of concealment which led to the cancellation of his appointment by the authorities by an Order dated 19th February, 2015."

14. Later, when the character and antecedent verification certificate was made by the respondents, the District Magistrate, Gorakhpur by its letter dated 30th December, 2014 informed that Crime No. 586/98 at one stage was registered against the appellant but he was discharged by the learned Court of competent jurisdiction by an order dated 15th December, 2001. Still the authorities, without taking note of the material on record, took a decision for cancellation of the candidature of the appellant by order dated 19th February, 2015 that became a subject matter of challenge at the instance of the appellant.

19. At the first blush, we were not inclined to grant the appellant consequential benefits as he had not worked after his services came to be terminated on account of cancellation of appointment dated 19th February 2015, but in the present facts and circumstances, **when the appellant was never at fault and no one has afforded him a reasonable opportunity to justify** and, at the same time, the authorities have also failed to consider that the appellant was a juvenile on the date when the complaint was made and the date when he was discharged by the learned trial Judge by an order dated 15th December, 2001, these peculiar facts were not noticed by the authority while exercising its judicious discretion as to whether the so called alleged suppression at all disentitled the appellant from continuation of service."

20. The counsel for the Respondent on the other hand places reliance on a Division Bench Judgement dated 17.09.2021 of the Apex Court in Civil Appeal Nos.5743-5744 of 2021 in Rajasthan Rajya Vidyut Prasaran Nigam Limited and another v Anil Kanwariya, and in particular para 12, which is extracted below and contends that the Petitioner is not entitled for any relief:

"12. The issue/question may be considered from another angle, from the employer's point of view. The question is not about whether an employee was involved in a dispute of trivial nature and whether he has been subsequently acquitted or not. **The question is about the credibility and/or trustworthiness of such an employee who at the initial stage of the employment, i.e., while submitting the declaration/verification and/or applying for a post made false declaration and/or not disclosing and/or suppressing material fact of having involved in a criminal case. If the correct facts would have been disclosed, the employer might not have appointed him. Then the question is of TRUST.** Therefore, in such a situation, where the employer feels that an employee who at the initial stage itself has made a false statement and/or not disclosed the material facts and/or suppressed the material facts and therefore he cannot be continued in service because such an employee cannot be relied upon even in future, the employer cannot be forced to continue such an employee. The choice/option whether to continue or not to continue such an employee always must be given to the employer. At the cost of repetition, it is observed and as observed hereinabove in catena of decision such an employee cannot claim the appointment and/or continue to be in service as a matter of right.

21. This Court opines that the Petitioner's appointment was not as per Rule 10(a)(i) of TS & SS Rules, 1996 which deals with temporary appointment, including appointment by direct directrecruitment/ appointment by transfer or promotion in view of the fact that the Petitioner was appointed as Junior Assistant on compassionate grounds in the existing vacancy in District Police Office, Warangal, against Roaster point (73-OC) vide an order dt. 03.10.2016 of the S.P. Warangal, though the order of appointment indicated that the appointment of the Petitioner was as per Rule 10(a)(i) of TS & SS Rules, 1996. This Court opines that the same is in fact substantiated by perusing the contents of Rc.No.298/ME3/2018, dt. 11.10.2018 of the Director General of Police, who had clearly instructed the Commissioner of Police, Warangal to take action against the Petitioner as per Rule 17(ii) of TS & SS Rules, 1996 and not under Rule 10(e) of TS & SS Rules, 1996. This Court opines that Rule 10(e) has been invoked in the present case only to deny serving of notice to the Petitioner and to avoid the procedure

stipulated under Rule 17(ii) of TS & SS Rules, 1996. This Court opines that the order impugned has been passed in clear violation of principles of natural justice giving a go by to the specific directions of the Director General of Police issued in Rc.No.298/ME3/2018, dt. 11.10.2018. A bare perusal of the consequential order dated 29.10.2018 of the 2nd respondent herein in C.No.E1/175/2018 only indicates that the petitioner had been terminated for suppression of information as per the orders of the commissioner or Police, Warangal.

22. This Court takes into consideration the two Apex Court Judgements relied upon by both the Counsel for the Petitioner and also the Counsel for the Respondents herein and also the fact that the judgement rendered by the Apex Court in Avatar Singh Vs. Union of India reported in 2016 (8) SCC 471 had also been considered in the judgments relied upon by both the counsel for the Petitioner and the counsel for the Respondents.

22. The Division Bench of Apex Court in its recent judgement dated 16.01.2023 reported in 2023 SCC

Online SC 27 in Ex-Const/Dvr Mukesh Kumar Raigar Vs. Union of India & Others, dated 16.01.2023, duly considering the principles laid down in para 38 of the 3-Judges Bench Judgement of the Apex Court in Avatar Singh Vs. Union of India reported in 2016 (8) SCC 471 at para 8 observed as under :

"8. It may be noted that even after the guiding principles laid down in the case of Avtar Singh by the three-judge Bench, divergent views were expressed by the various benches of this Court. Therefore, this Court in case of Satish Chandra Yadav v. Union of India, after taking into consideration the inconsistent views taken in the cases of Union of India v. Methu Meda; Union of India v. Dilip Kumar Mallick; Pawan Kumar v. Union of India; Rajasthan Rajya Vidyut Prasaran Nigam Limited v. Anil Kanwariya; Mohammed Imran v. State of Maharashtra²; etc., further laid down following principles:

"89. The only reason to refer to and look into the various decisions rendered by this Court as above over a period of time is that the principles of law laid therein governing the subject are bit inconsistent. Even after, the larger Bench decision in the case of Avtar Singh (supra) different courts have enunciated different principles.

90. In such circumstances, we undertook some exercise to shortlist the broad principles of law which should be made applicable to the litigations of the present nature. The principles are as follows:

a) Each case should be scrutinised thoroughly by the public employer concerned, through its designated officials- more so, in the case of recruitment for the police force, who are under a duty to maintain order, and tackle lawlessness, since their ability to inspire

public confidence is a bulwark to society's security. [See Raj Kumar (supra)]

b) Even in a case where the employee has made declaration truthfully and correctly of a concluded criminal case, the employer still has the right to consider the antecedents, and cannot be compelled to appoint the candidate. The acquittal in a criminal case would not automatically entitle a candidate for appointment to the post. It would be still open to the employer to consider the antecedents and examine whether the candidate concerned is suitable and fit for appointment to the post.

c) The suppression of material information and making a false statement in the verification Form relating to arrest, prosecution, conviction etc., has a clear bearing on the character, conduct and antecedents of the employee. If it is found that the employee had suppressed or given false information in regard to the matters having a bearing on his fitness or suitability to the post, he can be terminated from service.

d) The generalisations about the youth, career prospects and age of the candidates leading to condonation of the offenders' conduct, should not enter the judicial verdict and should be avoided.

e) The Court should inquire whether the Authority concerned whose action is being challenged acted malafide.

f) Is there any element of bias in the decision of the Authority?

g) Whether the procedure of inquiry adopted by the Authority concerned was fair and reasonable?"

23. A 3-Judges Bench of the Apex Court vide its judgment dated 05.01.2021 reported in 2021 (2) SCC 612 in case of Deputy General Manager (Appellate

Authority) Vs. Ajai Kumar Srivastav in CIVIL APPEAL NO(s). OF 2021 (Arising out of SLP(C) No(s). 32067-32068 of 2018) circumscribing the power of judicial review by constitutional Courts at para 24 and 25 observed as under :

"24. It has been consistently followed in the later decision of this Court in **Himachal Pradesh State Electricity Board Limited Vs. Mahesh Dahiya** (2017(1) SCC 768) and recently by the three Judge Bench of this Court in **Pravin Kumar Vs. Union of India and Others** (2020(9) SCC 471).

25. It is thus settled that the power of judicial review, of the Constitutional Courts, is an evaluation of the decision making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The Court/Tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority if based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority is perverse

or suffers from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact. "

24. The Apex Court in the judgment reported in (2005) 6 SCC 321 in CANARA BANK Vs. V.K. AWASTHI at para 10 and 11 observed as under :

Para 10 : The adherence to principles of natural justice as recognised by all civilised States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the best limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable a opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case

before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle b found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate, interrogate and adjudicate". In the celebrated case of Cooper v. Wandsworth Board of Works the principle was thus stated: (ER p. 420).

"[Even God himself did not pass sentence upon Adam before he was called upon to make his defence. 'Adam' (says God), 'where art thou? c Hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat?"]

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

Para 11 : "Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These

rules are intended to prevent such authority from doing injustice”.

25. Taking into consideration the afore said facts and circumstances, this Court opines that the order impugned of the 5th Respondent herein in C.No.2842/A1/2016-18, C.O.No.2075/ 2018, dt. 27.10.2018 and the consequential order in C.No.E1/175/2018, R.O.No.744/2018, dt. 29.10.2018 of the 2nd Respondent herein need to be set aside applying Clause (e), (f) and (g) of the broad principles of law laid down at para 8 of the Division Bench Judgement of the Apex Court reported in 2023 SCC Online SC 27 in Ex-Const/Dvr Mukesh Kumar Raigar Vs. Union of India & Others, dt. 16.01.2023, on the points that the Respondent Authority acted malafidely and did not follow the instructions of the Director General of Police in his letter Rc.No.298/ME3/ 2018, dt. 11.10.2018 addressed to the Commissioner of Police, Warangal and did not follow the procedure laid down under Rule 17(ii) of TS & SS Rules, 1996 and passed the orders impugned in clear violation of principles of

natural justice with an element of bias against the
Petitioner herein without conducting any enquiry
hastily in an unfair and unreasonable manner invoking
Rule 10(e) of TS & SS Rules, 1996 though it is fact as
borne on record that the Petitioner has been appointed
as Junior Assistant on compassionate grounds in the
existing vacancy in District Police Office, Warangal
against Roaster Point (73-OC) and not under Rule
10(a)(i) of TS & SS Rules, 1996 which deals with
appointment of a person temporarily as stipulated in
Petitioner's order of appointment dt. 03.10.2016 issued
by the 4th Respondent herein, which in fact had been
admitted at para '3' of the Counter Affidavit filed by the
respondents that petitioner's appointment was under
Compassionate grounds. This Court opines that the
impugned order of the 4th respondent dated 27.10.2018
is also in clear violation of the principle of law laid
down in para 24 of 3-Judge Bench judgement of the
Apex Court in case of Deputy General Manager
(Appellate Authority) Vs. Ajai Kumar Srivastava
reported in 2021 (2) SCC 612, being inconsistent with

the rules of natural justice and also in clear violation of statutory rules in force and further taking into consideration the view taken by the Apex Court on the principle of *Audi Alteram Partem* rule in the judgment reported in (2005) 6 SCC 321 in CANARA BANK Vs. V.K. AWASTHI, the order impugned dt. 27.10.2018 of the 4th Respondent and the consequential order dated 29.10.2018 of the 2nd Respondent need to be set aside and accordingly they are set aside on the ground of their inherent defect and the Writ Petition is allowed. The Respondents are further directed to reinstate the Petitioner forthwith with all consequential service benefits by treating the interregnum period as on duty for all purposes including salary and other benefits. It is however observed that it is left open to the Respondents to proceed and initiate fresh proceedings against the Petitioner if the Respondents so desire, but however, in accordance with law and in conformity with principles of natural justice and accordingly, the writ petition is allowed. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA, J

Date: 05.06.2023

Note: L.R. copy to be marked
b/o kvrm