

IN THE HIGH COURT OF TELANGANA AT HYDERABAD**W.P. No. 3230 of 2019****Between:**

P.Sudhakar Rao

... Petitioner

And

The Board of Directors, rep.by its Chairman and others

... Respondents

JUDGMENT PRONOUNCED ON: 30.10.2023**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. 3230 of 2019****% 30.10.2023****Between:**

P.Sudhakar Rao

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... Respondents

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> Head Note:

! Counsel for the Petitioner : Mr Krishna Murthy Devarakonda

^ counsel for Respondents : Mrs Pasham Sujatha

? Cases Referred:

1. (2018) 14 SCC 92
2. (2018) 14 SCC 98
3. (2007) 6 SCC 694]
4. (2020) 18 SCC 71

HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 3230 of 2019****ORDER:**

Heard Mr. Krishna Murthy Devarakonda, the Learned Counsel appearing on behalf of the Petitioner, the Mrs Pasham Sujatha, Learned standing counsel appearing on behalf of the respondents

2. This Writ Petition is filed to issue a Writ of Certiorari calling for the records related and connected with the rejection orders vide Proceedings No. TSSDC/Admn./Disc.case/2018-19 dated 30.04.2018 passed by the 1st Respondent in Appeal confirming the Disciplinary Proceedings of Major Penalty of dismissal from service imposed by the 2nd respondent vide proceedings No. TSSDC/Admn./2015-16, dated 11.03.2016 by declaring as illegal, arbitrary and violative of principles of natural Justice besides being in violation of enquiry procedure and quash the same and consequently direct the 2nd respondent to pay the balance of subsistence allowance for the period of suspension and withheld amounts of the service benefits which were

withheld without notice and other benefits entitled by the petitioner along with legal interest.

3. The case of the Petitioner as per the averments made by the petitioner in the affidavit filed by the petitioner in support of the present Writ Petition in brief, are as follows:

a) The petitioner has joined in the A.P. State Seeds Development Corporation Limited (currently known as Telangana State Seeds Development Corporation Ltd.) on 03/01/1986 as Seed Officer and has worked about 26 years until the time of issuing the charge memo dated 27.08.2012, and suspending the petitioner from the services. The petitioner as Seed Officer has worked as in-charge of the District unit as District Manager (Seeds) of the various district units.

While the petitioner was working as the District Manager (Seeds) i.e., In-charge of Khammam unit from 10.08.2005 to 25.08.2011, due to mis-management of the receipts of income of the 2nd respondent corporation, which was intentionally done by a Junior Assistant Accountant (Cashier)

which could not be either found out or identified even by the internal audit officials of the 2nd Respondent, who thoroughly check the accounts, and the petitioner himself being an expert in accounts was unable to detect the malice intention of the said cashier and it was brought to light by a District Cooperative Marketing Society. Khammam which is a dealer to the Corporation at Khammam, after the petitioner got transferred to Kurnool i.e., about after an year, the Head Office has deputed a Special team in August 2012 to look into the accounts and they have submitted a Note to 2nd Respondent, where it was found out that the said cashier has gone to the extent of collecting money from the respective parties raising original cash receipts for the actual sum received and has managed to duplicate receipt available to the office with half of the actual amount collected and by virtue of such intentional action of the said cashier, the 2nd Respondent corporation was accounted for the said half amount against actual full amount collected by the said cashier and such intentional action could not be even identified by the internal audit officers since the duplicate office copy of the cash receipt is showing half the amount

alleged to be collected and which is the basis for finalizing the accounts of the Unit.

b) Since the cash book handled by the cashier has to be counter-signed by the petitioner as supervisory, while cross checking, the petitioner could not find out the intentional doings and being a District Manager (Seeds) of the unit, one of the daily functions of the petitioner were: (v) collection of sale proceeds, where the Mandal Agricultural Officers are involved in distribution. Moreover, even after the 2nd Respondent issued a charge memo for the period from 10.08.2005 to 25.08.2011 dated 27.08.2012 when the petitioner was transferred about one year ago and is currently working at Kurnool, obliging the same, the petitioner has submitted a written statement of defence on 10.12.2012 seeking extension of time from time to time as the petitioner was not in the Khammam unit. The 2nd respondent after receipt of the petitioner's written statement of defence issued revised charge memo dated 01.04.2013 keeping the petitioner under suspension for the first time.

c) After perusing the records at Khammam Unit with the permission of 2nd Respondent, the petitioner submitted a

representation dated 10/07/2013 by providing some of the documents which the petitioner found in the table of the cashier in the presence of the District Manager of the unit, but they have not provided the same till date which are crucial in nature.

d) Subsequently, an enquiry officer was appointed by the 2nd Respondent to conduct a common enquiry where the cashier was also given charge memo. The 2nd respondent has originally lodged a complaint through District Manager, Khammam against the cashier which was registered as Crime No. 123 of 2012, thereafter under wrong impression the 2nd Respondent has addressed a letter to the CI of Police, to include the petitioner's name as well in the said crime.

e) Aggrieved by the same, the petitioner has made a representation dated 04.10.2013 wherein, the 2nd Respondent directed the District Manager (Seeds) Khammam to withdraw the said letter dated 15.04.2013 for inclusion of the petitioner's name in the said FIR No.123 of 2012. Subsequently, the petitioner attended before the Police and upon proper investigation, the petitioner's name was deleted as the accused.

f) Thereafter, the 2nd Respondent reinstated the petitioner into service vide proceedings dated 10.10.2013 and during the petitioner's visit to Khammam Unit, he found certain documents which are needed to disprove the allegations of the charge made against him. Further, the petitioner has requested Respondent Nos. 2 and 3 to provide certain crucial documents vide letter dated 10.12.2013 and the 3rd Respondent has addressed a letter to the District Manager (S) Khammam and the 2nd respondent permitted to issue copies of (i) Details of remittances made by AO's pertaining to dues of Rs.20,55,047-45 ps. and (ii) Seed indent/seed supplies register pertaining to the year 2007-08 season.

g) Subsequently, the District Manager (S) Khammam addressed a letter dated 10.01.2014 to the said Manager (QC) and 3rd Respondent herein, stating that the said information is not traceable. Thereafter, the enquiry was conducted in Khammam District at Khammam Unit Office on 10.12.2013 and the petitioner requested the 3rd Respondent herein to examine one of the Mandal Agriculture Officer (MAO), Vemsur Mandal and one of the progressive seed

grower namely, K.Seshi Reddy so as to find out the truth on the false allegations made against him.

h) In spite of non-examination of the said crucial witnesses by the enquiry officer, the enquiry was vitiated to provide the petitioner defence to disprove the allegations made in the charge memo. Furthermore, the 2nd Respondent herein having no jurisdiction was pleased to pass disciplinary proceedings dated 11.03.2016 imposing major penalty of dismissal from the services of the corporation on 31.01.2015. After the petitioner's actual retirement took place on 31/01/2014, the 2nd Respondent ordered and permitted the petitioner to get relieved on 31.01.2014, by then the petitioner was District Manager (S) (since promoted to Asst. Manager) and even if the said major penalty of punishment was proposed to be imposed, the 2nd Respondent has no power since the District Manager(S) post is under the control of 1st respondent. Aggrieved by the said actions of the 2nd respondent, the present Writ Petition is filed.

4. The averments in the Counter Affidavit filed by the Respondents, in brief, are as under:

- a) The petitioner was imposed major penalty of dismissal from service vide proceedings No. TSSDC/Admn/2015-16 dated 11.03.2016 by the 2nd Respondent, against which the petitioner filed an appeal before the 1st Respondent and after thorough examination of available material on record and after personal hearing of the petitioner, appeal was rejected and dismissal of service was confirmed by the 1st Respondent.
- b) While the petitioner was working as District Manager in-charge in Khammam District, serious irregularities took place in the sales accounts in respect of DCMS, PACS, Agricultural Officers & Joint Director of Agriculture. The Petitioner was prima facie found responsible for irregularities and disciplinary action was initiated against the petitioner keeping him under suspension and 2nd Respondent issued proceedings No.SSDC/Admn./2012-2013 /9813 on 03.10.2012, stating that petitioner will continue to be under suspension.
- c) Furthermore, while the petitioner was working in Kurnool, during 2012 the successor of Khammam district manager has complained that, the customer accounts of unit are not tallying with the actual amount payable by the parties and he requested the Head Office to depute officer for sales

and accounts reconciliation. After verification of the records, a report was submitted on 22.08.2015, stating that there were certain financial irregularities and manipulations in the sales accounts. On 27.08.2012 Charge Memo was issued to the petitioner and the respondents constituted a special audit team for conducting Audit & verification of the accounts and the special audit team submitted their report on 18.02.2013.

d) Moreover, the petitioner is accountable for the shortage physical cash and dues extended to the various dealers of the unit and W.P No. 578 of 2013 was filed by the petitioner challenging the suspension which was also dismissed. On 16.08.2013 the petitioner has given an undertaking letter to recover the amount from his retirement benefits with regard to receipt of Rs.3,98,000/- in cash from Mandal Agricultural Officer, Vemsoor, Khammam District giving a rough receipt dated 02.06.2008 and the said amount was handed over to the petitioner by V.Radha Krishna, who has not accounted for as per the charge.

e) Furthermore, the petitioner has falsely alleged that he did not get a chance to examine his documents and his witnesses to disprove his allegations. However, the petitioner

neither provided the documents desired by him to disprove the allegations made against him nor examined any crucial witnesses. Subsequently, the petitioner retired from his service and received all retirement benefits except gratuity and leave encashment amount. The petitioner also filed an appeal before the 1st Respondent against the proceedings No. TSSDC/Admn/2015-16 issued by the 2nd respondent and the same was rejected on grounds of devoid of merits.

f) Hence, the Writ Petition is devoid of merits and is liable to be dismissed.

5. The petitioner filed reply affidavit to the counter affidavit filed by the respondents.

The enquiry officer has failed to conduct fair enquiry as per the material placed by the petitioner. It is also pertinent to mention here that the Respondent has stated in the counter affidavit that the petitioner was paid retirement benefits except gratuity, which was true, but failed to pay any of the retirement benefits like EPF, leave encashment, GSLI and gratuity, as well had been withheld all these years without any prior notice except that the petitioner had been permitted to retire from the service.

PERUSED THE RECORD :

6) Office Order dated 27.01.2014 vide No.SSDC/Admn/ Retirement/013/2013-14, of the General Manager (Admn) I/c. reads as under :

"Sub: SSDC - Estt. – Relieving of to be retired employee – Orders – Issued.

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Sri P.Suldhakar Rao, Asst. Manager, APSSDC Ltd., Nirmal is retiring from the services of the Corporation on 31.01.2014 on attaining superannuation age of '58' years.

Therefore, the District Manager (Seeds), APSSDC Ltd., Nirmal is requested to relieve Sri P.Sudhakar Rao, Asst. Manager from his duties on 31.01.2014 A.N. duly recovering dues, if any.

(Issued under orders of the V.C. & M.D.,APSSDC Ltd., Hyderabad)"

7. The observations and the order in Proceedings No.TSSDC/Admn/2015-16, dated 11.03.2016 of the Disciplinary Authority and Managing Director of the TSSDC Ltd., Hyderabad, observed as under:

"OBSERVATIONS:

After careful examination of the case and material on record, it is observed that after completion of the meeting held in the o/o JDA, Khammam, the Charged Officer received an amount of Rs.3,98,000/- in cash from Mandal Agricultural Officer, towards the cost of non-subsidy amount of Green Manure seed supplied

during the year 2008. He issued a hand written receipt dated 02.06.2008 to the MAO, as a token of receipt/acknowledgement for the cash received. But, he has not handed over the cash to the Jr. Asst. and not accounted for the amount. The issue has not come to light till the report of Officers deputed from Head Office, for sales accounts reconciliation on 22.08.2012. The contention of the Charged Officer that he handed over the cash on the same day to the Jr. Asst., without producing any evidence, is not agreeable. Being Supervisory Officer, he has to sign the unit Cash Book regularly, after completion of cash and bank transactions. If the cash was actually handed over to the Jr.Asst., before signing the cash book, he would have asked why he had not made entry in the cash book and not deposited in the corporation bank account. The Charged Officer has deliberately suppressed the fact of receipt of cash of Rs.3,98,000/- from MAO, Vemsoor. This clearly proves his Dis-honesty and Misappropriation of Office Funds.

The Charged Officer allowed fictitious entries and wrong postings in the Customer Accounts, to show lesser amounts than the actual amount payable by A.O's. He allowed supplies to DCMS, Khammam, though there was huge outstanding amount due from them. After passing adjustment entries by the Special Audit Team to set right the wrong postings, a net difference of Rs. 20,55,047.45 was found in DCMS account. In spite of

repeated instructions during review meetings held at Head Office on 25.03.2010; 01.11.2010 & 10.02.2011, he exhibited negligence and not made any efforts to recover dues, violating the instructions of Head Office. He colluded with Jr.Asst., and diverted the Corporation funds for their personal/illegal gains. Even on the complaint of Sri P. Yugandhar, daily wage Assistant on non-raising of cash receipt for the amount of Rs.1,10,000/-remitted by him, the Charged Officer being Head of the Unit, failed to take action against the Jr.Asst., working under his control. The deposition dt: 01.02.2013 of Sri P. Yugandhar, daily wage assistant, Khammam proves the collusion of Charged Officer with the Junior Assistant and his dishonesty in discharging official duties.

I, therefore agree with the findings of Inquiry Officer and have come to the conclusion that the Charged Officer Sri P. Sudhakar Rao, A.M(retd.) has committed grave financial irregularities with malafide intention to defraud the Corporation, while working as D.M(S), Khammam, during the period from 04.06.2007 to 24.08.2011.

ORDER:

Since, the Corporation was established for the benefit of farmers in obtaining quality seeds at lesser price well before commencement of respective seasons; such fraudulent acts on the part of employees deceiving the Organization

established for Social cause are liable for stringent punishment.

Keeping in view of his proved misconducts of mis-appropriation, fraud and dishonesty in connection with the Corporation business under Rule 4(x), negligence in duties under Rule 4(ii) and subversive of discipline of the Corporation under Rule 4 (xxiv) of Discipline & Appeal Rules, Sri P.Sudhakar Rao, Asst. Manager(retd.) is deemed to have been dismissed from the Services of the Corporation on 31.01.2015 A.N. and therefore his terminal benefits are hereby withheld.

8. Proceedings dated 30.04.2018 of the 2nd respondent reads as under:

"In the reference 1st cited, after complying the prescribed procedure, Sri P.Sudhakar Rao, A.M. & D.M(S) (Retd.), TSSDC Ltd., Khammam was dismissed from the services, for his proved negligence in duties under Rule 4(ii), mis-conducts of mis-appropriation, fraud and dishonesty in connection with the Corporation business under Rule 4(x), and subversive of discipline of the Corporation under Rule 4(xxiv) of Discipline & Appeal Rules for employees of the Corporation.

In the reference 2nd cited, Sri P.Sudhakar Rao, A.M. & D.M(S) (Retd.) has preferred an 'Appeal' before the Appellate Authority i.e. Board of Directors against the penalty imposed on him.

The Appeal of the dismissed employee was placed before the 6th Board Meeting held on 29.09.2016 for

taking decision on the penalty imposed against him. The Appellate Authority in its above said meeting constituted a Committee comprising of Joint Secretary(Agril.), Dy Secretary(Fin.), Govt. of Telangana and the Share holder Seed Grower Director of the Corporation to examine the appeal and submit its recommendations to the Chairman, for decision. Accordingly, the meeting of the Appeals Sub-Committee was convened at 4.00 p.m. on 05.12.2016 and the Appellant was called for hearing. After hearing the Appellant, the Sub-Committee has recommended as follows:

The Appellant Sri P.Sudhakar Rao has collected an amount of Rs.3,98,000/- in cash from MAO, Vemsooor towards the cost of Green manure seed supplied during the year 2008. But, there is no official Cash Receipt or acknowledgement, it can be construed that he has not remitted the collected amount to the Office.

The Committee further opined that he exhibited negligence in supervising the activities of sub-ordinate staff working under his control. If he is vigilant, such manipulations in the records would have avoided, much earlier and he deceived the organisation and misappropriated the Office cash in lakhs of rupees, for his personal purpose?

Further, Govt. in its Memo No.3446/A&C/Vig/A1/2016, Dt:03.04.2018 directed the Appellate Authority to reject the appeal filed by the Appellant.

ORDER:

"After thorough examination of the Appeal, personal hearing of the Appellant, considering the gravity of the entire case, verification of the available material on record, Sub-Committee recommendations and Govt. orders, it is proved that Sri P.Sudhakar Rao, A.M & D.M(Retd.) has committed certain financial irregularities and he exhibited negligence in supervising the activities of sub-ordinate staff besides mis-use/misappropriation of Office Cash for his personal use.

There is no merit in the Appeal filed by Sri P.Sudhakar Rao against the orders of dismissal from service".

Therefore, the Appeal preferred by Sri P.Sudhakar Rao, A.M.(Retd.) is rejected on grounds of devoid merits and his proved misconducts of mis- appropriation, fraud and dishonesty in connection with the Corporation business, the major penalty imposed from dismissal of service vide Proceedings dated 11.03.2016 is hereby confirmed.

9. Counter affidavit filed by the Respondents, in particular, Paras 8, 9, 10, 11, read as under:

"8. In reply to para No.7 of the affidavit, the respondent authority lodged a report before III Town Police station, Khammam, against Junior Assistant and the petitioner offences Under Section 406,409, R/W 420 IPC., and it was registered as Crime no. 123 of 2012. On 27-8-2012 issued charge memo to the petitioner. On 16-8-2013 the petitioner given an undertaking letter to recover the amount from his retirement benefits, "undertaking that with regard to receipt of Rs.3,98,000/- in cash from Mandal Agricultural Officer, Vemsoor, Khammam District giving a rough receipt dt: 2-6-2008, the said amount was handed over by me to V.Radha Krishna, who has not accounted for as per the charge, I submit that I am giving undertaking to recover the said amount from my retirement benefits." The subject to the result and outcome of the enquiry proceedings, requested for revocation of his suspension and reinstate into his duties. The petitioner further

requested to delete his name from above said crime. The respondents considering his request, issued vide proceedings dated 10-10-2013, stating that the petitioner re-instated into his duties pending further enquiry into the charges.

9. In reply to para No.8 of the affidavit, the 2nd respondent consider petitioner's request and re-instated the petitioner after receiving his undertaking letter. The 2nd Respondent appointed an enquiry officer to conduct an enquiry against the petitioner, except this remaining contents in this paragraph is baseless allegations.

10. In reply to para No.9 of the affidavit, the enquiry officer conducted an enquiry and submitted his report, copy served to the petitioner. The petitioner falsely alleging that he didn't get a chance to examine his documents and his witnesses to disprove his allegations. But petitioner neither provided the documents desired by him to disprove the allegations made against him nor examined any crucial witnesses. The 2nd respondent is the disciplinary and appointing authority according to that the 2nd respondent have an authority to impose major penalty. The petitioner retired from his service and received all retirement benefits except gratuity and leave encashment amount.

11. In reply to para No. 10 of the affidavit, the petitioner filed an appeal before the 1st respondent against the proceedings No.TSSDC/Admn/2015-16

issued by the 2nd respondent, it was referred to the subcommittee. The subcommittee rejected the appeal on grounds of devoid of merits and same was confirmed.

DISCUSSION AND CONCLUSION :

DISCUSSION :

10. It is the specific case of the Petitioner that the Petitioner joined in Telangana State Seeds Development Corporation Ltd., on 03.01.1986 as Seed Officer and worked sincerely all through. A charge memo dated 27.08.2012 was issued to the Petitioner suspending the Petitioner from service. Vide the said charge Memo dt. 27.08.2012, seven (7) specific allegations were levelled against the writ petitioner and the charge Memo dated 27.08.2012 in its conclusion observed as under :

“As seen from the above, the Charged Officer knowingly concealed dues position to Head Office for his personal gain. He violated Head Office instructions and issued seed on credit to DCMS though sizeable amount was due from them. His notice dt. 27.05.2011 to DCMS for settlement of amount of Rs.107.50 lakh against the total out standing amount of Rs.417.83 lakh as on 31.03.2011 from the said party gives scope for suspicion on his involvement in the irregularities. He colluded with the Junior Assistant in manipulation of

records with a view to defraud the Corporation. His failure to supervise the activities of his subordinates resulted in damage to the reputation of the Corporation before JDA and DCMS, Khammam, but also caused differences in sales accounts of the parties, which may likely cause loss to the Corporation. Therefore, he is responsible for the acts of his subordinate and liable for the differences occurred during his tenure as D.M. (Seeds), Khammam.

Thus, he committed acts of misconduct of negligence of duties under Rule 4(ii) and Dishonesty in connection with the Company's Business under Rule 4(x) of Disciplinary & Appeal Rules and failed to maintain absolute integrity, devotion to duty and conduct unbecoming of Corporation employee in violation of Rule (3) of Conduct Rules for the employees of APSSDC, 1976.

The employee has, therefore, rendered himself liable for regular departmental action for major penalty”.

11. It is further the case of the Petitioner that the Petitioner was again issued a revised charge memo dt. 01.04.2013 with 6 specific charges and in conclusion it is again observed that the Petitioner committed acts of misconduct of negligence of duties and therefore rendered himself liable for regular departmental action for major penalty. Enquiry was conducted in Khammam District at Khammam Unit Office on 10.12.2013 and certain crucial witnesses were not examined by the Enquiry Officer and the enquiry was vitiated and proceedings dated 11.03.2016 imposing major penalty of dismissal from services of the Corporation on 30.01.2015 A.N. was imposed

against the Petitioner and the terminal benefits also had been withheld vide the said impugned order dated 11.03.2016 vide No.TSSDC/Admn/2015-16 of the Disciplinary Authority & Managing Director. It is further the case of the Petitioner that the Petitioner preferred Appeal and the Disciplinary Authority & Managing Director rejected the Appeal vide Proceedings dated 30.04.2018 vide No.TSSDC/Admn/Disc.Case/2018-19, confirming the major penalty imposed upon the Petitioner dated 11.03.2016 holding that there is no merit in the Appeal filed by the Petitioner. Counsel for the Petitioner mainly submits that the pleas raised by the Petitioner in the explanation furnished by the Petitioner to the revised charged memo dated 01.04.2013 had not been considered by the Disciplinary Authority and further the request of the Petitioner for providing certain documents for submission of additional written statement of defence was not considered by the Respondents and the orders impugned had been passed hastily and mechanically in violation of principles of natural justice and further that the 2nd Respondent had no jurisdiction to pass the order impugned dated 30.04.2018, since as per the Disciplinary and Appeal Rules Schedule for the post of

Seed Officer, the Disciplinary Authority to impose major penalties is the Managing Director and the Appellate Authority is the Board, therefore the writ petition has to be allowed as prayed for.

12. Counter affidavit has been filed by the Respondents and it is contended that the 2nd Respondent is the Disciplinary Authority and the Appointing Authority and therefore the 2nd Respondent has an Authority to impose major penalty and that the Petitioner retired from his service and he received all retirement benefits except gratuity and leave encashment amount and further the Appeal preferred by the Petitioner had been rejected on grounds of devoid of merits and therefore the writ petition needs to be dismissed.

CONCLUSION :

13. A bare perusal of the contents of the charge memo dated 27.08.2012 and revised charge memo dated 01.04.2013 issued against the Petitioner clearly indicates that the Vice Chairman and Managing Director of the Respondent Corporation proceeded against the Petitioner arriving at a predetermined conclusion that

the Petitioner rendered himself liable for regular departmental action for major penalty and further held that the Petitioner committed acts of misconduct of negligence of duties and indulged in misappropriation, fraud and dishonesty and failed to maintain absolute integrity, devotion to duty and conduct unbecoming of Corporation employee. This Court opines that at the stage of issuance of charge memo itself there cannot be any unilateral conclusion arrived at against the Petitioner holding the Petitioner as guilty without even conducting a proper enquiry as per Rules in force and as per due procedure.

14. A bare perusal of the contents of the letter dated 27.01.2014 of the General Manager (Admn) I/c., vide No.SSDC/Admn/ Retirement/013/2013-14, (referred to and extracted above) issued to the Petitioner clearly indicates that the Petitioner retired from the services of the Corporation as Assistant Manager, APSSDC Ltd., Nirmal on 31.01.2014 on attaining superannuation age of 58 years and curiously the order impugned dated 11.03.2016 issued by the Disciplinary Authority &

Managing Director of the Respondent Corporation indicates that the Petitioner is deemed to have been dismissed from the services of the Corporation on 31.01.2015 A.N. withholding the terminal benefits of the Petitioner. This Court opines that the Petitioner having retired from the services of the Respondent Corporation on attaining superannuation age of 58 years on 31.01.2014 and not being on the rolls of the Corporation since 01.02.2014 cannot be dismissed from service w.e.f., 31.01.2015 A.N. as observed by the Disciplinary Authority & Managing Director in the order impugned dated 11.03.2016.

15. A bare perusal of the order of the Appellate Authority dated 30.04.2018 (referred to and extracted above) confirming the major penalty of dismissal of service imposed upon the Petitioner vide Proceedings dated 11.03.2016 indicates a specific reference to the Government Memo No.3446/A&C/Vig/A1/2016, dated 30.04.2018 directing the Appellate Authority to reject the Appeal filed by the Appellant/the Petitioner herein. This Court opines that the Appellate Authority did not

apply its mind independently and simply followed the directions issued by the Government mechanically since it is a cryptic order passed without assigning any reasons and simply confirmed the proceedings dated 11.03.2016 issued against the Petitioner. The Respondents failed to explain in the Counter Affidavit the relevant applicable rules governing the service conditions of the Petitioner which enabled the Respondent Authority to impose punishment of dismissal from service after Petitioner's superannuation.

16. The Apex Court in the Judgment reported in (2018) 14 SCC 92 in UCO Bank Vs. Rajendra Shankar Shukla, in particular, at para 18 observed as under :

"18 : Under the circumstances, we have no hesitation in dismissing the Appeal filed by the Bank also on the ground that the punishment of dismissal could not have been imposed on Shukla after his superannuation".

17. The Apex Court in the Judgment reported in (2018)14 SCC 98 in UCO Bank & Others Vs. Prabhakar

Sadashiv Karvade, in particular, at para 11 observed as under :

"11 : This view is amply supported by other judicial precedents. In High Court of Punjab & Haryana v. Amrik Singh, this Court referred to an earlier Judgment in D.V. Kapoor v. Union of India", Rule 2.2 of the Pension Rules applicable to the employees of the High Court and observed: (Amrik Singh case, SCC p. 324, para 5)

"5. It is seen that the learned Chief Justice of the High Court, on the administrative side, while passing the order of dismissal agreed with the enquiry officer's finding that the respondent committed embezzlement and mentioned that the order of dismissal would come into immediate effect from the date of the order. In other words, he appears to have intended to say that the order of dismissal will be operative from the date of the order of the dismissal. But it would appear that the Chief Justice was not apprised that the delinquent had already been retired from service on completion of two years' period of extended service of re-employment with effect from 31-8-1982. Therefore, the order of giving effect to the order of dismissal from the date of its order was of no consequence and became superfluous as he was no longer in service as on that date."

18. In the Division Bench judgment of the Apex Court dated 18.05.2007 in UCO Bank v. Rajinder Lal Kapoor

reported in (2007) 6 SCC 694, in particular, at paras 22 and 23, it is observed as under:

"22. The respondent, therefore, having been allowed to superannuate, only a proceeding, inter alia, for withholding of his pension under the Pension Regulations could have been initiated against the respondent. Discipline and Appeal Regulations were, thus not attracted. Consequently the charge-sheet, the enquiry report and the orders of punishment passed by the disciplinary authority and the appellate authority must be held to be illegal and without jurisdiction.

23. An order of dismissal or removal from service can be passed only when an employee is in service. If a person is not in employment, the question of terminating his services ordinarily would not arise unless there exists a specific rule in that behalf. As Regulation 20 is not applicable in the case of the respondent, we have no other option but to hold that the entire proceeding initiated against the respondent became vitiated in law."

19. This Court opines that the master and servant relationship between the Petitioner and the Respondent Corporation had come to an end for all practical

purposes on 31.01.2014 on Petitioner attaining superannuation age of 58 years, and the Departmental enquiry initiated against the Petitioner before Petitioner's retirement could be continued for a limited purpose to decide on the point, whether or not the Petitioner is entitled for full pensionary benefits and gratuity. This Court is of the firm opinion that the impugned order dated 11.03.2016 of the Disciplinary Authority & Managing Director observing that the Petitioner is deemed to have been dismissed from the services of the Corporation on 31.01.2015 A.N. is of no consequence since the Petitioner was no longer in service as on that date.

20. The Learned Counsel appearing on behalf of the Respondents placed reliance on the judgment of the Apex Court reported in (2020) 18 SCC 71 in Chairman-cum-Managing Director, Mahanadi Coal Fields Ltd., Vs. Rabindranath Choubey and in particular para 44, but this Court opines that the said judgment does not apply to the facts of the present case for the following reasons :

- i. The charge memo dated 27.08.2012 and the revised charge memo dated 01.04.2013 proceeded against the Petitioner pre-judging and predetermining the subject issue having arrived at a unilateral conclusion even before conduct of enquiry as per the due procedure and rules in force, in conformity with principles of natural justice against the Petitioner holding the Petitioner as having committed acts of misconduct of negligence of duties, misappropriation, fraud and dishonesty.
- ii. The counter affidavit is silent and does not trace its power to relevant rules or regulations which empower the Respondent Authority to pass an order of dismissal of service upon Petitioner's superannuation from service.
- iii. The Appellate Authority in its order dated 30.04.2018 clearly observed that the Government in its Memo dated 03.04.2018 directed the Appellate Authority to reject the Appeal filed by the Appellant which clearly evidences the fact that the Appellate Authority did not apply its mind independently in passing the order impugned dated 30.04.2018.
- iv. The 2nd Respondent had no jurisdiction to pass the order impugned dated 30.04.2018, since a bare perusal of the schedule pertaining to Disciplinary and Appeal Rules [see Rule 2(h)

5 (ii) and (16)] clearly indicates that for the post of Seed Officer, the Disciplinary Authority to impose major penalties is the Managing Director and the Appellate Authority is the Board.

21. Taking into consideration the afore said facts and circumstances of the case and duly taking into consideration the law laid down by the Apex Court in the (1) judgment dated 18.05.2007 in UCO Bank v Rajinder Lal capoor reported in (2007) 6 SCC 694 (2) The judgment of the Apex Court reported in (2018) 14 SCC 92 in UCO Bank v Rajender Shankar Shukla and (3) the judgment of the Apex Court reported in (2018) 14 SCC 98 in UCO Bank and others v Prabhakar Sadashiv Karvade (referred to and extracted above), this Court opines that the writ petitioner is entitled for the relief as prayed for in the present writ petition and the same is allowed as prayed for. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA, J

Date: 30.10.2023

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