

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

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WRIT PETITION No.2845 OF 2015

Between:

P.Udayasankar (died) per LRs.  
Smt.P.Raja Ratnam, W/o.Late P.Udayasankar,  
Aged 45 years, Home Maker,  
R/o.H.No.6-50, Vampadu Village,  
Pedapadu Mandal, West Godavari District  
and two others.

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Petitioners.

And

The Deputy Inspector General of Police,  
Eluru Range, Eluru, West Godavari District  
and two others.

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Respondents.

DATE OF ORDER PRONOUNCED : 08.02.2021

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE JOYMALYA BAGCHI

AND

HON'BLE SRI JUSTICE A.V.SESHA SAI

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| 1. Whether Reporters of Local Newspapers<br>may be allowed to see the order? | Yes/No |
| 2. Whether the copy of order may be<br>marked to Law Reporters/Journals?     | Yes/No |
| 3. Whether Their Lordships wish to<br>see the fair copy of the order?        | Yes/No |

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JOYMALYA BAGCHI, J

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A.V.SESHA SAI, J

\* HON'BLE SRI JUSTICE JOYMALYA BAGCHI  
AND  
\* HON'BLE SRI JUSTICE A.V.SESHA SAI

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and two others. --- Petitioners.

And

The Deputy Inspector General of Police,  
Eluru Range, Eluru, West Godavari District  
and two others. --- Respondents.

! Counsel for the Petitioners : Mr.Brahmadandi Ramesh

^ Counsel for Respondents : Government Pleader for Services-I

< Gist:

> Head Note:

? Cases referred:

1. 2010 (8) SCC 573

This Court made the following:

**HON'BLE SRI JUSTICE JOYMALYA BAGCHI  
AND  
HON'BLE SRI JUSTICE A.V.SESHA SAI**

**WRIT PETITION No.2845 OF 2015**

(Taken up through video conferencing)

**ORDER:** (*Per Hon'ble Sri Justice Joymalya Bagchi*)

Order of the Tribunal refusing the prayer to set aside the dismissal order of the delinquent employee dated 15.06.2008 which came to be affirmed by the appellate authority is the subject matter of challenge at the behest of his legal representatives.

Facts of the present case portray a paradoxical situation. Second petitioner, the estranged wife and one of the legal representatives of the deceased employee, is the originator of the present imbroglio. Being aggrieved by the ill-treatment at the hands of the deceased employee, she had instituted criminal proceedings against him under Section 498-A of Indian Penal Code (I.P.C.). Infuriated by the decision of his superior officer to handover articles from the police department stores to the second petitioner-wife on credit from the salary of the delinquent employee, the latter threatened and criminally intimidated the superior officer with dire consequences. Such misconduct became the subject matter of the criminal proceedings being C.C.No.31 of 2004 wherein the delinquent employee was convicted for commission of offences punishable under Sections 353 and 506(2) I.P.C. and sentenced to pay fine of Rs.1,000/- and in default, to undergo simple imprisonment for two months on each count. Disciplinary proceedings were also initiated on self same facts against the delinquent employee. Pursuant to his conviction, *vide* order dated 09.05.2005 the second respondent dismissed him from service on the ground that he had been convicted in the criminal

case. In revision, however, this Court *vide* order dated 10.12.2007 while upholding the conviction released the delinquent employee under the provisions of the Probation of Offenders Act, 1958 (for short, 'the Act') on condition he executed a personal bond for good behaviour for a period of two years. In view of the aforesaid development by order dated 13.04.2008, the delinquent employee came to be reinstated, however, without prejudice to the enquiry pending against him. In conclusion of enquiry proceedings, by order dated 15.06.2008 the disciplinary authority accepted the enquiry report and again dismissed him from service. Appellate authority confirmed such order. Delinquent employee assailed such order before the Tribunal in O.A.No.12509 of 2009. During pendency of the proceedings before the Tribunal, he died and his legal representatives including the aforesaid estranged wife Smt.P.Raja Ratnam were substituted as legal heirs on his behalf. By impugned order, the Tribunal rejected the O.A. and upheld order of dismissal. Hence, the present writ petition at the behest of the legal representatives of the deceased employee.

Sri B.Ramesh, learned counsel appearing for the petitioners, submits that the disciplinary proceedings and the criminal case had been instituted on self-same facts. He was convicted and sentenced in the criminal case. While disposing of the criminal revision against the order of conviction, the Court released the petitioner on probation so that his service would not be affected. Accordingly, he was reinstated, but unfortunately, again dismissed in the conclusion of the disciplinary proceedings. Penalty imposed is, therefore, disproportionate and contrary to the findings of this Court in the criminal proceedings.

On the other hand, learned Government Pleader for Services-I submits that the delinquent employee was found guilty on self-same charges not only by the criminal Court but also in the disciplinary proceedings. Invoking Rule 20 of Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991, the second respondent was justified in dismissing the petitioner. No interference is called for in the matter.

Ordinarily, this Court in exercise of judicial review would not sit in judgment over punishment imposed on a delinquent. However, the present case portrays a peculiar state of affairs. Delinquent employee was prosecuted both in the criminal Court as well as in the disciplinary proceedings on self same facts. Upon being found guilty in the criminal Court sentence imposed upon him was modified by this Court in revision and he was permitted to be released on probation so that his service may not be affected. Consequently, his order of dismissal was recalled and he was reinstated into service *vide* order dated 13.04.2008. Relying on ***Sushil Kumar Singhal Vs. The Regional Manager, Punjab National Bank***<sup>1</sup>, learned Government Pleader argued the expression “*removal of disqualification*” under Section 12 of the Act does not affect the power of the employer to dismiss a delinquent employee as per service rules upon conviction. We choose not to make any comment with regard to this issue as the second respondent/employer himself had chosen to recall the order of dismissal upon suspension of sentence and release of the delinquent employee on probation. No doubt such reinstatement was without prejudice to the disciplinary proceedings already instituted and in conclusion thereof delinquent was again

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<sup>1</sup> (2010) 8 SCC 573

dismissed from service *vide* order dated 15.06.2008. However, it is apposite to note that the conduct of the delinquent employee, which was the subject matter of the disciplinary proceedings, did not relate to misappropriation of funds or moral turpitude. Although we have no reason to doubt the legality of the decision of the disciplinary authority to hold the delinquent guilty of the charges levelled against him, the issue which falls for consideration is:

Whether the punishment imposed upon the delinquent employee is disproportionate or not?

Gist of the charge relates to an irresponsible behaviour on the part of the delinquent in threatening his superior, who had come in aid of his estranged wife and permitted her to draw supply of rations on credit from the police co-operative society. This allegation, even if true, would not fall within aggravated acts of misconduct like misappropriation, moral turpitude etc., and no wrongful loss was caused to the department. Further more, while dealing with the criminal charge, this Court was inclined to suspend the sentence and release the delinquent on probation so that his employment was not terminated. These factors ought to have weighed with the second respondent while imposing the maximum penalty of dismissal. Impugned decision does not reflect any reference to the aforesaid facts which are germane to the proportionality of punishment imposed. Another extenuating circumstance arising from the peculiar facts of the case is that the second petitioner, who is seeking relief on behalf of her deceased husband, is the unfortunate victim who had been supported by her husband's superior which prompted irresponsible and arrogant behaviour on the part of her husband culminating in his dismissal

from service. Presently, the delinquent is no longer alive and the punishment proposed to be imposed upon him if continued may operate to the prejudice and deny the helpless widow and her children of pensionary benefits, if any. Hence, we are of the opinion that in the aforesaid factual matrix the penalty of dismissal is disproportionate in nature. Accordingly, we propose the same may be altered to one of compulsory retirement which is also a major penalty, but would not disentitle the legal representatives (particularly, the aggrieved widow) to pensionary benefits if they are otherwise eligible to such relief in accordance with law.

Accordingly, impugned order dated 03.01.2014 is set aside and the order of dismissal dated 15.06.2008 passed by the second respondent and affirmed by the appellate authority i.e., first respondent is altered to one of compulsory retirement of the delinquent employee with effect from 15.06.2008.

The Writ Petition is allowed to the aforesaid extent. No order as to costs. As a sequel, Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

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**JUSTICE JOYMALYA BAGCHI**

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**JUSTICE A.V.SESHA SAI**

Date: 08.02.2021

Note: Issue CC in one week

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