

APHC010343602024



IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3487]

TUESDAY ,THE FIFTEENTH DAY OF OCTOBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE G.NARENDAR

THE HONOURABLE SMT JUSTICE KIRANMAYEE MANDAVA

WRIT APPEAL NO: 729/2024

Between:

The Chief Commissioner Of State Tax (ap), and Others **...APPELLANT(S)**

AND

Sri G Prabhakara Murthy **...RESPONDENT**

Counsel for the Appellant(S):

1.GP FOR SERVICES I

Counsel for the Respondent:

1.J.N VENKATA SURESH KUMAR

The Court made the following:

JUDGMENT:

(Per Hon'ble Sri Justice G. Narendar)

1. Heard the learned Government Pleader for Services-I appearing for the appellants and learned counsel for the Respondent/Writ Petitioner.
2. The intra-Court appeal is preferred assailing the order of the learned Single Judge, whereby the learned Single Judge quashed the disciplinary proceedings midway, i.e., at the stage when the enquiry had been completed, the report had been submitted to the disciplinary authority, and the disciplinary authority had issued the second show cause notice enclosing the report and calling for his explanation.
3. The approach of the learned Single Judge, in our considered opinion, amounts to usurping the jurisdiction of the disciplinary authority, which we find to be impermissible. The learned Single Judge could not have usurped the role of the disciplinary authority and scuttled the proceedings midway. The statute vests the authority, either to impose or not to impose punishment after appreciating the matter on merits, on the disciplinary authority only. By the impugned order, this process has been preempted.
4. In fact, there was no adversarial order, resulting in no cause of action to canvass or maintain the Writ Petition. The mere pendency of the inquiry or the Writ Petitioner's apprehension of any adverse orders cannot be a ground to maintain the Writ Petition. It is apparent that no rights of the Writ Petitioner have been abridged, nor has the inquiry resulted in altering the service

conditions. In that context, the mere issuance of the show cause notice would not confer jurisdiction on this Court to entertain and appreciate the Writ Petition. In the absence of any right of the litigant being adversely affected, we do not see how the learned Single Judge could have heard and ordered the Writ Petition.

5. Appreciation of the facts is the domain of the statutory authorities, specifically the disciplinary authority in this case. We had directed the Appellant/Department to produce the records relating to the refund claim, which has been the contention between the Appellant/Department and the Employee. In compliance with this direction, the records have been produced and given to the learned counsel representing the Respondent/Writ Petitioner, who has perused them and submitted that there are no records relating to the processing of the claim or consideration of the pending tax revision cases. He further contends that the charge itself could not have been framed in the absence of sufficient material. Additionally, he argues that there has been a gross miscarriage of justice, as neither the inquiry officer nor the presiding officer furnished the documents sought by him.

6. In our considered opinion, these are grounds of defense that could have been better appreciated by the disciplinary authority than by this Court in the exercise of powers vested in it under Article 226 of the Constitution of India.

7. The learned Single Judge, in our considered opinion, has erred in taking up the role of the disciplinary authority and in attempting to substitute the opinion of the disciplinary authority with the opinion of this Court, which we

find to be impermissible. The learned Single Judge could not have usurped or preempted the statutorily empowered disciplinary authority from forming an opinion on imposing or not imposing any penalties. The authority to impose or not impose any penalty, as provided under the rules, is in the exclusive domain of the disciplinary authority, an action that has now been preempted by the impugned order. In our opinion, the Writ Petition itself was premature in the absence of any adverse impact on the rights or service conditions of the Writ Petitioner.

8. In that view of the matter, we have no hesitation in allowing the appeal. Accordingly, the appeal is allowed in part. The impugned order is set aside, and the matter is remitted back to the disciplinary/competent authority for consideration of the reply to be submitted by the Respondent/Writ Petitioner. Thereafter, the disciplinary/competent authority shall pass necessary orders within six (6) weeks from the date of receipt of the reply to the second show cause notice. The Respondent/Writ Petitioner shall submit his reply within three (3) weeks from today, without waiting to receive a copy of this order. In the event no reply to the second show cause notice is submitted by the Respondent/Writ Petitioner within three (3) weeks from today, it is open to the disciplinary/competent authority to pass such orders as it deems appropriate, based on the facts and circumstances of the case and strictly in accordance with law. There shall be no order as to costs.

As a sequel, interlocutory applications pending, if any, in this Writ Appeal shall stand closed.

JUSTICE G. NARENDAR

JUSTICE KIRANMAYEE MANDAVA

Date: 15.10.2024

DNV

89

THE HON'BLE SRI JUSTICE G. NARENDAR
and
THE HON'BLE SMT. JUSTICE KIRANMAYEE MANDAVA

WRIT APPEAL No.729 of 2024

Date: 15.10.2024

DNV