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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

M.A. 346/94
in
O.A. 27/94.

Dt. of Decision : 23.6.94.

Mr. S.B. Ramesh

.. Applicant

Vs

1. Ministry of Finance,
Govt. of India,
Represented by the Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
Govt. of India, New Delhi.
2. Director of Income tax (Investigation)
Aaykarbhavan, Hyderabad. .. Respondents.

Counsel for the Applicant : Mr. L. Sudhakar Reddy S.B. Ramesh
Party-in-Person.

Counsel for the Respondents : Mr. M. Bhimanna, Addl.CGSC.

CORAM:

THE HON'BLE SHRI JUSTICE V. NEELADRI RAO : VICE CHAIRMAN
THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

O R D E R

(As per Hon. Mr. Justice V. Neeladri Rao, Vice Chairman)

Heard Sri S.B. Ramesh, party-in-person and Sri V. Bhimanna, learned Standing counsel for Central Government.

2. The applicant in this OA filed this MA praying for suspension of Proceeding No.DIT(INV)(Con.Viz/91-92) dated 23-4-1992 of Director of Income Tax(Inv) AP, Hyderabad, pending disposal of the OA.

3. The OA was filed challenging the order dated 23-4-1992 passed by R-2 whereby the applicant was compulsorily retired from service. It is stated that the appeal dated 4-6-1992 presented against order dated 23-4-1992 is not yet disposed of.

4. Charge memo dated 25-3-1988 was issued to the applicant who was working as Income Tax Officer Group-B with the following charge :

"Shri S.B. Ramesh, Income Tax Officer, Group-B Andhra Pradesh Charge (now under suspension) has contracted a second marriage with Smt.K.R. Aruna while his first wife, Smt. Anasuya is alive and the first marriage has not been dissolved. By this act, Shri S.B. Ramesh has violated Rule 21(2) of CCS(Conduct)Rules, 1964. In any case, Sri S.B.Ramesh has been living with Smt. K.R. Aruna and has children by her. Thereby Shri S.B. Ramesh has exhibited a conduct unbecoming of a Government servant and has accordingly violated Rule 3(1)(iii) of the CCS(Conduct)Rules, 1964".

The Inquiry Officer held that the said charge is in two limbs and the charge in regard to the first limb was not established and the charge in regard to the second limb was established. The Disciplinary authority after considering the explanation of the applicant submitted

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on the basis of the observation in para-10 laid down the principle that adultery on the part of the person does not involve moral depravity.

7. The applicant who argued in person has not drawn our attention to any Judgement of the Supreme Court or High Court which states that conduct of an employee in living with another while his wife is living and if that marriage is subsisting, does not amount to misconduct as envisaged under Rule 3(1)(iii) of CCS(Conduct) Rules, 1964. Thus, it is a matter for consideration in the OA as the applicant is contending that such conduct does not involve moral turpitude while the learned Standing Counsel submits that the same amounts to moral turpitude. When it is a matter for consideration in the OA and when the attention of the Bench is not drawn to any High Court or Supreme Court decision in support of the plea of applicant, it cannot be stated that prima facie case is established. It can only be stated that there is an arguable point and it is a matter for consideration.

8. It is true that if prima facie case is established and if there is balance of convenience, the question of issuing interim order pending disposal of the main proceedings may arise if there will be inordinate delay in disposal of the OA. When we enquired the applicant as to whether he is going to argue the OA itself, as the reply in this OA was already filed, or whether he is going to confine his arguments at this stage only in regard to MA, he submitted that this Tribunal may first consider the MA. Accordingly, we heard only in regard to the MA.

9. It is also contended for the applicant that his appeal was not disposed of within six months and the same

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after he was communicated of the Report of the Inquiry Officer, accepted the findings of the Inquiry Officer in regard to both the limbs and passed the impugned order dated 23-4-1992.

5. It was urged interalia for the applicant that even assuming that the facts on the basis of which the second limb of the charge was issued were established, it does not amount to violation of Rule 3(1)(iii) of CCS(Conduct) Rules, 1964 and thus prima facie case is established. In support of the said contention, Judgement of AP High Court reported in 1988(4)SLR 34 (M/s Bharat Heavy Plates and Vessels ltd., Visakhapatnam, Vs. V. Sreeramachandramurthy and another) was referred to. In para 10 of the said Judgement it is observed as under :

"10. One may reasonably doubt whether a conviction by Court of law for an offence of adultery per se involved moral depravity. A person may be guilty of committing an offence without the use of force, fraud, perjury, coercion, cruelty and deceit. But the question is whether in the absence of those elements, an offence can be described as involving moral turpitude. It is highly doubtful that in the absence of those elements, the offence can be described as involving moral depravity."

But at the same time it was observed as under in para 11 :

"We make it clear that we are dealing in this case not with the question of morality of the offence of adultery but only with the appropriate punishment that can be awarded to a single act of adultery."

6. Thus, by reading the above portion of the judgement in para-11, it cannot be stated that the AP High Court



should be deemed to have been allowed. The same that was referred to was only in the relief portion of the OA. Anyhow, the applicant has not drawn our attention to any decided case to show that the appeal stands allowed or it is deemed to have been allowed if it is not disposed within the period prescribed i.e. six months in this case. But when the applicant had not referred to any decided case in regard to the same, it is also to be stated that it is a matter for consideration in the OA and hence we are not going to further advert to it for disposal of this MA.

10. In the written arguments, the applicant submitted that the proceeding itself was initiated against him as a vindictive measure because of his community (the applicant is an SC) and it had become an eyesore as he is an active member of many prestigious clubs and in view of the rivalry between the direct recruits and the promotees (the applicant is a promotee). But when it is alleged as a vindictive act on the basis of alleged facts referred to by him, it is necessary for the applicant to give an opportunity to the respondents to traverse the same in reply. The respondents can meet the point if they are referred to in OA. But as the applicant has not referred to the same in the OA, there is naturally no mention about it in reply filed in this OA. If the applicant is so advised and if the applicant intends to urge the same in the OA it is for him to come up with additional affidavit in the OA so as to give opportunity to the respondents to meet the same. Ofcourse, if the applicant is not going to come up with such an affidavit, then he will not be permitted to come up with the said contention.

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To

1. The Chairman, Central Board of Direct Taxes,
Union of India, Ministry of Finance,
Govt. of India, New Delhi.
2. The Director of Income Tax (Investigation)
Adayakarshan, Hyderabad.
3. One copy to Mr. S. B. Ramesh, Party-in-Person, Income-tax officer, Survey Unit
[Income Tax Dept. Adayakarshan, Hyd.]
4. One copy to Mr. V. B. Nimmanna, Adal. CGSC. CAT. Hyd.
5. One spare copy.

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recd
30/6/94
at 6.00 P.M
F. 30/6*

1/29/94

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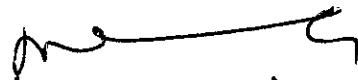
11. The applicant has cited a number of decisions to contend that the interim relief has to be considered as it is a case of right to life coming within the ambit of the Article 21 of the Constitution.

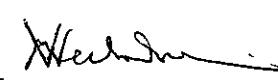
12. It is not a case where there will be inordinate delay in disposal of this OA. If the applicant is not going to come up with an additional affidavit, it will be listed for final disposal even in July, 1994. If the applicant intends to come up with additional affidavit and as it will be necessary to give atleast four weeks time to the respondents to file their additional reply if any, the OA can be considered in August, 1994 itself. Further, as already observed, the applicant could not establish any *prima facie* case.

13. Hence, it is not a case where interim order as prayed for has to be granted. In the above view, there is no need to refer to the various citations relied on by the applicant under Article 21.

14. The applicant also relied upon some decisions in regard to waiver and misconduct. We already observed that whether even the facts on the basis of which the charge in regard to the second limb are relied upon are established, the same amounts to misconduct is a matter for consideration in the OA. In the above view, there is no need to refer to the decisions relied upon in regard to misconduct. The question of waiver does not arise for consideration of this MA.

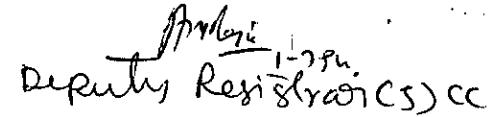
15. In the result, the MA is dismissed. No costs.


(R. Rangarajan)
Member (Admn.)


(V. Neeladri Rao)
Vice Chairman

Dated : 23rd June, 1994
Dictated in the Open Court

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Deputy Registrar (S)cc