SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Krishna Murty (K.) Vs. State of Andhra

Krishna Murty (K.) Vs. State of Andhra

SooperKanoon Citation : sooperkanoon.com/426384

Court : Andhra Pradesh

Decided On : Dec-13-1958

Reported in : (1959)ILLJ558AP

Judge : Chandra Reddy, C.J.

Acts : Constitution of India, 1950 - Articles 226 and 311(1)

Appeal No. : S.O.J. Writ Petition No. 645 of 1955

Appellant : Krishna Murty (K.)

Respondent : State of Andhra

Judgement :

Chandra Reddy, C.J.

1. In this writ petition the legality of the order compulsorily retiring the petitioner is assailed.

2. The petitioner was appointed sub-inspector of excise on 23 April 1928 by the Commissioner of Excise. He was promoted as Assistant Commercial-tax Officer in December 1941 and he was reverted as aub-inspector in April 1945. In or about the year 1946, he was transferred to the Prohibition Department as sub-inspector by the Board of Revenue and was confirmed in that office on 10 November 1951. He seems to have been guilty of several irregularities and laches which led to the

framing of six charges in 1952. The charges were communicated to the petitioner and he was directed to submit his written statement within one month from the date of the receipt of the memorandum of charges. The memorandum of charges was sent by registered post and it was received on 29 December 1952 by the petitioner's son, who acknowledged receipt. No written statement was filed as directed in that memorandum within the time in spite of several reminders. Thereafter the petitioner sent a reply stating that he was sick, unbalanced in mind and was not in a fit condition to offer his explanation and peruse the record. On receipt of this, a requisition was issued by the respondent to the Civil Assistant Surgeon, Amalapuram, for report whether the petitioner was in a condition to appear in the departmental enquiry. After examining the petitioner, the doctor sent a report that the petitioner was fit to attend the departmental enquiry. Thereupon, the department asked the petitioner to file his written statement within ten days of the receipt of the memorandum. This was sent by registered post with acknowledgement due, but the notice was evaded under some pretext or other. Having made every attempt to serve the petitioner and failed, the enquiring officer submitted his findings on the charges framed. Taking into consideration the findings, the concerned officer required the petitioner to submit his further representation against the proposed punishment of dismissal within seven days of the receipt of the memorandum. Although the said memorandum was received by the Petitioner's son no further representation was received from the petitioner in spite of several reminders.Having waited for some time, the respondent proceeded to Annavaram and recorded a statement from the petitioner on 25 September 1953. In this statement the petitioner expressed a desire to peruse certain records and he was allowed all facilities to look into whatever records he wanted. The final representation was made by the petitioner on 30 October 1953. Once again, the provisional findings which were reached on a consideration of all the material, were forwarded to the petitioner and he was called upon to submit his final representation. It was done on 15 May 1954. In addition to the charges and enquiry above mentioned, two more charges were framed in regard to his work at Annavaram and he was asked to submit an explanation. The petitioner adopted the same attitude as before, namely, evading service of summons, with the result that the department had no option but to give its findings on those charges also.

3. These findings were sent to the petitioner and he was directed to submit his final representation but no such thing was done by him. After considering all the charges and the findings thereon, the respondent passed orders in the course of which it was observed thus : 'Though the sub-inspector deserves the punishment of dismissal as indicated, I take a lenient view considering his long service of more than 26 years and he being on the verge of retirement. However, I consider that continuance of this type of sub-inspector any further in service is to breed inefficiency and indiscipline in the department. I therefore, order his compulsory retirement from service from the date of relief.' An appeal was preferred to the Deputy Commissioner of Excise by the petitioner but unsuccessfully. Thereafter, he took the matter in revision to the Government but before final orders were passed, he moved this Court under Art. 226 of the constitution.The only point urged in support of this petition is that since the petitioner was appointed originally by the Board of Revenue, it was not competent for the District Prohibition Officer to inflict any punishment. There is substance in this argument. Article 311(1) of the Constitution, which is relevant for the purpose of this enquiry, reads :

'No person who is a member of a civil service of the Union or an All-India service or a civil service of a State, or holds a civil post under the Union or a State shall be dismissed or removed by any authority subordinate to that by which he was appointed.' The effect of this article is that a Government servant cannot be punished by any authority subordinate to that which had actually appointed him. It is no doubt true that this article does not require that the dismissal must be by the very same officer who appointed him. The 'competent authority' can be either the officer who initially made the appointment or any other officer who is co-ordinate in rank to him. That is the purport of the clause 'dismissed or removed by any authority subordinate to that by which he was appointed.' By reason of this article, no subordinate officer has jurisdiction to inflict any of the punishments contemplated by the Madras Civil Services (Classification, Control and Appeal) Rules. Since admittedly the order of compulsory retirement was passed in this case by the District Prohibition Officer who is said to hold the rank of an Excise Assistant Commissioner, it does not satisfy the requirements of Art. 311(1) as the petitioner is shown to have been appointed by the Commissioner of Excise. It follows that the order in question should be vacated. This does not preclude the department from proceeding with the enquiry from the stage at which the findings were submitted by the Deputy Prohibition Officer. It is open to the Commissioner of Excise or the Prohibition Officer, as the case may be, to take further proceedings and pass such orders as he deems fit.In the result, the order of compulsory retirement is set aside. No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com