

P.V. Rao Vs. Director, Dept. of Information and Public Relations, Hyd. and Others

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Court : Andhra Pradesh

Decided On : Aug-25-1999

Reported in : 1999(5)ALD442; 1999(5)ALT86

Judge : B. Subhashan Reddy and ; V. Eswaraiah, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 143, 144, 147, 149, 188, 353 and 506; Criminal law Amendment Act, 1908 - Sections 7; [Constitution of India](#) - Article 226; Andhra Pradesh Civil Service (conduct) Rules - Rule 17; Representation of Peoples Act, 1951 - Sections 9; Andhra Pradesh State and Subordinate Service Rules - Rule 30

Appeal No. : WP No. 17739 of 1999

Appellant : P.V. Rao

Respondent : Director, Dept. of Information and Public Relations, Hyd. and Others

Advocate for Def. : Mrs. C.P. Sarathi, Adv. and Addl. Advocate-General

Advocate for Pet/Ap. : Mr. S.A. Chari, Adv.

Judgement :

ORDER

B. Subhashan Reddy, J.

1. This writ petition has been filed complaining of inaction on the part of the Government in not relieving the petitioner from the service with effect from 31-7-1999, which was the date set by the petitioner in his application dated 17-7-1999.

2. The petitioner had been working as Editor (Telugu) in Information and Public Relations Department of State of Andhra Pradesh. He has taken-up the cause against the policy of the State Government to categorise Scheduled Castes into A, B, C and D. We are not concerned with the details of the said categorisation or dispute relating to the same. Suffice it to say that the petitioner had been advocating the cause of Malas and that there should not be any categorisation of scheduled castes. He has also been chosen as the President of Mala Mahanadu, a registered body for protecting the interests of the Scheduled Castes in general and Mala community in particular, and to oppose the division of these castes for political reasons. During the course of agitation against the said categorisation, the petitioner is said to have made some protests and participated in rallies and made some statements. Reacting to the same, the State Government had initiated disciplinary proceedings against him under CCA Rules. Criminal Prosecution was also launched in CC No. 1677 of 1998 on the file of the XV Metropolitan Magistrate, Hyderabad against the petitioner who is the Accused No.1 in the said case and others for the offences punishable under Sections 144, 147, 353, 506, 188 read with Section 149 IPC as also Section 7 of Cr.Law Amendment Act. By judgment dated 28-6-1999, the Court of Metropolitan Magistrate acquitted the accused of other offences excepting the one under Section 143 IPC and for the said offence, the Accused No.1 and 25 others were convicted and were sentenced to pay a fine of Rs.500/- each and in default to undergo RI for one month. The petitioner was placed under suspension, but the fact remains that his suspension has not been revoked and he continues to be under suspension even on this day. The disciplinary proceedings which were initiated against the petitioner had been enquired into by the Enquiry Officer appointed in G.O. Rt. No.803, GAD, dated 25-2-1999 and the charges run as follows:

(i) for his absents from duty without applying for any leave;

- (ii) not obtaining prior permission or informing to the Government to act as Chief Convenor Mala Mahanadu with its aims and objectives;
- (iii) as Chief Convenor of Mala Mahandu conducting rallies, Press conferences etc., against the policies of Government being a Government Servant;
- (iv) as Chief Convenor, Mala Mahandu (on leave) giving a call for by-cotting 50 years of India's Independence Day celebrations;
- (v) as Chief Convenor of Mala Mahanadu he has issued Press Statements criticising the Chief Minister and policies of Government. He also expressed to influence the Lok Sabha Elections either directly or indirectly.

Mr. A.D. Kismat Kumar, Additional Director of Information and Public Relations Department, who was appointed as an Enquiry Officer, after making enquiry had submitted his report on 27-7-1999 and the Government is seized of the matter for taking action pursuant to the said report. Meanwhile, the petitioner has on 17-7-1999 filed an application before the Government seeking voluntary retirement with effect from 31-7-1999 and if the same was not accepted, to treat the same as resignation relieving him on 31-7-1999 by waiving any notice period and if it is not possible, to waive notice period and he was prepared to pay salary in lieu of notice period on being communicated in that regard.

3. In the said application dated 17-7-1999, the petitioner made it clear that he was intending to contest in the ensuing Assembly Elections. In fact, he has applied for Congress ticket and got the same for Allavaram SC-reserved constituency, but could not file his nomination, which was to be filed by 24th August, 1999 consequent to the election notification issued on 17-8-1999, as his resignation was not accepted. He had filed O.A.No.5086 of 1999 before the Andhra Pradesh Administrative Tribunal, but the same was dismissed by its order dated 18-8-1999. Hence, this writ petition.

4. Mr. S.A. Chary, the learned Counsel appearing for the petitioner vehemently contends that once resignation application is given, it was bound to be accepted and a month's time amounts to inordinate delay in discharging the functions by the

State and that when he had offered to resign, the Government was obligated to accept the same and there was no discretion for the Government to sit over the plea of resignation made by the petitioner. He has cited several judgments rendered by the Supreme Court in *Kameshwar v. State of Bihar*, : (1962)ILLJ294SC , *O.K. Ghosh v. Ex. Joseph*, : (1962)ILLJ615SC , *Dr. V.K. Javali v. State of Mysore*, : AIR 1966 SC1387 , *State of West Bengal v. B.K. Barman*, : (1970)ILLJ698SC , *Madhu Limaye v. S.D.M. Monghyr*, : 1971 CriLJ1720 , *State of M.P. v. Ramashanker Raghuvanshi*, : (1983)ILLJ299SC , *Prakash Cotton Mills Private Limited v. Rashtriya Mills Mazdoor Sangh*, : (1987)ILLJ97SC , and *Bilal Ahined Kaloo v. State of Andhra Pradesh*, : 1997 CriLJ4091 , but the said judgments have got no bearing on the issue for adjudication. The issue for adjudication is as to whether there is any inaction on the part of the Government in responding to the application dated 17-7-1999 filed by the petitioner and as to whether there is an unreasonable delay in considering the said application and as to whether the acceptance of resignation is automatic.

5. Mr. D. Prakash Reddy, the learned Additional Advocate-General appearing for the State has submitted that there is no inaction on the part of the Government in dealing with the application dated 17-7-1999 filed by the petitioner and that there is no unreasonable delay and it is not obligatory on the part of the Government to accept the resignation of the petitioner per force. He also submits that the application dated 17-7-1999 filed by the petitioner is not an unqualified plea of resignation, but it was only a conditional one. Making a reference to the file produced by the Government, he submits that there is no unreasonable delay on the part of the Government and that the Government has never intended to prevent the petitioner from contesting the elections, if he is entitled to do so in law.

6. Mr. C.P. Sarathy, the learned senior Counsel appearing for the Election Commission strenuously contends that this Court cannot invoke its power under Article 226 of the [Constitution of India](#) to entertain this writ petition for the reason that the election process has already started and cited the judgments of the Supreme Court in *Election Commission of India v. Shivaji*, *S.T. Muthusami v. K. Natarajan*, and *Chief Election Commissioner v. Dr. Alladi P. Raj Kumar*.

7. At the outset, we hold that adjudication with regard to powers of this Court in the context of commencement of election process is not necessary.

8. The petitioner had been in Government service for more than 20 years and he knows fully well the conditions of service governing the public employment and the relevant Rules thereto, including the disciplinary rules. As the disciplinary authority is seized of the matter, it may not be proper for us to dwell as to whether the charges levelled against him, particularly, charges 3, 4 and 5 will come within Rule 17 of Andhra Pradesh Civil Service (conduct) Rules resulting in disqualification to contest on the ground of disloyalty to Government as contemplated in Section 9 of Representation of Peoples Act, 1951. It is pertinent to mention that such an event has not yet taken place as the matter is pending consideration before the Government.

9. It is not a crime to join politics. But a person seeking to join politics should adhere to the conditions laid down in Representation of Peoples Act, 1951. A contestant cannot hold a Governmental post on the date of his nomination. Seven daytime was available for filing nomination i.e., from 17-8-1999 to 24-8-1999. That time is over. But, as an interim measure and having regard to the balance of convenience, we had permitted the petitioner to file his nomination and directed the authorities to accept his nomination subject to such further orders as may be passed in this case. We are told that the nomination has been filed by the petitioner and that will be scrutinised to-day.

10. We have heard all the learned Counsel comprehensively and are of the considered view that the writ petition lacks merits and is fit to be dismissed for the reasons mentioned infra:

(1) The petitioner ought to have submitted his resignation the moment he thought that he would join politics.

(2) Application made by the petitioner on 17-7-1999 is not an outright tendering resignation, but, it was only qualified by seeking the Government's permission to retire voluntarily and if the Government considers that he is not entitled for voluntary retirement, then to accept his resignation and on such communication of

acceptance of resignation, he will pay back the salary in lieu of notice. Payment in lieu of notice has not been tendered along with the application dated 17-7-1999. The petitioner's affidavit filed into this Court to forego his retiral benefits cannot enable him to automatically resign, for the reason of the pendency of the disciplinary proceedings.

(3) Resignation comes into effect only on acceptance of the same by the Government and it is still under consideration.

(4) Acceptance of resignation is not automatic and the same can be hauled-up and it is rightly hauled-up in the instant case as the petitioner had been under suspension and his suspension is not revoked and is still in operation, as contemplated under Rule 30 of Andhra Pradesh State and Subordinate Service Rules.

(5) There is neither inaction nor unreasonable delay in dealing with the disciplinary proceedings against the petitioner as also considering his application dated 17-7-1999, as the enquiry was concluded on 28-6-1999 and the Enquiry Officer had submitted his report on 27-7-1999 and the matter has been processed and on 30-7-1999, a decision has been taken by the Government basing upon the enquiry report to inflict major penalty on the petitioner and show-cause notice is in the offing. Resignation plea will be dealt with basing on the said decision.

11. In view of what is stated supra, there are no grounds to urge that there is either inaction or unreasonable delay in responding to his application dated 17-7-1999 and the petitioner continues to be the Government servant as on this day. It is needless to state that interim directions granted on 20-8-1999 and 23-8-1999 stand vacated. In result, this writ petition is dismissed without costs.