



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

[3509]

MONDAY ,THE ELEVENTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

THE HONOURABLE SRI JUSTICE CHALLA GUNARANJAN

WRIT PETITION NO: 14098/2022

Between:

Madicharla Lakshmi,

...PETITIONER

AND

The State Of A P and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.N NAGARAJA KAPOOR

Counsel for the Respondent(S):

1.GP FOR SERVICES IV

2.GP FOR SERVICES I

The Court made the following:

ORDER:- (per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri N.Nagaraja Kapoor, learned counsel for the petitioner and learned Government Pleader for Services – I for the respondents.

2. The petitioner filed OA.No.2337 of 2008 before the Andhra Pradesh Administrative Tribunal which was disposed of by an order dated 09.02.2010 in the following terms:

“In view of the aforesaid decision of the Hon'ble Supreme Court, the respondents are directed to consider the case of the applicant strictly in accordance with the provisions of G.O.Ms.No.212, dated 22.04.1994 and pass appropriate orders within a period of 8 weeks from the date of receipt of a copy of this order. With these directions, the OAs stand disposed of.”

3. The petitioner filed this writ petition submitting that the order of the Tribunal was not complied with and prayed for implementation of the order of the Tribunal, with the following prayer:

“.....to issue a Writ Order or Order or direction more particularly Writ of Mandamus by declaring the action of the respondents in not implementing the Orders of the Hon'ble A.P Administrative Tribunal passed in O A No2337/2008 dated 09.02.2010 even as on today and did not regularize the services of the petitioner's husband w.e.f. the date of completion of 5 years of services though he fulfils all the conditions of G.O.Ms.No.212 dt.22.04.1994 where as the similar orders were implemented by the respondents vide G.O.Ms.No.109 PR&RD (ESTT. III) Department, dated 18.07.2019, and denying the same orders to the petitioners husband is illegal arbitrary and discriminatory and consequently direct the respondents to implement the orders passed in O.A.No.2337/2008 dated 09.02.2010 and extend the benefit of G.O.Ms.No.109 PR&RD Department, dated 18.07.2019 and pass”

4. Learned Government Pleader submits that the respondent No.5 has filed the counter affidavit submitting *inter-alia* that the case of the petitioner was considered pursuant to the direction of the Tribunal but was rejected vide

order dated 06.05.2010, a Copy of which has also been annexed along with the counter affidavit.

5. Learned counsel for the petitioner submits that the said order dated 06.05.2010 though filed along with the counter affidavit but was never communicated to the petitioner and in view of its non-communication, that order is no order in the eye of law. He places reliance in the case of ***State of Punjab V. Amar Singh Harika***¹ and submits further that, consequently, this writ petition for implementation of the order dated 09.02.2010 of the Tribunal, still survives and direction may be issued to implement the said order as prayed in the writ petition.

6. Learned Government Pleader for Services-I submits that in para-12 of the counter affidavit it is clearly mentioned that the order dated 06.05.2010 was communicated to the petitioner through RPAD though the acknowledgment of the registered post letter was not received back in the office.

7. In reply, learned counsel for the petitioner refers to para-10 of the rejoinder affidavit but could not point out that the pleading of communication of the order as mentioned in para-12 of the counter affidavit, was denied specifically, that the order was not communicated.

8. It has not been submitted that the registered letter was not sent to the correct address.

¹ 1966 SCC OnLine SC 48

9. In ***Amar Singh Harika*** (supra), the respondent therein was an Assistant Director, Civil Supplies. He was dismissed from service vide order dated 03.06.1949 which was communicated to him on 2nd /3rd January, 1953. The Hon'ble Apex Court held that mere passing of an order of dismissal would not be effective unless it was published and communicated to the officer concerned. If the appointing authority passed an order of dismissal but did not communicate it to the officer concerned, theoretically it was possible that unlike in the case of a judicial order pronounced in Court, the authority might change its mind and decide to modify its order. It was observed that the order of dismissal passed by the appropriate authority and kept with itself, could not be said to have taken effect unless the officer concerned knew about the order and it was otherwise communicated to all the parties concerned. The Hon'ble Apex Court observed that if it was held that the mere passing of the order of dismissal had the effect of terminating the services of the officer concerned, various complications might arise. Relevant part in para No.11 of the judgment is as under:

"11. The first question which has been raised before us by Mr. Bishan Narain is that though the respondent came to know about the order of his dismissal for the first time on 28th May 1951, the said order must be deemed to have taken effect as from 3rd June 1949 when it was actually passed. The High Court has rejected this contention; but Mr. Bishan Narain contends that the view taken by the High Court is erroneous in law. We are not impressed by Mr. Bishan Narain's argument. It is plain that the mere passing of an order of dismissal would not be effective unless it is published and communicated to the officer concerned. If the appointing authority passed an order of dismissal, but does not communicate it to the officer concerned,

theoretically it is possible that unlike in the case of a judicial order pronounced in Court, the authority may change its mind and decide to modify its order. It may be that in some cases, the authority may feel that the ends of justice would be met by demoting the officer concerned rather than dismissing him. An order of dismissal passed by the appropriate authority and kept with itself, cannot be said to take effect unless the officer concerned knows about the said order and it is otherwise communicated to all the parties concerned. If it is held that the mere passing of the order of dismissal has the effect of terminating the services of the officer concerned, various complications may arise. If before receiving the order of dismissal, the officer has exercised his power and jurisdiction to take decisions or do acts within his authority and power, would those acts and decisions be rendered invalid after it is known that an order of dismissal had already been passed against him? Would the officer concerned be entitled to his salary for the period between the date when the order was passed and the date when it was communicated to him? These and other complications would inevitably arise if it is held that the order of dismissal takes effect as soon as it is passed though it may be communicated to the officer concerned several days thereafter. It is true that, in the present case, the respondent had been suspended during the material period; but that does not change the position that if the officer concerned is not suspended during the period of enquiry, complications of the kind already indicated would definitely arise. We are, therefore, reluctant to hold that an order of dismissal passed by an appropriate authority and kept on its file without communicating it to the officer concerned or otherwise publishing it will take effect as from the date on which the order is actually written out by the said authority; such an order can only be effective after it is communicated to the officer concerned or is otherwise published. When a public officer is removed from service, his successor would have to take charge of the said office; and except in cases where the officer concerned has already been suspended, difficulties would arise if it is held that an officer who is actually working and holding charge of his office, can be said to be effectively removed from his office by the mere passing of an order by the appropriate authority. In our opinion, therefore, the High Court was plainly right in holding that the order of dismissal passed against the respondent on 3 June 1949, could not be said to have taken effect until the respondent came to know about it on 28 May 1951.

10. It is evident that the judgment in ***Amar Singh Harika*** (supra) relates to the passing and communication of the order of dismissal from service. What has been held is for the reasons recorded in the said judgment, *inter-alia*, the complications that may arise if the order of dismissal from service is not communicated to the officer concerned. The authority may change its mind and modify the same before its communication. The complications may arise if before communication such officer does some act within its authority and jurisdiction.

11. ***Amar Singh Harika*** (supra) was considered by Hon'ble Apex Court in ***State of Punjab v. Khemi Ram***². The question whether communicating the order means its actual receipt by the concerned Government servant was also considered. It was held that once an order was issued and it was sent out to the concerned Government servant, it must be held to have been communicated to him, no matter when he actually received it. In ***Khemi Ram*** (supra) the Hon'ble Apex Court further observed that actual knowledge of an order of dismissal may perhaps become necessary because of the consequences which the decision in ***Amar Singh Harika*** (supra) contemplates. But such consequences would not occur in the case of an officer who had proceeded on leave and against whom an order of suspension was passed because in his case there was no question of his doing any act or passing any order and such act or order being challenged as invalid.

² (1969) 3 SCC 28

12. Para No.17 of ***Khemi Ram*** (supra) is as under:

“17. The question then is whether communicating the order means its actual receipt by the concerned Government servant. The order of suspension in question was published in the Gazette though that was after the date when the respondent was to retire. But the point is whether it was communicated to him before that date. The ordinary meaning of the word 'communicate' is to impart, confer or transmit information. (cf. Shorter Oxford English Dictionary, Vol. 1, p. 352). As already stated, telegrams, dated July 31, and August 2, 1958 were despatched to the respondent at the address given by him where communications by Government should be despatched. Both the telegrams transmitted or imparted information to the respondent that he was suspended from service with effect from August 2, 1958. It may be that he actually received them in or about the middle of August 1958 after the date of his retirement. But how can it be said that the information about his having been suspended was not imparted or transmitted to him on July 31 and August 2, 1958, i.e. before August 4, 1958, when he would have retired? It will be seen that in all the decisions cited before us it was the communication of the impugned order which was held to be essential and not its actual receipt by the officer concerned and such communication was held to be necessary because till the order is issued and actually sent out to the person concerned the authority making such order would be in a position to change its mind and modify it if it thought fit. But once such an order is sent out, it goes out of the control of such an authority, and therefore, there would be no chance whatsoever of its changing its mind or modifying it. In our view, once an order is issued and it is sent out to the concerned Government servant, it must be held to have been communicated to him, no matter when he actually received it. We find it difficult to persuade ourselves to accept the view that it is only from the date of the actual receipt by him that the order becomes effective. If that be the true meaning of communication, it would be possible for a Government servant to effectively thwart an order by avoiding receipt of it by one method or the other till after the date of his retirement even though such an order is passed and despatched to him before such date. An officer against whom action is sought to be taken, thus, may go away from the address given by him for service of such orders, or may deliberately give a wrong address and thus prevent or delay its receipt and be able to defeat its service on him. Such a meaning of the word 'communication' ought not to be given unless the

*provision in question expressly so provides. Actual knowledge by him of an order where it is one of dismissal, may, perhaps, become necessary because of the consequences which the decision in **State of Punjab v. Amar Singh** contemplates. But such consequences would not occur in the case of an officer who has proceeded on leave and against whom an order of suspension is passed because in his case there is no question of his doing any act or passing any order and such act or order being challenged as invalid.”*

13. The present case is not a case of the order of dismissal from service. Here, the authority passed the order pursuant to the directions issued by the Tribunal in OA and also sent the same through registered post with acknowledgment due. The order was not kept with the authority so as to modify or change the same. The act of sending through registered post with acknowledgment due is itself ‘communication’. The requirement is not of actual receiving, as it is not a case of dismissal of a Government servant nor of accrual of the consequences or doing of any act or passing any order by the petitioner herein which might be challenged as invalid as contemplated in **Amar Singh Harika** (supra). The order was sent to the petitioner through registered post which is due communication.

14. In view of the specific order dated 06.05.2010 filed along with the counter affidavit, we cannot accept the submission that the order of the Tribunal dated 09.02.2010 was not implemented. The direction was to consider and on consideration, the petitioner’s case was rejected. The order dated 06.05.2010 is not under challenge even after the same was brought on record by way of

counter affidavit. The present petition was filed only for implementation of the Tribunal's order dated 09.02.2010. The same has already been implemented.

15. We are of the considered view that the writ petition is misconceived. It is devoid of merit and is dismissed.

No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

RAVI NATH TILHARI,J

CHALLA GUNARANJAN,J

Dated: 11.11.2024
AG

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
THE HONOURABLE SRI JUSTICE CHALLA GUNARANJAN

WRIT PETITION NO: 14098/2022

Dated: 11.11.2024
AG