HIGH COURT OF ANDHRA PRADESH

* * * *

WRIT APPEAL NO: 1017 OF 2026

Between:
The State of Andhra Pradesh and another

.....APPELLANTS

AND
M.S.Chandra Sekhara Rao and 3 others

.....RESPONDENTS

DATE OF JUDGMENT PRONOUNCED : 02.11.2026
DATE OF JUDGMENT UPLOADED : .11.2026

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HONOURABLE SRI JUSTICE ALAPATI GIRIDHAR

1. *Whether Reporters of Local newspapers may be allowed to see the Judgments?* *Yes/No*

2. *Whether the copies of judgment may be marked to Law Reporters/Journals* *Yes/No*

3. *Whether Your Lordships wish to see the fair copy of the Judgment?* *Yes/No*

_____

RAVI NATH TILHARI, J

_____

ALAPATI GIRIDHAR, J

APHC010401902026

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI

*** THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**
&
*** THE HON'BLE SRI JUSTICE ALAPATI GIRIDHAR**

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Between:
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.....APPELLANTS

AND
M.S.Chandra Sekhara Rao and 3 others

.....RESPONDENTS

! Counsel for the Appellants : Sri R.S. Manidhar Pingali

Counsel for the Respondents : Sri B.Ravi Chandra

< Gist :

> Head Note:

? Cases Referred:

1. (1996) 9 SCC 395
2. (1993) 3 SCC 196

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

THE HONOURABLE SRI JUSTICE ALAPATI GIRIDHAR

WRIT APPEAL NO: 1017 OF 2026

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

Heard Sri R.S.Manidhar Pingali, learned Government Pleader for the appellants and Sri B. Ravi Chandra, learned counsel for respondent No.1 (writ petitioner).

2. Respondent No.2 herein was respondent No.3 in the writ petition No.11298 of 2026 and is a formal party.

3. Respondent No.1 is the writ petitioner. He filed Writ Petition No.11298 of 2026 to set aside the charge memo issued to him vide R.C.No.A1/02/2020 dated 16.05.2024 and for a direction to the respondents therein to provide full pension, gratuity, commutation, earned leave encashment and all other terminal benefits applicable with interest on par with the similarly situated persons, in Cir.Memo.No.993093/FIN01-HR0CL/9/2019-HR-III dated 15.03.2020 of the Finance Department, Government of Andhra Pradesh.

4. The writ petitioner was appointed as Hostel Welfare Officer Grade-II on 13.01.1992 in B.C.Welfare Department and was promoted as Grade-I Hostel Welfare Officer. He retired on 31.05.2024. While he was working as Hostel Welfare Officer at Amruthalur, a surprise check was

conducted by ACB officials on 03.01.2020. The writ petitioner was given a charge memo dated 16.05.2024 vide R.C.No.A1/02/2020.

5. Challenging the charge memo the writ petition was filed.

6. The writ petition has been allowed, at the admission stage vide judgment dated 26.04.2026. The charge memo dated 16.05.2024 has been quashed. The directions have been issued to the respondents in the writ petition (the writ appellant) for the payment of pension, gratuity, commutation etc., to the writ petitioner. The relevant part of the order dated 26.04.2026 in paras 6 to 10 reads as under:

> "6. Shorn of the details, the aforementioned charge memo was issued on 16.05.2024 based on a surprise check dated 15.07.2017 i.e. four years from the date of the alleged incident. It is pertinent to have a look at Rule 9(2)(b) of the Rules, which is relevant to this context. Rule 9(2)(b) of the Pension Rules, reads thus:
>
> "9 (2) (a) … ……
>
> (b) The Departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment;
>
> (i) shall not be instituted save with the sanction of the Government;
>
> (ii) shall not be in respect of any event which took place more than four years before such institution; and
>
> (iii) …"

7. Thus, Rule 9(2)(b) (ii) bars the institution of departmental proceedings in respect of an event that has taken place four years before the institution of proceedings.

8. In the case at hand, the alleged incident took place on 03.01.2020. However, charge memo was issued on 16.05.2024 i.e. after four years from the date of the alleged incident.

9. Given the facts and circumstances of the case, since the charge memo, impugned in the writ petition, was issued contrary to Rule 9(2)(b)(ii) of the Rules, which is liable to be set aside.

10. Accordingly, this writ petition is allowed at the admission stage. The charge memo issued vide R.C. No.A1/02/2020 dated 16.05.2024, against the petitioner, is hereby quashed. Since the petitioner retired from service on 31.05.2024, the respondents are hereby directed to pay full pension, gratuity, commutation, earned leave encashment and all other terminal benefits applicable with interest on par with the Circular Memo dated 15.03.2020 of the Government of Andhra Pradesh. No costs."

7. Writ Appeal has been filed by the State respondents in the writ petition against the order dated 26.04.2026.

8. Learned Government Pleader submits that in the facts of the case, Rule 9(2)(b)(ii) of the A.P.Revised Pension Rules, 1980 (in short 'Pension Rules') was not attracted. The charge memo was issued on 16.05.2024. The writ petitioner retired on 31.05.2024. So, the departmental proceedings were instituted while the writ petitioner was in service.

9. Learned Government Pleader also referred to the Rule 9(6) of the Pension Rules to contend that the departmental proceedings in this case, shall be deemed to be instituted on the date on which the statement of charges was issued to the Government servant. The writ petitioner since was not placed under suspension, the latter part of Rule 9(6)(a) is not attracted.

10. Learned counsel for respondent No.1 (writ petitioner) submits that the charge memo was served on the petitioner on 31.05.2024. He also refers to para-4 of the affidavit in support of the writ petition, in which it was stated as under, that

> *"…….the Collector & District Magistrate, Guntur, given Charge Memo vide RC.No.A1/02/2020 dated 16.05.2024, which Charge Memo received by the Petitioner on 31.05.2024."*

11. Learned counsel for respondent No.1 (writ petitioner) further submits that 31.05.2024 shall be treated as non working day for the writ petitioner, under Rule 5(b) of the Pension Rules. So, the charge memo was served on a non-working day and consequently, Rule 9(2)(b) was attracted. The incident happened more than four years back. The charge memo has rightly been set aside by the learned Single Judge.

12. We have considered the aforesaid submissions of the learned counsels for the parties and perused the material on record.

13. The facts are not in dispute. The writ petitioner retired from service on 31.05.2024. The charge memo was issued vide RC.No. R.C.No.A1/02/2020 dated 16.05.2024. According to the writ petitioner the was served on 31.05.2024. The charge memo is with respect to an event which occurred more than 4 years back.

14. Rule 9(2) of the Rules 1980 reads as under:

> "9(1)……..
>
> 9(2)(a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.
>
> Provided that where the departmental proceedings are instituted by an authority subordinate to the State Government, that authority shall submit a report recording its findings to the State Government.
>
> (b) The Departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment:
>
> (i) shall not be instituted save with the sanction of the Government;
>
> (ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the State Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

15. Rule 9(2)(b) provides that the Departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment then in that case the departmental proceedings **(i)** shall not be instituted save with the sanction of the Government; **(ii)** shall not be in respect of any event which took place more than four years before such institution; and **(iii)** shall be conducted by such authority and in such place as the State Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

16. The plain reading of Rule 9(2)(b)(ii) makes it evident

i) that if the departmental proceedings were not instituted while the Government Servant was in service, then the departmental proceedings cannot be instituted at all with respect to any event which took place more than four years before such institution.

ii) that the departmental proceedings, even after retirement can be instituted to any event where a period of four years prior to such

institution has not expired but with the sanction of the Government and

iii) that if the Departmental Proceedings have been instituted when the Government servant is in service, there would arise no question of the event being four years or more on the date of institution of the departmental proceedings.

17. Rule 9(6) of A.P.Revised Pension Rules, 1980 reads as under:

> "6) For the purpose of this rule-
>
> (a) **departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant** or pensioner of if the Government servant has been placed under suspension from an earlier date; on such date; and
>
> (b) Judicial proceedings shall be deemed to be instituted-
>
> (i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognisance, is made; and
>
> (ii) in the case of Civil proceedings, on the date the plaint is presented in the Court."

18. As per Rule 9(6) of the Pension Rules, the Departmental proceedings are deemed to be instituted on the date on which the statement of charges is issued to the Government servant.

19. It is not in dispute that the Charge memo was issued on 16.05.2024. It shall therefore be deemed that the departmental proceedings were initiated on 16.05.2024. The writ petitioner retired on

31.05.2024. So, the initiation of the departmental proceedings is at the time when the writ petitioner was in service.

20. In ***State of U.P. v. Shri Krishna Pandey***[1], under consideration was Regulation 351-A of Civil Services Regulations. It was on the same lines as of Rule 9(2)(b) & 9(6) of AP Revised Pension Rules, 1980. The Hon'ble Apex Court held that, the departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him. Para Nos.3 to 5 of ***Shri Krishna Pandey*** (supra) are reproduced as under:

> **"3.** The only provision brought to our notice is Regulation 351-A of Civil Services Regulations which reads as under:
>
> "The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct, or to have caused pecuniary loss to Government by misconduct or negligence, during his service, including service rendered on re-employment after retirement:
>
> **Provided that**
>
> **(*a*) such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment—**
>
> **(*i*) shall not be instituted save with the sanction of the Governor,**
>
> **(*ii*) shall be in respect of an event which took place not more than four years before the institution of such proceedings,** and

[1] (1996) 9 SCC 395

(*iii*) shall be conducted by such authority and in such place or places as the Governor may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made.

(*b*) judicial proceedings, if not instituted while the officer was on duty either before retirement or during re-employment, shall be instituted in accordance with sub-clause (*ii*) of clause (*a*) and

(*c*) the Public Service Commission, U.P., shall be consulted before final orders are passed.

***Explanation*.—For the purpose of this Article—**

(*a*) departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him, or if the officer has been placed under suspension from an earlier date, on such date; and

(*i*) in the case of criminal proceedings, on the date on which a complaint is made, or a charge-sheet is submitted, to a criminal court; and

(*ii*) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made, to a civil court.

Note.—As soon as proceedings of the nature referred to in this article are instituted the authority which institutes such proceedings shall without delay intimate the fact to the audit officer concerned."

4. A reading thereof clearly indicates that the Governor reserves to himself the power and right to withhold or withdraw pension or a part thereof, whether permanently or for a specified period. Equally, he has right to order recovery from pension of the whole or part of any pecuniary loss caused to the Government when it is found in a departmental or judicial proceedings that the delinquent was guilty of grave misconduct or has caused pecuniary loss to the Government by his misconduct or negligence while he was continuing in service including the period of his re-employment after retirement. **But the conditions precedent are that the departmental proceedings should be initiated only either before retirement or during re-employment and the same shall not be instituted without the**

sanction of the Governor. It should be in respect of an event which may have taken place not more than 4 years before the institution of such proceedings.

5. Explanation to the rule purports to give the meaning to the words **"commencement of departmental proceedings". It says that departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him**, or if the officer has been placed under suspension from an earlier date, from such date the date of suspension and the proceedings shall be deemed to have been instituted in the case of criminal proceedings, on the date on which complaint is made or a charge-sheet is submitted to a criminal court; and in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made to the civil court. As soon as the proceedings of the nature referred in the articles are instituted, the authority which institutes such proceedings shall without delay intimate the fact to the audit officer concerned."

21. In ***Delhi Development Authority v. H.C.Khurana***[2], where the question was "what is the stage, when it can be said that the decision has been taken to initiate disciplinary proceedings", the Hon'ble Apex Court held as follows vide para-9:

"9. The question now, is : What is the stage, when it can be said, that 'a decision has been taken to initiate disciplinary proceedings'? We have no doubt that the decision to initiate disciplinary proceedings cannot be subsequent to the issuance of the charge-sheet, since issue of the charge-sheet is a consequence of the decision to initiate disciplinary proceedings. Framing the charge-sheet, is the first step taken for holding the enquiry into the allegations, on the decision taken to initiate disciplinary proceedings. The charge-sheet is framed on the basis of the allegations made against the government servant; the charge-sheet is then served on him to enable

[2] (1993) 3 SCC 196

> him to give his explanation; if the explanation is satisfactory, the proceedings are closed, otherwise, an enquiry is held into the charges; if the charges are not proved, the proceedings are closed and the government servant exonerated; but if the charges are proved, the penalty follows. **Thus, the service of the charge-sheet on the government servant follows the decision to initiate disciplinary proceedings, and it does not precede or coincide with that decision. The delay, if any, in service of the charge-sheet to the government servant, after it has been framed and despatched, does not have the effect of delaying initiation of the disciplinary proceedings, inasmuch as information to the government servant of the charges framed against him, by service of the charge-sheet, is not a part of the decision-making process of the authorities for initiating the disciplinary proceedings**."

22. In ***Delhi Development Authority*** (supra), the Hon'ble Apex Court held that the decision to initiate disciplinary proceedings cannot be subsequent to the issuance of the charge sheet, since issue of the charge-sheet is a consequence of the decision to initiate disciplinary proceedings. The Hon'ble Apex Court held that the delay, if any, in service of the charge sheet to the Government servant, after it has been framed and dispatched, does not have the effect of delaying initiation of the disciplinary proceedings, in as much as information to the government servant of the charges framed against him, by service of charge-sheet, is not a part of the decision making process of the authorities for initiating the disciplinary proceedings.

23. Learned Single Judge has taken a view that the charge memo was issued on 16.05.2024 based on a surprise check dated 3.01.2020 which

was four years and 4 months prior to issuance of the charge memo, and therefore the initiation of the Departmental Proceedings was against Rule 9(2)(b)(ii) of the Rules, 1980. The view taken is that Rule 9(2)(b)(ii) bars the institution of departmental proceedings in respect of an event that has taken place four years before its institution. Rule 9(6) was not brought to the notice of the learned Single Judge. The date of issuance of charge memo dated 16.05.2024 is not in dispute. Even its service, as per the case of the writ petitioner is on 31.05.2024 i.e., on the date of retirement and not on a date after retirement. So service of charge memo is also when the writ petitioner was in service.

24. Learned counsel for respondent No.1 (writ petitioner) submitted that the charge memo was served on 31.05.2024 the last date of retirement.

25. Rule 5 of the Revised Pension Rules, 1980 reads as under:

> **“5. Regulation of claims to pension or family pension:-**
>
> 1)(a) Any claim to pension or family pension shall be regulated by the provisions of these rules in force at the time when a Government servant retires or is retired or is discharged or is allowed to resign from service or dies, as the case may be.
>
> (b) **The day on which the Government Servant retires** or is retired or is discharged or is allowed to resign or voluntarily retire from service, as the case may be **shall be treated as a non-working day** but the date of death shall be treated as a working day.
>
> (c) Any type of pension sanctioned under these rules, except Family pension, shall be subject to rule 45.”

26. The submission of the learned counsel for the respondent No.1, based on Rule 5(1)(b) that the service of charge memo was on last day of retirement is treated as a non-working day and therefore Rule 9(2)(b)(ii) was attracted is misconceived. We are of the view that

(i) even if the date on which the Government Servants retires shall be treated as a non-working day; in this case 31.05.2024, it does not mean that on a non –working day, the Government servant is not in service. He is very much in service even on last day which might be treated as a non-working day;

ii) even if the charge memo was served as per the writ petitioner's case on 31.05.2024 such service was when the writ petitioner was in service;

iii) even if it be taken that issuance of charge memo in Rule 9(6) may include service of charge memo to the Government employee, then also the charge memo was served when the writ petitioner was in service. So, the institution of the Departmental proceedings was at a time when writ petitioner was in service and not after his retirement; and

iv) in either case Rule 9(2)(b)(ii) was not attracted.

27. We are of the view that Rule 9(2)(b)(ii) of the Rules, 1980 shall be attracted where the departmental proceedings are instituted after the retirement and not during the service period or during the re-employment of the government servant. During service period for initiation of Departmental proceedings, the question of the date of the event taking place four years back is also not relevant.

28. Learned Government Pleader who appeared in the writ petition did not correctly place the factual and the legal position, which is evident from para-5 of the judgment which reads as under:

> "5. Learned Assistant Government Pleader for services, fairly conceded that Rule 9 of the Rules, applies to the facts of the case and charge memos are liable to be quashed."

29. The aforesaid shows that the learned Assistant Government Pleader for services who appeared in the writ petition conceded at the admission stage that Rule 9 of the Rules, applied and charge memo was liable to be quashed.

30. The learned Government Pleader Sri R.S.Manidhar Pingali, appearing in the writ appeal submits that there were no instructions to the learned Assistant Government Pleader appearing in the writ petition, to make such a statement or grant any concession. He further submits that, even otherwise, when it comes to the legal issues, the concession

granted by the counsel, if wrong, shall not be binding on the party and so it cannot be said that a contrary legal submission cannot be advanced in the writ appeal.

31. We are in agreement with the aforesaid submission. A wrong concession by counsel on a legal question can neither bind the party when it comes to a challenge in appeal nor the Court that since the concession was granted a contrary view on legal point cannot be taken.

32. The writ appeal is allowed. The order dated 27.04.2026 is set aside the necessary consequences, pursuant to initiation of departmental proceedings shall follow.

33. A copy of this judgment be served to the learned Advocate General, through proper mode.

No order as to costs.

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

RAVI NATH TILHARI, J

ALAPATI GIRIDHAR, J

Date: 02.11.2026
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THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

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