

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No. 7950 of 2015

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ORDER:

The petitioner herein, who was employed as a Conductor with the Andhra Pradesh State Road Transport Corporation (henceforth referred to as 'the Corporation'), challenges the action of the Depot Manager, Tirupati Depot, Chittoor District, the 2nd respondent herein, in suspending him from service through proceedings dated 31.10.2014.

The learned counsel for the petitioner Sri V. Eswaraiah Chowdary would submit that while the petitioner was on duty on 14-10-2014 on the bus bearing Registration No. AP-28-Z-0067 at about 7.00 am., at the bus depot, the security personnel on duty checked him in the presence of the Duty Controller and the breath alcohol analyzer has reported presence of 12 milligrams of alcohol in 100 milligrams of blood and hence, it was suspected that he was under the influence of an alcoholic beverage. The learned counsel for the petitioner would submit that the petitioner was, in fact, not maintaining good health and he has used 'Benadryl' cough syrup for getting over the irritable cough with which he was suffering. The petitioner therefore, attributes the findings of the breath analyzing test towards the negligible quantity of the alcohol present in the blood, to the consumption of the cough syrup. This apart, the learned counsel for the petitioner would also point out that the Corporation itself has issued a Circular on 22-09-2012 bringing out that the level of alcohol contained in the blood can be detected instantaneously besides obtaining the report in the form of a print out on the spot by subjecting the employees of the Corporation to the breath analyzing test using the latest gadgets. The Circular discloses that if 30 milligrams of alcohol is found in 100 milligrams of blood, then an inference can be drawn that such a person is under the influence of an alcoholic beverage. Since the finding in the instant case is only 12 milligrams of alcoholic presence, according to the learned counsel for the petitioner, the petitioner cannot be suspected to be under the influence of an alcoholic beverage and hence, he cannot be proceeded any further. The learned counsel for the petitioner would also submit that even Section 185 of the Motor Vehicles Act, 1988 would only recognize a person, who has

presence of 30 milligrams of alcohol in 100 milligrams of blood, to be under the influence of alcohol. Therefore, according to the learned counsel for the petitioner, the petitioner cannot be suspected to be under the influence of an alcoholic beverage and subjected to any disciplinary proceedings on that score.

Per contra, the learned Standing Counsel for the Corporation Sri A. Rama Rao would place reliance upon the Andhra Pradesh State Road Transport Corporation Employees' (Classification, Control and Appeal) Regulations, 1967. In Regulation 9, it is clearly spelt out that being under the influence of drink while on duty is a serious misconduct. Though the Regulation has not been happily framed, in that it has used a vague expression of 'drink' instead of using precise expression of 'alcoholic beverage', but nonetheless, all employees have understood the scope, content and meaning of this statement contained in the note appended to Regulation-9 of the Regulations, as 'influence of alcoholic beverage' only. Sri Rama Rao would contend that it is one thing to say that the petitioner has not exceeded the tolerable limits of influence of an alcoholic beverage and it is altogether different for him to say that he is not under the influence of alcohol at all. Sri Rama Rao would also place heavy reliance upon an unreported Judgment rendered in W.P.No.3627 of 2015 by my learned Brother Justice Vilas V. Afzulpurkar on 19-02-2015.

My learned Brother Justice Vilas V. Afzulpurkar has noted in para 5 of the Judgment as under:

"5. It is well settled that suspension pending enquiry can be interfered with by this Court only in the event of an order being passed by an authority incompetent to pass such order or in the event of the order being accentuated by malafides. Both the said events are absent in the present case. Moreover, suspension was found warranted by the Depot Manager, since the petitioner was about to take up service, as aforesaid and the passengers in the bus could not be exposed to the risk of driving by the petitioner. Even if it is accepted that the alcohol content, as per report, is within the permissible limit, the order of suspension pending enquiry does not deserve to be interfered with in the interest of the passengers in the bus. If the contention of the learned counsel for the petitioner is tested, it would lead to a situation where a driver, who shows a reading of 29.999mg/100ml would also justifiably claim that it is not a misconduct and that he is entitled to work as a driver and thereby, not only the passengers in the bus are put to risk but the general public using the road is also exposed to the risk. The consumption of alcohol and the affect of intoxication cannot be said to be uniform and as such,

merely because the alcohol content in the blood of the petitioner having found within the permissible limit, cannot, in my view, entitle the petitioner to contend that he is still entitled to drive the bus and discharge his normal functions as a driver without being subjected to any disciplinary action including suspension. Keeping in view this aspect, therefore, the discretion under Article 226 of the Constitution of India does deserved to be invoked in the present case. Since the order of this Court relied upon by the petitioner is only an interim order, the same is, obviously, not binding on a coordinate bench and as such, I am not inclined to entertain the writ petition for the reasons mentioned above. The respondents, however, shall consider the explanation of the petitioner and taken appropriate, further, steps for expeditious completion of the enquiry. The observations, on merits, if any, made hereinabove are only for the purpose of decision in the present writ petition and shall not affect the disciplinary authority in considering the disciplinary case.”

I am in complete agreement with the reasoning assigned by my learned Brother. It is one thing to say that a motor vehicle driver had exceeded the tolerance limits of alcohol while driving a motor vehicle and it is altogether a different thing to say that one has not breached the prescribed code of conduct.

The Corporation is a public-sector undertaking catering to the demand of the public for providing transportation facilities at an affordable cost. Therefore, the Corporation is entitled to ensure that all its employees bear appropriate and decent conduct. It is also expected to prescribe as to how the employees of the Corporation must bear appropriate conduct. When once the Corporation has recognized ‘the influence of alcohol while on duty’ as a serious misconduct, in my opinion, the quantum of presence of alcohol in the blood of the employee of the Corporation pales completely into insignificance. The Corporation apart from being obliged to preserve and protect its assets and manage its resources, including its precious financial resources, it also owes a larger social responsibility to the other road users. The primary duty and obligation of the Corporation is to ensure safety of the passengers / commuters, who prefer to travel by the buses deployed by it. Therefore, looked at it from this perceptive, the Corporation viewing its employees in particular to be under the influence of an alcoholic beverage as a serious misconduct, cannot be taken exception to, however much the percentage of the alcohol is available in the blood of the employee concerned.

No employee of the Corporation should either at the time of reporting for duty or while performing actually the duties can be found ever to be under the influence of an alcoholic beverage. I am therefore, of the opinion that the Corporation is fully justified in treating the conduct of its employees on duty who are under the influence of alcohol, however small quantity of its presence in the blood is, as a serious misconduct.

The learned counsel for the petitioner has placed reliance upon the Circular issued by the Vice-Chairman & Managing Director of the Corporation on 22-09-2012, which was issued subsequent to framing of the Regulations. It is for the Vice-Chairman & Managing Director of the Corporation to reconcile at the earliest this discrepancy. For this purpose, I direct the Registry to communicate a copy of this order to the Vice-Chairman & Managing Director, Andhra Pradesh State Road Transport Corporation, so as to provide an opportunity for reconciling the contradictions noticed supra.

I hope and trust that the inquiry initiated against the petitioner shall be completed as expeditiously as possible preferably within a maximum period of one month from the date of receipt of a copy of this order provided the petitioner extends the necessary cooperation through out.

With this, the writ petition stands disposed of at the admission stage, but however, without costs.

Consequently, the miscellaneous petitions, if any, stand disposed of.

NOOTY RAMAMOHANA RAO, J.

mrk

25.03.2015.