

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION NO.36394 of 2015

Between :

S.S.Rao, s/o. Papa Rao, Age: 42 years,
Occu: Driver, E.602286, r/o.Kakinada Depot,
Kakinada, East Godavari District.

.... Petitioner

and

The Depot Manager, A.P.S.R.T.C.,
Razole Depot, East Godavari District and two
others.

.... Respondents

DATE OF JUDGMENT PRONOUNCED : 25.11.2015

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THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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1. Whether Reporters of Local Newspapers : No
may be allowed to see the Judgments ?

2. Whether the copies of judgment may be : **Yes**
marked to Law Reporters/Journals

3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

***THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

+WRIT PETITION No.36394 of 2015

%25.11.2015

S.S.Rao, s/o. Papa Rao, Age: 42 years,
Occu: Driver, E.602286, r/o.Kakinada Depot,
Kakinada, East Godavari District.

... Petitioner

Vs.

\$ The Depot Manager, A.P.S.R.T.C.,
Razole Depot, East Godavari District and two
others.

.... Respondents

!Counsel for the petitioner : Sri T.S.Venkata Ramana

Counsel for the Respondents: Sri S.V.Ramana, standing
counsel for respondents

<Gist :

>Head Note:

? Cases referred:

1. 2009 (4) ALT 530
2. (2013) 16 SCC 147

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.36394 of 2015

ORDER:

Petitioner is a driver in Razole Depot of respondent-Corporation. In this Writ Petition petitioner is assailing the order of suspension dated 05.10.2015.

2. The facts giving rise to institution of this writ petition are as under. On 27.08.2015, petitioner was given duty of Razole – Sakinetapally route on Bus No.AP 28Z 2630. The total journey required to be covered was 402 KMs. After carrying the Bus for three trips of 360 KMs, in the last trip bus came to Razole Bus Stand at 1930 hours and has to start the bus within 10 minutes for the next trip. When petitioner attempted to start the Bus, the bus did not start due to engine failure. Accordingly, petitioner informed the Garage Superintendent, who sent the Mechanic to look into the mechanical problem of the bus. As the bus required repairs, it was carted into Garage at 2010 hours. Another bus was provided and petitioner completed the scheduled service by undertaking Palakolu trip. Alleging that petitioner indulged in mixing water in HSD oil in the service vehicle, he was placed under suspension by the order impugned in the writ petition.

3. Heard Sri T.S.Venkata Ramana, learned counsel for petitioner and learned standing counsel for respondents.

4. Learned counsel for petitioner contends that petitioner was not responsible for mixing of water in the HSD oil. Initial assessment of the mechanic for not starting the bus was that there was air-lock. After taking the bus to the garage, rain water could have sneaked into HSD tank. He submits that there was no need for the petitioner to mix the water in the oil tank. The fact that initially mechanic stated that there was air-lock lends credence to his contention. He further submits that petitioner was required to complete 402 KMs of traveling and he has accordingly completed. On account of failure of the Bus, the total time lost was approximately one hour and journey was completed without causing any inconvenience to the passengers. He, therefore, submits that false allegations are leveled against the petitioner. Suspension is unwarranted and made only to harass the petitioner.

5. Learned counsel further submits that there is no justification to place the petitioner under suspension on trivial charge. Furthermore, when there is no possibility of tampering of evidence or influencing the witness, suspension need not be resorted to. In the instant case, everything is on record. Petitioner is only a bus driver, he cannot have access to the record. His continuation in service cannot be said as detrimental to the respondent corporation. On the contrary, continuation of suspension would only deprive the experienced driver attending to the bus service.

6. In support of his contentions, learned counsel placed reliance on the decision rendered by the Division Bench of this Court in W.A.No.1316 of 2014 dated 27.10.2014; and in **the Deputy General of Police, Kurnool Range and four others vs. R.S.Madhubabu** (W.A.No.186 of 2009).

7. The report of the Assistant Engineer (Mechanical) of Razole Depot submitted on 29.08.2015 seems to suggest that there was contamination of HSD oil with water in the vehicle resulting in failure of the vehicle. The disciplinary authority considered the said report and found that initial statement given by the petitioner to the night trip supervisor that there was air-lock of the vehicle and, therefore, vehicle did not start was not correct. The disciplinary authority noticed that as per the record, two liters of water was found in the oil tank. Alleging that petitioner was responsible for mixing of water in HSD oil with an intention to increase the KMPL out put or to cancel the

kilometers on the ground of bus failure, amounts to fraudulent nature of the person and that he intended to tarnish the image of the Corporation. On the same day, disciplinary authority framed the charge. The charge sheet enlists the allegations and calls for the explanation of the petitioner.

8. Based on the law laid down in long line of precedents, it is clear that in matters of suspension, the exercise of extra-ordinary power of judicial review vested in this court under Article 226 of the Constitution of India is very limited. Scope of consideration is limited to the extent of examining the competence of the authority who places an employee under suspension; arbitrary exercise of power; selective suspension; allegations are frivolous/ technical in nature; suspension was wholly unwarranted; and there was no application of mind. In matters of suspension, each case has to be examined in the factual back ground of given case within the above parameters.

9. In **UNION OF INDIA V. ASHOK KUMAR AGGARWAL**, Supreme Court held as under:

“27.it is not desirable that the court may find out as to which version is true when there are claims and counterclaims on factual issues. The court cannot act as if it is an appellate forum de hors the powers of judicial review.”

10. The competency of the Depot Manager to place the driver under the suspension is not doubted and, therefore, there is no error in exercise of jurisdiction. Thus, the order is not vitiated on that ground.

11. In the facts of this case, it cannot be said there was no application of mind by the competent authority. The reading of the order of suspension would make it clear that disciplinary authority has not taken hasty decision to suspend. Only after a preliminary enquiry was conducted and based on the report submitted by the Assistant Engineer (mechanical) he placed the petitioner under suspension. The report *prima facie* would disclose that there was mixture of water. The disciplinary authority therefore assumes that since the bus was in the control of the petitioner and mixing of water would benefit the petitioner, he is responsible for such mixture of water which resulted in damage to the bus and resultant deficiency in provision of

service to the passengers.

12. The RTC provides incentive for generating higher mileage per liter. Furthermore, by the time petitioner completed three trips it was already 7.30 PM and the petitioner next trip would require traveling for another approximately 62 KMs. Therefore, disciplinary authority assumes that to increase the mileage or to suspend further service for the day, petitioner indulging in mixing of water. While taking the decision to place an employee under suspension what all is required is *prima facie* case of gravity of the charge.

13. It cannot be said that impugned order is result of illegal exercise of power or amounting to arbitrary exercise of power. It cannot be said that order of suspension is made for extraneous consideration or without application of mind and that it is not supported by material on record. In matters of this nature, employer not only looks at the conduct of employee *per se*, but in the larger perspective of enforcement of discipline, he would intend to send across a message to the employees that indulging in such illegal activities would not be spared. Enforcement of discipline is within the domain of employer. What is alleged against the petitioner relates to primary duty of the driver of the vehicle. It is the responsibility of the driver to maintain the vehicle in good condition. On a *prima facie* consideration of the allegations leveled against petitioner, it cannot be said that the allegation is trivial in nature.

14. The tenability of the allegation and the involvement of petitioner can only be gone into during the departmental enquiry and this Court cannot express any opinion on merits of the allegation. The decisions relied by the learned counsel do not come to the aid of the petitioner having regard to the facts of this case. I, therefore, see no error in the order of suspension warranting interference by this Court.

15. Accordingly, the writ petition is dismissed. There shall be no order as to costs. However, the disciplinary authority is directed to complete the enquiry and disciplinary action as expeditiously as possible, preferably within six weeks from the date of receipt of the copy of the order. It is made clear that what is discussed in the above paragraphs is for the purpose of considering the validity of the order of suspension and shall not prejudice the defense of the petitioner in the disciplinary proceedings.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 25.11.2015

Note: L.R. copy to be marked

B/o.

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HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 36394 of 2015

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Date: 25.11.2015

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