

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH
(Special Original Jurisdiction)

THURSDAY, THE NINETEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIFTEEN
PRESENT

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

WRIT PETITION No.3627 of 2015

BETWEEN

C.G. Anjappa.

... PETITIONER

AND

APSRTC, Rep. by its VC & MD, Musheerbad, Hyderabad and two others.

...RESPONDENTS

Counsel for the Petitioner: MR. PEETA RAMAN

Counsel for the Respondent: MR. A. RAMA RAO

The Court made the following:

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ORDER:

Petitioner, a driver in the respondent corporation, questions the impugned order of suspension pending enquiry and the charge sheet, both dated 11.12.2014, on the ground that the allegation made against him does

not amount to misconduct in terms of Section 185 of the Motor Vehicles Act as well as circular issued by the respondent corporation dated 22.09.2012.

2. The order of suspension itself records that on 28.11.2014 at about 09.18 hrs, when petitioner approached the main again with vehicle No. AP 29 Z 1969 to perform Tirupati – Bangalore N/O (night over) service, on being tested by on duty APSRTC constable with alcohol breath analyser, the report showed 22mg/100ml confirming that the petitioner consumed alcohol and that the petitioner refused to sign on the report and absconded from duty without giving spot statement. Hence, alternate arrangement was made and petitioner was suspended, pending enquiry and charge sheet was also issued.

3. Learned counsel for the petitioner submits that even in terms of Section 185 of the Motor Vehicles Act as well as the circular dated 22.09.2012, the misconduct is said to have been committed only if the content of alcohol is beyond the permissible limit of 30mg/100ml. Learned counsel, therefore, submits that, in the present case, since the alcohol content is only 22mg/100ml, neither the petitioner can be said to be a drunken person in terms of Section 185 of the Motor Vehicles Act nor the same amounts to any misconduct warranting disciplinary action. Learned counsel also points out that the petitioner has filed a detailed explanation before the third respondent on 20.02.2015 and submits that the order of suspension is wholly unwarranted and amounts to affecting the reputation of the petitioner and also affecting his family. Hence, seeks intervention of this Court to suspend the said order. Reliance is also placed upon an interim order of this Court in WP.No.34042 of 2012 dated 02.12.2014.

4. Mr. A. Rama Rao, learned standing counsel for the respondent corporation, on the contrary, submits that even as per sub-clause (ix) of Regulation 9 (1) of the APSRTC Employees (Classification, Control and

Appeal) Regulations, 1967, even consumption of alcohol itself is misconduct. Learned standing counsel, further, submits that suspension pending enquiry, being not a punishment, petitioner cannot question the said order, as the Depot Manager, who passed the order, is, admittedly, the authority to pass the order.

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.

The writ petition is dismissed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

February 19, 2015
DSK