

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.35684 of 2015

Date : 14-12-2015

Between :

G.N.Seshu Babu S/o Radha Krishna Murthy
Aged about 52 years, Executive Engineer (H),
West Godavari district, Eluru.

....Petitioner

And

The State of A.P. rep by its Secretary, Housing,
Housing Department, Secretariat, Hyderabad and
others

.... Respondents

The Court made the following

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WRIT PETITION No.35684 of 2015

ORAL ORDER:

Petitioner is an Executive Engineer in A.P. State Housing Corporation Limited (second respondent). He was posted as Executive Engineer in Eluru on 20.02.2015. He was specifically assigned the responsibility of ensuring construction of new sports stadium/renovation of existing sports infrastructure in ASR stadium in Eluru town. Alleging that petitioner was negligent in performing his duties; failed to take action against the contractor who did not honour the time schedule prescribed for completion of work and colluded with contractor, he was placed under suspension by orders of the Managing Director dated 21.10.2015. The said order is under challenge in this writ petition.

2. Relevant facts necessary for consideration of the grievance of the petitioner are as under:

3. Government decided to construct new sports stadium / renovation of existing sports infrastructure in the existing ASR stadium in Eluru town. APSHCL (Respondent Corporation) is appointed as construction agency. The work was entrusted to the contractor. Agreement was entered into on 13.8.2013. In terms of the said agreement, the contractor was required to complete the entire work entrusted to him within 12 months from the date of agreement i.e., by 12.8.2014. Contractor could not complete the work within the time stipulated. The time for completion of the work is extended on three occasions, on 5.9.2014, on 7.3.2015 and on 29.10.2015, each time for six months. In other words, the work which was to be completed within 12 months was extended to 30 months. Just before grant of second extension, petitioner joined in Eluru. It was expected that posting of

petitioner would expedite completion of the work within the extended time. The delay in completion of the work resulted in his suspension.

4. Charge memo dated 12.08.2015 was drawn by the District Collector and served on the petitioner. On 20.10.2015 petitioner submitted his explanation. On the recommendation of the Superintending Engineer the Managing Director extended the contract for further period of six months by his proceedings dated 29.10.2015.

5. Heard learned counsel for petitioner and Sri Thimmadi Sudhakar Reddy, learned standing counsel for respondent corporation and with their consent the writ petition is taken up for disposal at the admission stage.

6. Learned counsel for petitioner made extensive submissions. He has submitted that false and baseless allegations are made contrary to record only to harass and humiliate petitioner and the suspension is resorted to at the instance of contractor. There was no application of mind. Petitioner is placed under suspension based on a report by the District Collector without independently examining the desirability of suspension from service.

7. He would contend that even before petitioner joined, the first extension was granted and within few days of his joining the post, further extension was granted. Petitioner was not responsible for the tardy progress in the work till he was posted. Soon after he joined, petitioner was asking the contractor to complete the work as expeditiously as possible and since contractor was not complying with the request and not satisfied with the progress of work, petitioner issued several notices to the contractor and also complained to the Chief Engineer.

8. According to the learned counsel, terms of General Conditions of the contract entered with the contractor empower the Engineer in Chief to enforce the terms of contract; the Director HEBTECH is competent

to recover from the contractor; to terminate the contract, if the contractor causes breach of the contract terms; and to levy liquidated damages for delayed completion of the work by number of days. If the authorities are of the opinion that there was tardy progress of the work and contractor has never adhered to the time schedule prescribed in spite of granting sufficient time, it is not known why action is not taken against the contractor in terms of the Special Terms of Contract and why further accommodation is given to the contractor by extending time even after the initiation of the action against the petitioner.

9. Petitioner sent proposals to the Chief Engineer on 3.8.2015 to impose liquidated damages for the delay in completion of work. Without applying their mind and without looking into the provisions of the Special Terms of the contract which alone would prevail insofar as this particular work is concerned, illegally and in order to harass and humiliate, by referring to PS 60 of Standard Specifications and General Principles of Engineering Contracts, the burden is shifted to the petitioner. In view of special conditions of contract, the said clause has no application and the burden cannot be shifted to the Executive Engineer.

10. Learned counsel for petitioner further contended that absolutely baseless allegation is made with reference to collusion with the contractor. He was chasing the contractor to complete the work but if the contractor did not choose to complete in spite of petitioners' persuasions, appropriate action as warranted by contract terms is required to be taken by the Chief Engineer. He therefore, submits that there is no slackness in performing the duties by the petitioner. No instructions were given to Petitioner by the Chief Engineer to take action.

11. He submitted that substance of the allegation in the charge memo is based on provisions of PS-60 of APDSS. This allegation is

baseless and contrary to the records. The further allegation that petitioner ought to have black-listed the contractor goes against their own action prior to and after the joining of the petitioner in Eluru in extending the contract. Once, further time is granted, contractor cannot be blacklisted.

12. Learned counsel for petitioner further submitted that so far charges are not framed by the disciplinary authority and no disciplinary proceedings are deemed to be pending. The charge memo dated 12.8.2015 is drafted and issued by the District Collector, who is no way concerned with the disciplinary proceedings. Thus, in the eye of law, no charge is pending against the petitioner and there is no progress in taking disciplinary action.

13. Learned counsel for petitioner placed reliance on the decision of Division Bench of this court in **P.RAJENDER Vs.UNION OF INDIA AND ANOTHER**^[1]

14. Learned standing counsel for Respondent Corporation, submitted that Government was very keen that a modern sports complex comes up in Eluru as early as possible, so that sports activities can be encouraged in Eluru and Government decided to spend huge money for construction/renovation of the stadium. Initially, the Government expected that entire stadium work would be completed within 12 months from the date of execution of the contract. On account of tardy progress in the work, the corporation felt it desirable to post an officer in the rank of Executive Engineer exclusively to expedite completion of the stadium work. However, petitioner failed to discharge his legitimate duties and did not take any action against the contractor for delay in completion of the work causing lot of strain on the corporation funds and corporation has been in tremendous pressure from the Government for early completion of the stadium work.

15. The District Collector being the Executive Head in the District and it being a prestigious project taken up by the Government, he was keen that the work of stadium is completed early. In order to ascertain the progress of work, he inspected the site and having noticed the tardy progress of the work, report was submitted. The report of the District Collector brought the facts to the notice of the Managing Director and he has initiated the consequential action. On consideration of the said report and having regard to the gravity of the conduct of petitioner, the Managing Director, being competent authority, suspended the petitioner. Learned standing counsel submitted that it cannot be said that there was no application of mind by the competent authority. As pointed out by the District Collector, the conduct of petitioner in not ensuring the completion of construction/renovation is viewed seriously.

16. Learned standing counsel further submitted that the Standard Specifications apply to all contracts of the Government as well as Government undertakings. Clause 60 of the Standard Specifications of the contract vests power in the Executive Engineer to enforce strict compliance of the time schedule and to take action against the contractor, if there is any delay in completion of the work, he is also competent to black list the contractor for his negligence in completing the work as per the schedule. Learned standing counsel emphasized that if only the petitioner was vigilant, in ensuring early completion of the work, there was no need for further extension. The allegation of collusion with the contractor is a matter that requires consideration in the disciplinary proceedings. The Competent Authority can place an employee under suspension on prima facie case of misdemeanor and in public interest.

17. In matters of suspension, there are two competing interests. On the one side is employer's eagerness to ensure transparent operation of public service and to enforce discipline. Therefore, he would mince

no words to take disciplinary action when it comes to his notice of misconduct. When allegations are grave/ disobedience is palpable, it is also in public interest to place such employee under suspension. On the other hand is the concern of the employee. It is an accepted fact that though suspension does not take away the employment and is not a punishment per se, but it has deleterious effect on the employee and his family and attaches stigma as he would be looked down in the community whenever person is placed under suspension. The suspension from service continues for months together and in many cases for years together.

18. Thus, the norm which is binding on all employers in exercising power of suspension from service is that it should not be resorted to as a matter of course in all and sundry cases of allegation of misconduct and should be resorted to such course sparingly and in the larger interest of the organization and in public interest. Whenever, a person is placed under suspension, the disciplinary proceedings should be concluded within a fixed time frame.

19. 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.

20. In **O.P. GUPTA V. UNION OF INDIA**^[2], Supreme Court held order of suspension should not be lightly passed:

“15. We have set out the facts in sufficient detail to show that there is no presumption that the government always acts in a manner which is just and fair.....The real effect of the order of suspension as

explained by this Court in *Khem Chand v. Union of India*¹ is that he continues to be a member of the government service but is not permitted to work and further during the period of suspension he is paid only some allowance — generally called subsistence allowance — which is normally less than the salary instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension, unless the departmental inquiry is concluded within a reasonable time, affects a government servant injuriously. The very expression “subsistence allowance” has an undeniable penal significance. The dictionary meaning of the word “subsist” as given in *Shorter Oxford English Dictionary*, Vol. II at p. 2171 is “to remain alive as on food; to continue to exist”. “Subsistence” means — means of supporting life, especially a minimum livelihood. Although suspension is not one of the punishments specified in Rule 11 of the Rules, ***an order of suspension is not to be lightly passed against the government servant.*** In the case of *Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni*² the court held that the expression “life” does not merely connote animal existence or a continued drudgery through life. The expression “life” has a much wider meaning. Suspension in a case like the present where there was no question of inflicting any departmental punishment prima facie tantamounts to imposition of penalty which is manifestly repugnant to the principles of natural justice and fair play in action.....”(emphasis supplied).

21. In **STATE OF ORISSA Vs BIMAL KUMAR MAHANTY**^[3] Supreme Court laid down parameters of suspension and scope of judicial review. Supreme Court held:

“13. It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. ***It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee.*** The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. ***Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry etc.*** But as stated earlier, each case must be

considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. ***The suspension must be a step in aid to the ultimate result of the investigation or inquiry.*** The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge.”(Emphasis supplied)

22. In **UNION OF INDIA V. ASHOK KUMAR AGGARWAL** ^[4], Supreme Court held,

“21. ***The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as vindictive misuse of power. Suspension should be made only in a case where there is a strong prima facie case*** against the delinquent employee and the allegations involving moral turpitude, grave misconduct or ***indiscipline or refusal to carry out the orders of superior authority*** are there, or there is a strong prima facie case against him, if proved, would ordinarily result in reduction in rank, removal or dismissal from service. The authority should also take into account all the available material as to whether in a given case, it is advisable to allow the delinquent to continue to perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry.

22. In view of the above, the law on ***the issue can be summarised to the effect that suspension order can be passed by the competent authority considering the gravity of the alleged misconduct i.e. serious act of omission or commission and the nature of evidence available.*** It cannot be actuated by *mala fide, arbitrariness*, or for *ulterior purpose*. Effect on public interest due to the employee's continuation in office is also a relevant and determining factor. The facts of each case have to be taken into consideration as no formula of universal application can be laid down in this regard. *However, suspension order should be passed only where there is a strong prima facie case against the delinquent, and if the charges stand proved, would ordinarily warrant imposition of major punishment i.e. removal or dismissal from service, or reduction in rank, etc (emphasis supplied).*

27. ***Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered.*** Suspension is an interim measure in the aid of disciplinary proceedings so that the delinquent may not gain custody or control of papers or take any advantage of his position. More so, at this stage, ***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.

29. However, as the *suspension order constitutes a great hardship to the person concerned as it leads to reduction in emoluments, adversely affects his prospects of promotion* and also carried a *stigma*, an order of suspension should not be made in a perfunctory or in a routine and casual manner but *with due care and caution after taking all factors into account.*”(emphasis supplied)

23. The averments in para 5 of the counter affidavit would show that the petitioner was slack in exercising powers vested in him under the APDSS and view the same amounting to indiscipline. Petitioner was posted when decision was taken to grant second extension. According to respondents, the petitioner was required to focus on the work, to redraw the time line and to enforce compliance of the time line. As evident from the correspondence and the averments in the counter affidavit, the competent authority is viewing the lack of commitment to ensure completion of work by the petitioner very seriously.

24. The allegation leveled against petitioner is that he failed to enforce discipline and colluded with the contractor in delaying the completion of work. The District Collector was disturbed with the tardy progress in the work, even though an officer of the rank of EE is specifically posted. According to the District Collector, the very purpose of posting him is lost due to negligence of the petitioner.

25. The work entrusted to the Contractor is governed by the agreement entered with the Contractor on 13-08-2013. The agreement clauses stipulate that 'the AP Detailed Standard Specifications (APDSS)' which laid down general principles for engineering contracts shall apply. As per the agreement dated 13-08-2013, the Executive Engineer is the engineer-in-charge of the work entrusted to him. He is also vested with ample powers to take stringent action against the contractor. Prima facie, on reading the relevant clauses, it appears that the Director is vested power to levy liquidated damages for the period of delay in execution of work, but with reference to determination of terms of contract, the APDSS vest ample powers in the EE. Thus, it cannot be said that the petitioner is not vested with power to take action as sought to be contended.

Whether there was slackness in enforcing the APDSS clauses and the petitioner adopted dilatory tactics amounting to favoring the contractor are matters for consideration by the disciplinary authority.

26. The issue for consideration is whether in the facts of this case suspension from service is justified. Petitioner was entrusted with the responsibility of supervising the progress of work by contractor.

Primary responsibility to complete the work entrusted is on the contractor. He was given fixed time within which work was to be completed. By the time petitioner joined one extension was granted and soon after of petitioner assumption of duties another extension was granted. After the decision to suspend petitioner one more extension is granted. It is not stated why such extensions are granted to the contractor and why contract was not terminated having noticed that contractor failed to execute the work within the time granted to him. What is intriguing in this case is while petitioner is suspended, soon thereafter the contract period is extended giving more time to contractor.

27. The assessment of conduct of petitioner is based on record of progress already made. What is required to be seen is whether the actions of petitioner amounted to favouring the contractor and was he not diligent in protecting the interest of the corporation. In the facts of this case, it cannot be assumed that petitioner would indulge in tampering of evidence on record or influence the witnesses. If competent authority was of the view that petitioner failed in ensuring early completion of work and his continuation is not desirable he could have exercised option of transferring him. It appears that petitioner is placed under suspension as an administrative routine. There is a tendency of resorting to suspension because employee concerned did not adhere to instructions. It is called suspension syndrome.

28. Though, power to place an officer/ employee under

suspension is conceded to employer/competent authority and can be resorted to enforce discipline; convey to all the employees that dereliction of duty cannot be tolerated; to ensure that employee would not create impediment; and having regard to the gravity of allegations, in larger public interest, it is necessary to suspend, but such power must be exercised sparingly and should not be made as an administrative routine or an automatic consequence of alleged disobedience and detailed assessment must be made. It appears that no assessment is made on the impact of such suspension on progress of work. In order to speed up work, an Executive Engineer rank officer is posted. On account of his suspension, he remains to be an EE of this place and therefore no other officer of EE rank can be posted as there cannot be two officers working against same post. In the facts of this case, the suspension is wholly unwarranted and amounts to arbitrary exercise of power.

29. It is made clear that this order does not come in the way of the disciplinary authority taking disciplinary action. Whether petitioner's actions amounted to refusal to carry out the orders of superior authority/collusion with the contractor also ought to be gone into in the departmental proceedings. The tenability of the allegation and the involvement of petitioner can be gone into during the departmental enquiry and Court cannot express any opinion on merits at this stage. It is also made clear that if petitioner do not cooperate in early conclusion of disciplinary proceedings, the competent authority shall take a decision on the desirability of placing the petitioner under suspension on that ground. 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 disciplinary proceedings.

30. Accordingly, the writ petition is allowed. There shall be no order as to costs. It is also made clear that in view of setting aside

order of suspension, it is permissible for the competent authority to transfer petitioner and to post him at any other place.

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

JUSTICE P.NAVEEN RAO

DATE: 14.12.2015
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HONOURABLE SRI JUSTICE P. NAVEEN RAO

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[\[1\]](#) 2001(5)ALD 290 (DB)
[\[2\]](#) **AIR 1987 SC 2257**
[\[3\]](#) [(1994) 4 SCC 126]
[\[4\]](#) (2013) 16 SCC 147