

* HON'BLE SRI JUSTICE R.KANTHA RAO

+ Writ Petition Nos.18451 and 21988 of 2015

% 07-8-2015

T.Chiranjeevi and another

... Petitioners

Vs.

\$ TSRTC, Rep. by its MD, Bus Bhavan,
Musheerabad, Hyderabad; and others

... Respondents

! Counsel for the Petitioners: Sri V.Narasimha Goud

Counsel for the Respondents: Sri B.Mayur Reddy,
Standing Counsel.

< Gist:

> Head Note:

? Cases referred:

1. 1994 Supp 3) SCC 755

2. (1979) 4 SCC 22
3. (2002) 5 SCC 521
4. (2014) 1 SCC 603
5. AIR 1958 SC 86(1)
6. AIR 2008 SC 336
7. (1998) 8 SCC 1
8. (2004) 7 SCC 166

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

Writ Petition Nos.18451 and 21988 of 2015

Between

T.Chiranjeevi
and another

... Petitioners

and

TSRTC,
Rep. by its MD,
Bus Bhavan, Musheerabad,
Hyderabad;
and others

... Respondents

DATE OF JUDGMENT PRONOUNCED: 07-8-2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE R.KANTHA RAO

- | | | |
|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgment? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition Nos.18451 and 21988 of 2015

Common Order:

Heard Sri V.Narasimha Goud, learned counsel appearing for the petitioners and Sri B.Mayur Reddy, learned Standing Counsel for the respondents-Corporation.

2. In these two writ petitions, the contention of the petitioners is that a shockingly disproportionate punishment was imposed by the Disciplinary Authority in relation to a trivial misconduct alleged. The petitioners submit that they do not want to go into the controversial and disputed facts and ask this Court to dispose of the writ petitions considering the sole issue of proportionality of the punishment. Therefore, the question arises for determination is whether this Court can entertain the writ petitions under Article 226 of the Constitution of India and pass appropriate orders notwithstanding the exhaustion of alternative remedies available to the petitioners. The learned Standing Counsel for the respondents-Corporation did not file any counters in these writ petitions in view of the submission made by the learned counsel appearing for the petitioner that the petitioners do not insist upon examining the disputed questions of fact. Therefore, these two writ petitions are disposed of by a

common order.

3. Briefly stated, the following are the averments in the two writ petitions:

(a) In W.P.No.18451 of 2015, it is submitted by the petitioner that he is a conductor in the respondents-Corporation, he fell sick on 01-01-2015 and was taking treatment in Government Community Health Centre, Telangana State Vidya Vidhan Parishat, Kalwakurthy, Mahabubnagar district. He approached the 2nd respondent, produced a Medical Certificate issued by the Community Health Centre, Kalvakurthy and requested him to refer to take treatment in APSRTC Hospital, Tarnaka, Hyderabad. The 2nd respondent refused to refer him to Tarnaka Hospital. As he was unable to perform the duties he continued to undergo treatment in Community Health Centre, Kalvakurthy and reported to duty on 20-3-2015 with Fitness Certificate. The 2nd respondent did not allow him to join the duty alleging that he was unauthorisedly absent from duties from 01-01-2015 to 05-01-2015. He was not served with any charge-sheet. However, he appeared before the Deputy Superintendent (Traffic), who was conducting enquiry on 27-3-2015. He was examined by the Enquiry Officer. During the course of enquiry, no witnesses were examined and his Medical Certificate was not taken into consideration. According to the petitioner, in his absence one P.S. Rao, Controller in

the Department was examined. He came to know about the examination of the said witness only when the enquiry report was served on him calling for his objections. However, the enquiry was said to be completed and without considering the objection on the enquiry report submitted by the petitioner, pursuant to the show cause notice of removal from service, the petitioner was removed from service by an order dated 30-4-2015.

(b) The version of the petitioner is that in the enquiry conducted against him, no procedure has been followed, it was conducted in utter violation of principles of natural justice, the management witness was examined in his absence and he was denied the opportunity to cross-examine the said witness, the enquiry was motivated and it was initiated as the petitioner was insisting upon the 2nd respondent to pay the arrears of salary as per the orders of the High Court. Moreover, a major penalty of the removal from service was imposed on him for the charge of absenteeism for

a period of 5 days. Therefore, he filed the present writ petition under Article 226 of the Constitution of India for a Writ of *certiorari* to quash the removal order and direct the respondents-Corporation to reinstate him into service.

(c) In W.P.No.21988 of 2015, it is submitted by the petitioner that he was a conductor in the respondents-Corporation and he was appointed on 16-6-2009.

On 26-8-2014 his maternal uncle, who was aged about 38

years, expired. On receiving the said information, he after intimating the Traffic officials of the 3rd respondent Depot over phone attended the funeral and was away from duties from 26-8-2014 till 02-9-2014 to discharge the duties consequent upon the death of his maternal uncle as there was no elder male member in the family. He reported to duty on 03-9-2014 and was allowed to attend the duties. However, on 24-02-2015, a removal order has been served on him in an arbitrary manner. According to the petitioner, though the removal order reveals that an enquiry was conducted by a Traffic official, in fact, no enquiry was conducted against him. He was not asked to submit his comments on the enquiry report. Thus, without there being any enquiry and without calling for any explanation on the enquiry report, straightaway a show cause notice of removal from service was issued against him and consequently, an order of removal dated 24-02-2015 was passed on him.

He preferred an appeal to the 2nd respondent and the appeal was also dismissed. Therefore, he filed the writ petition under Article 226 of the Constitution of India seeking a Writ of *certiorari* to quash the termination order dated 24-02-2015 and to reinstate him into service.

4. The learned counsel appearing for the petitioners submits that even though the petitioners have a good case of success even on merits, he would confine his

arguments only to the proportionality of the punishment so as to enable them to obtain quick justice as they are deprived of their livelihood on a trivial charge of misconduct. Therefore, the learned counsel without stressing upon the point as to whether there was any justifiable reason for the absence of the petitioners in the two cases, urges this Court to dispose of the writ petitions only on the question of proportionality of punishment in the light of the established principles of law.

5. In support of his contention, the learned counsel appearing for the petitioners relied on **UNION OF INDIA v.**

GIRIRAJ SHARMA^[1]. In the said case before the Supreme Court, the allegation against the employee was that he overstayed the period of leave by 12 days.

The employee while admitting the fact that he had overstayed the period of leave had explained the circumstances in which it was inevitable for him to continue on leave as he was forced to do so, on account of unexpected circumstances. The Supreme Court held as follows:

“We are of the opinion that the punishment of dismissal for overstaying the period of 12 days in the said circumstances which have not been controverted in the counter is harsh since the circumstances show that it was not his intention to wilfully flout the order, but the circumstances forced him to do so. In that view of the matter, the learned counsel for the respondent has fairly conceded that it was open to the authorities to visit him with a minor penalty, if they so desired, but a major penalty of dismissal from service was not called for. We agree with this submission.

In the result, we see no merit in this appeal but we would modify the order of the High Court by stating that while we affirm the High Court's order quashing the order of dismissal and directing reinstatement in service with monetary benefits, it will be open to the department, if it so desires, to visit the respondent-petitioner with a minor punishment."

6. Basing on the said judgment, the learned counsel appearing for the petitioners submits that in the instant case also, the petitioners explained to the Disciplinary Authority the circumstances under which they were unable to attend the duties. However, not accepting the same, the major penalty of removal from service was imposed on them, which, in the light of the aforementioned judgment, is liable to be set aside and a minor penalty if the Department so wishes can be imposed on them.

7. The learned Standing Counsel for the respondents-Corporation contended that in the first writ petition (W.P.No.18451 of 2015), the petitioner has not availed alternative remedy of appeal and directly approached this Court by way of writ petition whereas in the second writ petition (W.P.No.21988 of 2015), though the petitioner availed the appellate remedy which resulted in rejection of appeal, he failed to prosecute the further remedies, namely, the revision and raising a dispute before the Industrial Tribunal or Labour Court and therefore, this Court is not supposed to entertain the writ petitions without exhaustion of the alternative

remedies available to the petitioners.

8. In support of his contention, the learned Standing Counsel for the respondents-Corporation relied on the following judgments:

(a) **ASSISTANT COLLECTOR OF CENTRAL EXCISE v. JAINSON HOSIERY INDUSTRIES**^[2], where the Supreme Court held as follows:

“1. It is correct to say that the High Court must have regard to the well established principles for the exercise of its writ jurisdiction and unless it is satisfied that the normal statutory remedy is likely to be too dilatory or difficult to give reasonably quick relief, it should be loath to act under Article 226.

May be, in exceptional cases – the present one does not appear to be one – that extraordinary power may be exercised. So it is right to point out that the High Courts will be careful to be extremely circumspect in granting these reliefs especially during the pendency of criminal investigations. The investigation of a criminal offence is a very sensitive phase where the investigating authority has to collect evidence from all odd corners and anything that is likely to thwart its course may inhibit the interests of justice. All that we need say here is that the High Courts will bear in mind the need for extreme reluctance when, during the investigation, any relief, interim or final, which has

a tendency to slow down or otherwise hamper the investigation, is sought.”

In the above decision, the Supreme Court also pointed out that in exceptional cases, the High Court can exercise its extraordinary jurisdiction under Article 226 of the Constitution of India notwithstanding the alternative remedy. In the case before the Supreme Court, the

Supreme Court found fault with the High Court exercising the jurisdiction under Article 226 of the Constitution of India on the ground that it will have the effect on the ongoing investigation. The facts of the present cases in hand are altogether different and therefore, the said decision is not applicable to the facts of the present cases. In the instant cases, the petitioners urge this Court to exercise the jurisdiction for the limited purpose of examining the proportionality of the punishment without going into the merits of the cases and subjecting the petitioners to the lengthy procedure in pursuing the alternative remedies before the authorities.

(b) **SECRETARY, MINOR IRRIGATION & RURAL ENGINEERING SERVICES, U.P. v. SAHNGOO RAM**

ARYA^[3], wherein the Supreme Court held as follows:

“When the statute provided Services Tribunal (U.P. Public Services Tribunal) for adjudication of disputes of government servants, the said Tribunal cannot be bypassed by filing writ petition on the ground that the Tribunal lacks power to pass interim order.”

This decision is also not applicable to the facts of the present cases since in the instant cases, the petitioners approached this Court for invoking the jurisdiction of this Court under Article 226 of the Constitution of India on the ground that they have been deprived of their livelihood by imposing on them the grossly disproportionate punishment of removal from service on a trivial ground of absenteeism for very few days.

(c) **CIT v. CHHABIL DASS AGARWAL**^[4], the

Supreme Court held as follows:

“When a statutory forum is created by law for redressal of grievances, the writ petition should not be entertained ignoring the said statutory dispensation.”

In the said case before the Supreme Court, the Supreme Court observed as follows:

“Neither the writ petitioner pleaded that available alternative remedy under the Income Tax Act was ineffectual or non-eficacious nor had High Court given cogent and satisfactory reasons to exercise its jurisdiction.”

The above judgment is also not applicable to the facts of the present cases since in these cases both the petitioners vehemently contended that in fact, no enquiry was conducted if at all any enquiry according to the respondents is conducted, it is in utter violation of principles of natural justice and without affording any opportunity to the petitioners to represent their respective cases and cross-examine the witnesses.

They not only questioned the proportionality of the punishment but also the procedure adopted by the respondents-Corporation for imposing the impugned punishment. According to them, the imposition of punishment on them is the result of *mala fide* exercise of power.

9. To arrive at an appropriate opinion as to the maintainability of these two writ petitions, it is necessary to

go through the following judgments of the Supreme Court relied on by the learned counsel appearing for the petitioners:

(a) **State of U.P. v. Mohammad Nooh**^[5]. In this case, the Supreme Court held as follows:

“The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law. The superior court will readily issue a certiorari in a case where there has been a denial of natural justice before the court of summary jurisdiction.

If therefore, the existence of other adequate legal remedies is not per se a bar to the issue of a writ of certiorari and if in a proper case it may be the duty of the superior court to issue a writ of certiorari to correct the errors of an inferior court or tribunal called upon to exercise judicial or quasi judicial functions and not to relegate the petitioner to other legal remedies available to him and if the superior court can in a proper case exercise its jurisdiction in favour of a petitioner who has allowed the time to appeal to expire or has not perfected his appeal, e. g. by furnishing security required by the statute, it cannot then be laid down as an inflexible rule of law that the superior court must deny the writ when an inferior court or tribunal by discarding all principles of natural justice and all accepted rules of procedure arrived at a conclusion which shocks the sense of justice and fair play merely because such decision has been upheld by another inferior court or tribunal on appeal or revision. ...
... even if an appeal to another inferior court or

tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what *ex facie* was a nullity for reasons aforementioned.

This would be so all the more if the tribunals holding the original trial and the tribunals hearing the appeal or revision were merely departmental tribunals composed of persons belonging to the departmental hierarchy without adequate legal training and background and whose glaring lapses occasionally come to the notice of the Supreme Court.”

10. In the writ petitions in hand, in the first writ petition (W.P.No.18451 of 2015) the petitioner did not prefer an appeal and in the second writ petition (W.P.No.21988 of 2015) though the petitioner preferred an appeal, the same was dismissed without assigning any valid reasons. Even the punishment which was shockingly disproportionate was also not interfered with by the Appellate Authority. This Court would certainly take into consideration the factors, namely, the way in which the cases of the petitioners have been dealt with by the Original and Appellate authorities, non-observance of rules of procedure in conducting enquiries and their insensitivity to the punishment required to be imposed in proportion to the misconduct allegedly proved. If on the aforementioned issues, the High Court is convinced that it would be justified in exercising its extraordinary jurisdiction under Article 226 of the Constitution of India, it can exercise such jurisdiction to set aside the orders which are *ex facie* illegal notwithstanding the fact that the party has not availed the alternative remedy.

11. Similarly, in **BCPP Mazdoor Sangh v.**

N.T.P.C.^[6], the Supreme Court held as follows:

“18. Though no serious objection was made as to the maintainability of the writ petition, however, learned senior counsel appearing for the Management pointed out that even if there is any breach by BALCO of its obligations in the matter of terms and conditions of employment, the appellants have appropriate remedy under Industrial Law. Inasmuch as the claim of the employees relates to interpretation of certain clauses in the agreement, appointment letters and no disputed facts are involved and taking note of the fact that the issue relates to employment of few hundreds of employees and in the light of the assertion that transferring them to private organization from a public sector undertaking without their specific consent is arbitrary and unreasonable and also of the settled position that alternative remedy is rule of discretion and not the rule of law, we accept the conclusion of the High Court and hold that the writ petitions under Article 226 of the Constitution filed by the employees are maintainable.”

12. In **WHIRLPOOL CORPN. v. REGISTRAR OF**

TRADE MARKS^[7], the Supreme Court held as follows:

“14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari* for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for “any other purpose”.

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and

efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been

a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

13. Turning to the facts of the instant cases, the petitioners filed the writ petitions seeking Writs of *certiorari* in exercise of jurisdiction of this Court under Article 226 of the Constitution of India. If the principles laid down by the Hon’ble Supreme Court in the afore-referred cases have been analysed, it is obvious that existence of an adequate or suitable alternative remedy to a litigant does not bar this Court from exercising its discretionary jurisdiction to issue Writs under Article 226 of the Constitution of India. Existence of such remedy is merely a factor which this Court has to take into consideration before exercising writ jurisdiction.

The Supreme Court in **S.J.S. BUSINESS ENTERPRISES (P) LTD. v. STATE OF BIHAR**^[8] dealt with a situation where an alternative remedy has been availed by a party but not pursued. The Supreme Court took the view that the party could prosecute the proceedings under

Article 226 of the Constitution of India for the same relief and in such a situation, the High Court may call upon the party to elect whether it will proceed with the alternative remedy or with the application under

Article 226 of the Constitution of India. The Supreme Court was further of the view that in such an event, the relief under Article 226 of the Constitution of India could not be rejected on the ground of suppression of fact, namely, filing of the suit earlier by the party for the same relief.

14. Similarly, in **Mohammad Nooh** (5 *supra*), the Supreme Court has laid down in categorical terms that there is no rule with regard to *certiorari* as there is with *mandamus*, that it will lie only where there is no other equally effective remedy, provided the requisite grounds exist, *certiorari* will lie although a right of appeal has been conferred by statute and the fact that the aggrieved party has another and adequate remedy may be taken into consideration while exercising the writ discretionary jurisdiction. In the same case, the Supreme Court observed as follows:

“11. ... even if an appeal to another inferior Court or tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what a *ex facie* was a nullity for reasons aforementioned. This would be so all the more if the tribunals holding the original trial and the tribunals hearing the appeal or revision were merely departmental tribunals composed of persons belonging to the departmental hierarchy without adequate legal training and background and whose glaring lapses occasionally come to our notice.”

15. In the present writ petitions, the petitioners contended that no enquiry, in fact, as per the procedure laid down under the Rules has been conducted against them, the imposition of the punishment was in utter violation of principles of natural justice and is also motivated. However, at the hearing of the appeal they confined their argument only to the proportionality of the punishment as they appeared to have been scared of by the inordinate delay which will occasion in pursuing the departmental remedies and the known result of confirming the order of the Original Authority.

The learned counsel appearing for the petitioners, therefore, submits that keeping in view the decision rendered by the Supreme Court in **JAINSON HOSIERY INDUSTRIES** (2 *supra*), the punishment of removal from service may be quashed and in its place, a minor penalty can be imposed.

16. The learned Standing Counsel for the respondents-Corporation would contend that this Court instead of quashing the punishment orders, can direct the petitioners to approach the Tribunal with a prayer to impose appropriate punishment.

17. I am not in acceptance with the contention urged by the learned Standing Counsel for the respondents-Corporation. The petitioner in W.P.No.18451 of 2015 was removed from service for absenteeism of

5 days whereas the petitioner in the other case (W.P.No.21988 of 2015) was also visited with the same punishment for absenteeism of 8 days. The punishment imposed by the Disciplinary Authority in both the cases shocks the judicial conscience. By imposing such a grossly disproportionate punishment, the Disciplinary Authority deprived the petitioners of their right to livelihood by imposing a punishment which shocks judicial conscience as being grossly disproportionate to the misconduct alleged without any justification. Therefore, this Court can exercise its discretionary jurisdiction to quash the said orders by issuing Writs of *certiorari*. The purpose of exercising the jurisdiction under Article 226 of the Constitution is to advance the justice but not to thwart it, as has been laid down by the Hon'ble Supreme Court in several judgments.

18. Therefore, driving the petitioners to avail the alternative remedies and approach this Court in the event of their being unsuccessful, in the given situation and peculiar facts and circumstances of the present cases, would be only a futile exercise. It would not serve any cause of justice but would result in subjecting the petitioners to undue hardship and irreparable injury.

19. For the foregoing reasons, the respective orders of removal from service, dated 30-4-2015 and 24-02-2015, passed against the petitioners being grossly

disproportionate to the misconduct alleged, are quashed in exercise of the jurisdiction under Article 226 of the Constitution of India. The respondents-Corporation are directed to reinstate the petitioners into service with all consequential benefits. However, it will be open to the respondents-Corporation if it so desires to visit the petitioners with a minor punishment. The writ petitions are accordingly disposed of without any order as to costs. The miscellaneous petitions, if any, pending in these writ petitions shall stand closed.

R.KANTHA RAO, J.

07th August, 2015.

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Note:-

L.R. Copy to be marked.

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HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition Nos.18451 and 21988 of 2015
(Common Order)

07th August, 2015.
(Ak)

[\[1\]](#) 1994 Supp (3) SCC 755

[\[2\]](#) (1979) 4 SCC 22

[\[3\]](#) (2002) 5 SCC 521

[\[4\]](#) (2014) 1 SCC 603

[\[5\]](#) AIR 1958 SC 86(1)

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[\[7\]](#) (1998) 8 SCC 1

[\[8\]](#) (2004) 7 SCC 166