

* THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND

* THE HON'BLE MRS. JUSTICE ANIS

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+ WRIT APPEAL Nos.876 and 878 of 2015
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% 14.03.2016

WRIT APPEAL No.876 of 2015:

Telangana State Road Transport Corporation
Rep. by its Joint Managing Director and 2 others.

....Appellants

v.

\$ Sri Janaki Ramudu

.... Respondent

WRIT APPEAL No.876 of 2015:

Telangana State Road Transport Corporation
Rep. by its Managing Director and 2 others.

....Appellants

v.

\$ Sri T.Chiranjeevi

.... Respondent

! Counsel for the Appellants : Sri B.Mayur Reddy, Standing Counsel

Counsel for Respondent: Sri V.Narasimha Goud

<Gist :

>Head Note:

? Cases referred:

- (1) AIR 1954 SC 403
- (2) AIR 1959 SC 725
- (3) AIR 1977 SC 1132

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

WRIT APPEAL NOs.876 and 878 OF 2015
WRIT APPEAL No.876 of 2015:

BETWEEN

Telangana State Road Transport Corporation
Rep. by its Joint Managing Director and 2 others.

.....Appellants

And

Sri Janaki Ramudu

... Respondent

WRIT APPEAL No.878 of 2015:

BETWEEN

Telangana State Road Transport Corporation
Rep. by its Managing Director and 2 others.

.....Appellants

And

Sri T.Chiranjeevi

... Respondent

JUDGMENT PRONOUNCED ON: 14.03.2016

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO _____
AND
THE HON'BLE SMT. JUSTICE ANIS _____

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? yes

- | | |
|---|-----|
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals | Yes |
| 3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes |

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE SMT. JUSTICE ANIS

WRIT APPEAL Nos.876 and 878 OF 2015

COMMON JUDGMENT: *(Per Hon'ble Sri Justice Nooty Ramamohana Rao)*

Both these writ appeals are preferred by the Telangana State Road Transport Corporation and its officials under Clause 15 of Letters Patent, calling in question the correctness of the judgment and order rendered on 07.08.2015 in writ petition Nos.18451 and 21988 of 2015. The sole respondent in both these appeals is the writ petitioner concerned, who instituted the aforementioned two writ petitions.

Heard Sri B.Mayur Reddy, learned standing counsel for the appellant – corporation and Sri B.Narasimha Goud, learned counsel for the writ petitioners/respondents.

Since the contentions are common and also in view of the fact that both the writ petitions were decided by a common judgment, it is only appropriate that both these appeals should be disposed of by this common order.

For convenience sake, we will set out, in detail, the facts leading to institution of W.P.No.18451 of 2015. The writ petitioner was employed in the service of the appellant – corporation as a conductor. He appears to have suffered a set back in his health. Consequently, finding that the notified doctor of the R.T.C. is not available at Kalwakurthy, the writ petitioner went to Area Government Hospital, Kalwakurthy. The

Government Doctor has prescribed medicines to be consumed by the writ petitioner and also advised him to take rest and accordingly issued a sick certificate to him. It is the specific case of the writ petitioner that the sick certificate issued by the Area Government Hospital, Kalwakurthy has been forwarded to the Depot through other employees by name Sri Jagdish, Conductor (Employee No.151367) and Driver Devaiah (Employee No.15009). It is also his specific case that the said sick certificate has been handed over to Sri Ram Reddy of the Depot, who has received it and kept it with the duty chart. It is noteworthy that this assertion fact by the writ petitioner was never disputed or denied by the appellants. It is also the specific case of the writ petitioner that on 02.01.2015 he submitted a representation to the Depot Manager, Kalwakurthy brining to his notice that he fell sick on 01.01.2015 and that he was undergoing treatment as suggested by the Government Doctor attached to the Area Government Hospital, Kalwakurthy and hence he sought for referring him to the R.T.C. Hospital at Tarnaka for better treatment. This letter has been received by the Depot, Kalwakurthy on 02.01.2015. A copy of this representation made by the writ petitioner on 02.01.2015 was in fact exhibited at page No.51 of the paper book filed in this appeal. It clearly bears the rubber stamp of Bus Depot at Kalwakurthy. Thus, evidencing that it is received in the said Depot on 02.01.2015. On the left hand side margin of this representation, an endorsement was also made, which reads as under:

“Forwarded to DVM”

It was signed by the Deputy Superintendent on 02.01.2015. Thus, the representation of the writ petitioner seeking a referral to the Hospital run by the Corporation at Tarnaka was received by the Depot at Kalwakurthy. But however, it was forwarded to a superior officer namely Divisional Manager of the Corporation. It is the specific case of the writ petitioner that no such permission was accorded for referring him for receiving better treatment at the Corporation hospital at Tarnaka, as a result he had undergone treatment locally and consequently could not attend to his duties till 05.01.2015. This fact was not denied at all by the

appellants.

The Controller of Operations of Kalwakurthy Depot appears to have filed a report on 05.01.2015 alleging that the writ petitioner was unauthorisedly absent to his duties. Based thereon, a charge sheet was drawn on 10.01.2015 against the petitioner framing the following charge.

“For having absented un-authorisedly for your duties from 01.01.2015 to 05.01.2015 neither with prior sanction of leave from the depot authorities nor submitted any sick certificate from the RTC Hospitals, which resulted in dislocation of services and inconvenience to the travelling public, besides loss of revenues to the Corporation, which constitutes mis-conduct under Reg.28 (xxvii) of APSRTC Employees Conduct Regulations 1963.”

(Emphasis is played now)

To conduct an enquiry into this charge, an enquiry officer was appointed. On 27.03.2015 an enquiry was conducted in the office of the Assistant Manager (Traffic) Kalwakurthy. The writ petitioner Sri T.Chiranjeevi was present and the Enquiry officer Smt.B.Kalyani, Deputy Superintendent (Traffic) was present. She has put certain questions to the writ petitioner. The writ petitioner gave answers to those questions and he clearly brought out that he fell sick on 01.01.2015 and hence received treatment at the local Area Government Hospital, Kalwakurthy and furnished the sick certificate to the Depot. He also stated that when he gave a letter seeking referral to Tanaka Hospital, such a referral was not accorded. But still the writ petitioner is treated to be unauthorisedly absent from duties. The proceedings of the enquiry that were conducted on 27.03.2015, wherein the writ petitioner participated, were placed at page No.47 of the paper book in this appeal. The proceedings bear the signatures of the enquiry officer and the writ petitioner. On the same day, the enquiry officer appears to have conducted enquiry at which one Sri P.S.Rao, the controller of the Depot bearing employee No.251071 participated. These proceedings were placed at page No.49 of the paper book. The writ petitioner was not present when the enquiry officer examined the said Sri P.S.Rao, controller and recorded his statement on 27.03.2015. There is no material available to show that intimation was left with the writ petitioner about examination of Sri P.S.Rao in the course of enquiry. The proceedings sheet placed at page No.49 of the writ appeal paper book bears the signature of the enquiry officer Smt. B.Kalyani and

that of Sri P.S.Rao and it does not bear the signature of the writ petitioner. Thus, it is more than clear that the enquiry officer has conducted the enquiry on 27.03.2015 and examined one of the witnesses on behalf of the management of the Corporation namely Sri P.S.Rao, Controller, bearing employee No.251071 behind the back of the writ petitioner. There could not have been graver impropriety than this.

It appears the enquiry officer drew up her report on 27.03.2015 itself and submitted it to the Depot Manager. On the same day, the enquiry report was forwarded to the writ petitioner calling for his remarks. The writ petitioner filed his detailed objections thereto on 10.04.2015. The Depot Manager immediately drew a show-cause notice on 13.04.2015 calling the writ petitioner to show cause as to why the punishment of removal from service be not imposed for the charged proved against him. The writ petitioner once again submitted a detailed explanation on 24.04.2015.

In his explanation dated 24.04.2015 the writ petitioner has asserted that he has forwarded the sick certificate obtained by him from the Area Government Hospital, Kalwakurthy, to the Depot of the Corporation on 02.01.2015 with the help of 2 other employees namely Conductor Jagdish and Driver Devaiah and the sick certificate was received by Sri Ram Reddy of the Depot, who kept the same along with the duty chart for the day. This apart, the petitioner has asserted that on 02.01.2015 itself he has brought to the notice of the Depot Manager that he was sick and hence he may be referred to the Hospital run by the Corporation at Tarnaka, Hyderabad. That representation of the writ petitioner, as is evident from page No.51 of the writ appeal paper book, was forwarded to the Divisional Manager by the Deputy Superintendent (Traffic) Kalwakurthy and no such permission has been accorded for referring the petitioner to the Corporation Hospital at Tarnaka. When he was not referred to the Hospital run by the Corporation at Tarnaka he could not have produced a sick certificate from that Hospital. Now, he is charged for his failure to produce the sick certificate from the RTC Hospital. Hence, the writ petitioner is charged for not producing a sick certificate from RTC Hospital, without first conceding his request to refer him there. Impossibility to perform a task cannot be made a charge. Further, no

reasons are forthcoming as to why the sick certificate given by Area Government Hospital is not considered by the Depot Manager. The petitioner, therefore, challenged the Depot Manager as to how far he is justified in proposing to impose the punishment of removal from service, but yet the Depot Manager passed orders on 30.04.2015 imposing the punishment of removal from service on the writ petitioner. That prompted the writ petitioner to institute W.P.No.18451 of 2015.

The fact situation prevailing in W.P.No.21988 of 2015 is almost identical excepting that in this case the petitioner was found to be absent for duties from 26.08.2014 to 02.09.2014, without any intimation or prior sanction of leave. It was urged by the writ petitioner that suddenly an uncle of his, who is aged '38' years expired and hence left to Kalwakurthy to attend to the obsequies of his deceased relative and consequently he could not attend to duty for '5' days as he had to perform the obsequies in the absence of any other male member in the family.

The principal objection raised by the learned standing counsel for the Corporation is that the learned Single Judge has entertained the writ petitions notwithstanding the fact that the writ petitioner in W.P.No.18451 of 2015 has not availed the alternative remedy of preferring an appeal under Regulation 22 of the APSTRC Employees (CC & A) Regulations, 1967. In the other case (W.P.No.21988 of 2015), though the writ petitioner availed the alternative remedy of appeal and it was rejected, but however he has not availed the remedy of revision, which is available under Regulation 29 of the aforementioned Regulations. Hence, the learned single Judge ought to have rejected both the writ petitions. Learned standing counsel for the appellant – corporation finds fault with the judgment of the learned single Judge only on the ground that the writ petitions ought not to have been entertained at all.

It is apt to remind oneself that existence of an alternative remedy is not considered to be an absolute bar for granting a writ under Article 226 of the Constitution. But, it is one of the factors to be taken into account and consideration in the matter of exercise of discretion before issuing the writ as prayed for. The traditional view that was held, over a long period of

time in this country, is that availing an alternative remedy before seeking a writ is a rule of policy, practice and a useful tool in the hands of a Court to regulate the proceedings before it exercises discretion to grant the writ as prayed for. The availability of an alternative remedy is never considered to be a bar for exercise of jurisdiction under Article 226 as a principle of law. Far therefrom, it is a self imposed limitation by the Courts so that wherever there is an effective alternative remedy available, by making the parties to exhaust the same before seeking a writ, the job of the Court to an extent can be reduced as the record will be full with all the necessary facts ascertained. Therefore, in certain exceptional circumstances and deserving cases, even in the face of availability of an alternative remedy writs as prayed for have been issued as a matter of remedying the wrong done to the aggrieved party, at the earliest.

If an authority is needed as to how this relevant exercise should be carried out, it is only appropriate to recall the words of Mahajan, Chief Justice, speaking for the Constitution bench in “**Himmatlal v. State of M.P.**”^[1],

“The contention that because a remedy under the impugned Act was available to the appellant it was disentitled to the relief under Article 226, stands negated by the decision of this Court in the case of State of Bombay v. United Motors (AIR 1953 SC 252) There it was held that *the principle that a court will not issue a prerogative writ when an adequate alternative remedy was available could not apply where a party came to the court with an allegation that his fundamental right had been infringed and sought relief under Article 226.*”
(emphasis supplied)

Once again in “**K.K.Kochuni v. State of Madras**”^[2] after referring to the earlier judgments of the Supreme Court in “Romesh Thappar v. State of Madras (AIR 1950 SC 124) and Rashid Ahmed vs. Municipal Board, Kairana (AIR 1950 SC 163), the Constitution Bench of the Supreme Court speaking through S.R.Das, Chief Justice, has made the following observations, which offer enormous guidance:

“Even if the existence of other adequate legal remedy may be taken into consideration by the High Court in deciding whether it should issue any of the prerogative writs on an application under Article 226 of the Constitution as to which we say nothing now - this Court cannot on a similar ground decline to entertain a petition under Article 32, for the right to move this Court by appropriate proceedings for the enforcement of the rights conferred by Part III of the Constitution is itself a guaranteed right..... *The mere existence of an adequate alternative legal remedy cannot per se be a good and sufficient*

ground for throwing out a petition under Article 32 if the existence of a fundamental right and a breach, actual or threatened, of such right is alleged and is prima facie established on the petition.”

All we need to examine now is whether the writ petitioner has made out a strong case for exercise of discretion by the learned single Judge in his favour or not?

The A.P.S.R.T.C., the predecessor-in-interest, of the 1st appellant Corporation herein, framed the Andhra Pradesh State Road Transport Corporation employees (Classification, Control and Appeal) Regulations, 1967 after obtaining the previous sanction of the Government of Andhra Pradesh under Sub-Section (1) of Section 45 of the Road Transport Corporation Act, 1950. Regulation-4 dealt with classification of the employees of the Corporation. The post of a conductor has been classified to fall at serial No.11 of the Operative (Traffic) staff as per Schedule III of these regulations and consequently the said post falls under Class III service as per Regulation – 5. Regulation-8 has spelt out as under:

(1) The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon an employee namely:-

- (i) censure;
- (ii) withholding of the privilege of free passes or privilege ticket orders or both for travel on the railway or the bus services of the Corporation, as the case may be, in the case of employees to whom such privilege or privileges are admissible;
- (iii) fine, in the case of persons for whom such penalty is permissible under these Regulations, vide sub-clause (3);
- (iv) withholding of increments;
- (v) recovery from pay of the whole or part of any pecuniary loss caused to the Corporation by an employee's negligence or breach of orders;
- (vi) suspension, where a person has already been suspended under regulation 18 pending enquiry into his conduct, to the extent considered necessary by the authority imposing the penalty;
- (vii) reduction to a lower rank in the seniority list or to a lower post or time-scale, whether in the same class of service or in another class, or to a lower stage in a time-scale;
- (viii) removal from service of the Corporation which does not disqualify from future employment.
- (ix) Dismissal from service of the Corporation which ordinarily disqualifies

from future employment.

Thus, for good and sufficient reason and after following the due procedure prescribed any of the above listed punishments can be imposed upon the employees who came to bear blameworthy conduct. The host of punishments listed out in Regulation 8 (1) clearly bring out their intrinsic intensity as they vary from “censure” to “dismissal from service.” They comprise both minor punishments and major punishments. It is, therefore, so very clear that depending upon the gravity of the misconduct the appropriate punishment should be chosen by the competent authority to be imposed upon erring employee.

Regulation-9 which delineates the circumstances under which penalties may be imposed made an attempt to list out in what kind of circumstances the punishment of dismissal, removal and other punishments should be imposed. Dealing with removal from service, it is spelt out in clause (f) as under:

“absenting himself or overstaying sanctioned leave, without sufficient cause”

Thus, Regulation No.9 of the aforementioned regulations authorises imposition of punishment of removal from service where employee absents himself from duty without sufficient cause.

In this context, if an employee falls sick and goes and gets treated in a Government Hospital, consequently abstains from reporting to duty, would that circumstance not be sufficient cause for his absence?

The facts as recorded by us reveal that the writ petitioner in W.P.No.18415 of 2015 fell sick on 01.01.2015 and consequently got grated in the Area Government Hospital, Kalwakurthy. When he sought to be referred to the hospital run by the Corporation at Tarnaka on 02.04.2015, his representation was forwarded to the Divisional Manager, but not such permission has been accorded. As a result of not referring him to the hospital of the Corporation at Tarnaka, if he continued to receive the treatment locally at Kalwakurthy and produces the sick certificate from the Area Government Hospital, but could not produce a sick certificate from RTC run Hospital, not entirely due to his fault, does it or does it not offer sufficient cause for his absence? If sickness of an

employee cannot offer sufficient or justifiable cause for his absence, we fail to understand which other factor can offer legitimately justification for absence. Similarly, the writ petitioner in W.P.No.21988 of 2015 had absented from reporting to duty due to an untimely death of a 38-year old uncle of his and consequently he appears to have performed the obsequies in the absence of any other male member in the family. Does it not offer a justifiable reason for one's absence from duty?

We are convinced that both the writ petitioners had good, sufficient and reasonable cause behind their absence from duty. Depot Manager, the competent authority, without in any manner addressing this crucial question as to whether there was sufficient cause behind their absence or not, proceeded mechanically to impose the major penalty of removal from service upon both the petitioners.

We confess, to have drawn inspiration from the following observations made by the Supreme Court in “***Union of India and others v. Giriraj Sharma***”^[3],

“Assuming Mr. Jain is right, we are of the opinion that so far as the present case is concerned the allegation is in regard to the incumbent having overstayed the period of leave by 12 days. The incumbent 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. 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 in 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.”

The order of punishment imposed by the Depot Manager is infirm for more than one good reason. Firstly, it is opposed to the principle spelt out in Regulation 9 (2) (f) read with Regulation 8 (1) of the Employees (CC & A) Regulations, 1967. Secondly, when Regulation 8 (1) listed out a host of punishments commencing from censure up to dismissal, it presupposes that an element of discretion is vested in the competent authority to choose the most appropriate amongst these punishments to be inflicted upon the employee. The very scale of punishments commencing from

censure indicates that it is the gravity of the misconduct that should be the guiding factor for choosing the suitable punishment. Every minor misconduct cannot be inflated and result in imposition of major punishments such as compulsory retirement/removal from service/dismissal from service. The punishment must be proportionate and reasonable with reference to the misconduct held established. Imposition of an excessive or harsh punishment reflects the unfair attitude held by the competent disciplinary authority towards the delinquent employee. In a given case, it might even amount to making up mind by the competent authority without any regard for the material on record. Any such prejudging would be a fatal error to be countenanced and hence Certiorari jurisdiction is required to be exercised in such a case.

It is only appropriate to recall, with profit, the principle set out by Supreme Court in “Om Kumar and others v. Union of India^[4]” in paragraph Nos.24 and 28.

“24. We agree that the question of the quantum of punishment in disciplinary matters is primarily for the disciplinary authority and the jurisdiction of the High Courts under Article 226 of the Constitution or of the Administrative Tribunals is limited and is confined to the applicability of one or other of the well-known principles known as Wednesbury principles, (See Associated Provincial Picture Houses v. Wednesbury Corpn [(1948) 1 KB 223]). This Court had occasion to lay down the narrow scope of the jurisdiction in several cases. The applicability of the principle of “proportionality” in administrative law was considered exhaustively in Union of India v. Ganayutham [(1997) 7 SCC 463] where the primary role of the administrator and the secondary role of the Courts in matters not involving fundamental freedoms, was explained.

28. By “proportionality”, we mean the question whether, while regulating exercise of fundamental rights, the appropriate or least- restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the court will see that the legislature and the administrative authority “maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve.” The legislature and the administrative authority are, however, given an area of discretion or a range of choices but as to whether the choice made infringes the rights excessively or not is for the court. That is what is meant by proportionality.”

For the sheer failure on the part of the Depot Manager, Kalwakurthy in not applying his mind as to whether the punishment of removal from service would meet the facts and circumstances brought on record, the punishment imposed on both the writ petitioners is bound to be set at

naught.

The enquiry was conducted, as was already pointed out supra, behind the back of the employee. He has pointed out that aspect to the disciplinary authority, but there was no reflection of this aspect of the matter by the disciplinary authority in the orders of punishment dated 24.02.2015 and 30.04.2015. The very purpose of drawing a show-cause notice was to provide a fair and meaningful opportunity to the delinquent employee to bring forth the mitigating factors available, if any, so that the same can be taken into consideration while finalising the proceedings. While the delinquent employee has brought out all the facts and circumstances, which are in his favour, the Depot Manager has not even adverted to them and he has not assigned any reasons as to why those factors will not fetch any relief to the petitioner concerned. Thus, the Depot Manager has exhibited a mechanical approach to the entire issue and for this reason also the orders of punishment passed by him are not sustainable.

It is a very settled principle of law that if a quasi-judicial authority like that of Depot Manager passes an order in breach of principles of natural justice, availability of an alternative remedy is not a factor for denying grant of writ as prayed for.

More than anything else, it is a settled principle that when a learned single Judge exercises his discretion and grants a writ of Certiorari, generally while exercising the appellate jurisdiction the Court will not interfere with such discretion unless the discretion so exercised by the learned single Judge is shown to be either perverse or unreasonable. In

“State of Uttar Pradesh v. Indian Hume Pipe Company Limited”^[5] it is held as under:

“Lastly, it was feebly argued by Mr. Manchanda that the High Court ought not to have entertained the writ petition and should have allowed the assessee to avail of the remedies provided to him under the U.P. Sales Tax Act, particularly when questions of fact had to be determined. In the instant case, the question as to what is the true connotation of the words "sanitary fittings" and whether the hume pipes manufactured and sold by the respondent were sanitary fittings within the meaning of that expression was a question of law and since the entire material on the basis of which this question could be determined was placed before the Sales Tax Officer and it pointed in one and only one direction, namely, that the hume pipes were not sanitary fittings and

there was nothing to show otherwise, the High Court was justified in entertaining the writ petition. Moreover, there is no rule of law that the High Court should not entertain a writ petition where an alternative remedy is available to a party. It is always a matter of discretion with the Court and if the discretion has been exercised by the High Court not unreasonably or perversely, it is settled practice of this Court not to interfere with the exercise of discretion by the High Court. The High Court in the present case entertained the writ petition and decided the question of law arising in it and in our opinion rightly. In these circumstances, therefore, we would not be justified in the interest of justice in interfering in our jurisdiction under Article 136 of the Constitution to quash the order of the High Court merely on this ground after having found that the order is legally correct. We are, therefore, unable to accept this contention.”

Emphasis is played now.

For the aforementioned reasons, we do not find any justifiable reason to entertain these appeals as the learned Single Judge has exercised the discretion properly and carefully too. Accordingly, they stand dismissed. No costs.

Consequently, the miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE ANIS

14.03.2016

Note: Mark L.R.Copy.
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[\[1\]](#) AIR 1954 SC 403

[\[2\]](#) AIR 1959 SC 725

[\[3\]](#) 1994 Supp (3) Supreme Court Cases 755

[\[4\]](#) (2001) 2 Supreme Court Cases 386

[\[5\]](#) AIR 1977 SC 1132