

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO**

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WRIT APPEAL No.348 of 2006

JUDGMENT: (Per Hon'ble Sri Justice Sanjay Kumar)

The Andhra Pradesh State Road Transport Corporation (APSRTC) preferred this appeal aggrieved by the order dated 05.10.2005 passed by a learned Single Judge allowing W.P.No.21623 of 2005 whereby the impugned notification dated 21.09.2005 was set aside on the grounds of non-application of mind and violation of principles of natural justice. The learned Judge consequently remanded the matter to the authority concerned for fresh consideration and disposal, duly taking into account the explanation submitted by the writ petitioner on 16.09.2005.

Sri S.V. Ramana, learned Standing Counsel for the APSRTC, would point out that the prayer in the writ petition was itself misconceived as challenge was made by the writ petitioner only to the notification dated 21.09.2005 which was in the nature of an internal communication of the removal of the writ petitioner under separate proceedings dated 21.09.2005. Learned Standing Counsel would further point out that reference was made to the said removal proceedings dated 21.09.2005 in the impugned notification dated 21.09.2005 but despite the same, no separate challenge was laid against the actual removal proceedings.

Copy of the removal proceedings dated 21.09.2005 placed on record reflects that the writ petitioner's explanation dated 16.09.2005 was taken into consideration before effecting removal of the writ petitioner from service.

This being the situation, learned counsel for the respondent-writ petitioner would submit that the removal proceedings dated 21.09.2005 were never communicated to the respondent-writ petitioner and therefore, challenge was laid to the notification dated 21.09.2005 which was the only record available with him.

In the light of the afore-stated facts, this Court is inclined to grant the benefit of doubt to the respondent-writ petitioner as there is no material placed on record in evidence of proof of communication of the removal proceedings dated 21.09.2005. As the learned Judge has only remanded the matter to the authority concerned for fresh consideration being under the impression that the removal was effected without considering the writ petitioner's explanation dated 16.09.2005, which is factually proved to be incorrect, and as the

removal proceedings dated 21.09.2005 provide for the remedy of appeal, we are of the opinion that the interest of justice would be sufficiently served by allowing the respondent-writ petitioner to avail such remedy at least at this stage.

The writ appeal is accordingly disposed of setting aside the order of the learned Judge in W.P.No.21623 of 2005 and permitting the respondent-writ petitioner to avail the remedy of appeal provided under the APSRTC Regulations within two months from the date of receipt of a copy of this order. In the event the respondent-writ petitioner prefers such an appeal, the appellate authority shall consider the same on merits and in accordance with law without reference to the issue of limitation prescribed under the Regulations. The appeal so preferred, if any, shall be considered and disposed of within two months from the date of its presentation.

Interim order dated 24.04.2006 shall stand vacated. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

Dr. B. SIVA SANKARA RAO, J

8th June, 2016
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