

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.8946 OF 2016

ORDER:

This Writ Petition, filed under Article 226 of the Constitution of India, challenges the order of removal passed by the Depot Manager, Telangana Road Transport Corporation (TSRTC), Karimnagar-I Depot, Karimnagar – 2nd respondent herein, vide proceedings No.02/95(141)/14-GDK, dated 05.03.2016.

2. With the consent of learned counsel appearing for both sides, this matter is heard and disposed of by this Court at the state of admission.

3. According to the petitioner, petitioner herein joined in the service of the respondent Corporation as a Conductor on 31.10.2008 and her services were regularized in the month of September, 2010. On 22.09.2014, a charge sheet was issued framing the following charges against the petitioner:

1. For having violated the rule issue and start to all the passengers, which constitutes mis-conduct vide in terms of Reg.No.28(vi)(a) of APSRTC Employees (Conduct) Reg., 1963.
2. For having collected Rs.50/- from a batch of TEN Passengers who boarded the bus at Thakkallapally state No.6 and found alighting without tickets at School stop, Thakkallapally, state No.5, you have not issued tickets to them, which constitutes serious misconduct in terms of Reg.No.28(ix)(a), (xxxi) & (xxxii) of APSRTC Employees (Conduct) Reg., 1963.
3. For having updated the TIM upto stage No.5 without issuing tickets, which constitutes misconduct in terms of Reg.28(vi)(a) of APSRTC Employees (Conduct) Reg., 1963.”

4. Thereafter, on 07.10.2015, petitioner was placed under suspension. The said order of suspension was assailed before this Court in W.P.No.32128 of 2014 and this Court ordered suspension of the said order on 28.10.2014 and in terms of the said order, petitioner was reinstated into service on 31.07.2015. Subsequently, on 23.11.2015, while communicating a copy of the enquiry report submitted by the Assistant Traffic Manager, Karimnagar, the petitioner herein was asked to submit the objections on the said report. In response to the same, the petitioner herein submitted her objections on 08.12.2015. In the said explanation, apart from other aspects, the petitioner herein raised specific objection with regard to the holding of the enquiry by the Assistant Traffic Manager on the ground that the Depot Manager, Godavarikhani, Superior Authority, was a witness in the said enquiry. Subsequently, the Depot Manager, TSRTC, Karimnagar-I, vide proceedings No.02/95(141)/14-GDK, dated 24.12.2015, issued a show cause notice of removal. Assailing the validity of the said show cause notice, petitioner herein filed W.P.No.6998 of 2016 before this Court on 03.03.2016. Pending the said writ petition, the Depot Manager, passed an order vide proceedings No.02/95(141)/14-GDK, dated 05.03.2016, ordering removal of the petitioner from service.

5. Calling in question the validity and legal sustainability of the said order of removal, the present writ petition has been filed.

6. Heard Sri A.K.Jayaprakash Rao, learned counsel, appearing for the petitioner and Sri A.Ravi Babu, learned standing counsel, appearing for the respondent Corporation.

7. It is contended by the learned counsel for the petitioner that the order of removal is highly illegal, arbitrary, unreasonable and violative of Article 14 of the Constitution of India and opposed to the very spirit

and object of the RTC regulations. It is also the submission of the learned counsel that the impugned action of the respondents is in total violation of the principles of natural justice. It is further contended that the enquiry conducted by an Inferior Authority when the Depot Manager appeared as witness cannot be the basis for passing the impugned removal order. In support of his submissions and contentions, learned counsel for the petitioner takes the support of the judgment of this Court in **M.L.L.Kumar Vs. The Divisional Manager, A.P.S.R.T.C. Cuddappah and another**^[1].

8. On the contrary, it is vehemently contended by the learned standing counsel that there is no illegality nor there exists any procedural infirmity in the impugned action, as such, the present writ petition is not maintainable under Article 226 of the Constitution of India and the impugned action is not amenable for any judicial review of this Court and the petitioner herein is not entitled for any relief from this Court. It is the further submission of the learned standing counsel that since the authorities afforded complete opportunity to the petitioner herein, it is not open for the petitioner herein to complain violation of principles of natural justice.

9. In the above backdrop, now the issue that boils down for consideration of this Court is:

“Whether the impugned action which culminated in termination of the petitioner from service by virtue of the impugned order is sustainable in the eye of law and whether the same warrants any interference of this Court under Article 226 of the Constitution of India?”

10. The material available before this Court manifestly discloses that there is absolutely no dispute with regard to the fact that the Depot Manager, Godavarikhani, appeared as witness before the enquiry authority i.e., Assistant Traffic Manager, Karimnagar. On receipt of the enquiry report, the petitioner herein submitted her objections on

18.12.2015, wherein the petitioner herein had taken the following objections on the enquiry report and the relevant portion at Paragraph No.4, reads as under:

“4. I submit that the Depot Manager, Godavarikhani, was the witness and his statement was alleged to have been recorded by the Assistant Traffic Manager, who is the Enquiry Officer. The complainant being higher officer enquiry has to be conducted by the higher officer and not by the lower rank officer. Therefore, the entire procedure of the enquiry is contrary to law, arbitrary and in violation of principles of natural justice.”

11. It is also evident from the show cause notice of removal dated 24.12.2015 that the said objection taken by the petitioner herein was not at all considered by the disciplinary authority and proceeded with the further action of terminating the services of the petitioner herein. In this connection, it may be appropriate to refer to the judgement cited by the learned counsel for the petitioner.

In M.L.L.Kumar Vs. The Divisional Manager, A.P.S.R.T.C. Cuddappah and another (cited supra), at paragraph No.4, this Court held as under:

“4. So far as the first contention is concerned, I have gone through the entire record of the case and also the depositions of the witnesses. Two witnesses were examined for the department. The second witness for the department for providing the charge is the Divisional Manager, Kurnool whom the petitioner is said to have abused. The evidence is to the effect that in as much as the petitioner was frequently absenting himself the Divisional Manager, Kurnool called him. It is in the evidence of the very same Divisional Manager that he admittedly gave a paper to the petitioner and asked him to write an undertaking that in the event of the petitioner absenting from duty in future, he would himself resign from office. The petitioner to whom the above undertaking was being dictated started writing the undertaking in his own handwriting and after writing a few words, realised what he was asked to write and refused. Here there is a slight variation in the versions of

the petitioner and of the Divisional Manager. While the petitioner's case is that he was asked to write down that in view of his absenteeism he was agreeing to resign straightaway, it is the version of the Divisional Manager, Kurnool, that he merely wanted the employee to write down that in the event of his future absenteeism he would resign from service. Be that as it may, even accepting the version of the Divisional Manager, I may say that no employer can compel an employee to agree to resign in future. When naturally an employee is so asked, he is bound to get a little provocation. In fact even according to the Divisional Manager in his evidence, the witness merely stated to him "you may do whatever you may like. I am not going to give the undertaking." Surely the provocation came from the Divisional Manager himself. The point that arises here is whether the Chief Inspector who conducted the enquiry was competent to conduct the inquiry. When the person who gave the complaint and the person who gave evidence before him was an officer immediately superior to him, I am clear in my mind that the enquiry should not have been conducted by the officer who was subordinate to the complainant himself and particularly when the superior officer is also a witness in the case. The principle that justice must not only be done but must be seen to be done is applicable to judicial as well as domestic proceedings. The principles of natural justice as applicable to domestic proceedings, have been held to include within them a right to the employee to have a fair trial."

12. In the instant case also, the Depot Manager, Godavarikhani, appeared as a witness before the subordinate authority i.e., Assistant Traffic Manager. Therefore, in the considered opinion of this Court, on the said ground alone, the impugned orders are liable to be set aside.

13. For the aforesaid reasons, Writ Petition is allowed, setting aside the order of termination vide proceedings No.02/95(141)/14-GDK, dated 05.03.2016. However, it is open for the respondents herein to initiate enquiry against the petitioner herein afresh, in accordance with

law and in terms of the observations made supra. It is also made clear that the petitioner herein shall cooperate with the said enquiry and in the event of non-cooperation, the orders impugned in the present writ petition stand revived.

14. Miscellaneous petitions pending consideration, if any, in the Writ Petition shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

18.03.2016
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