

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND**

THE HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT APPEAL No. 401 OF 2012

J U D G M E N T : *(per Hon'ble Sri Justice Nooty Ramamohana Rao)*

This Writ Appeal is preferred by the petitioner in Writ Petition No. 925 of 2004 which was directed against the order dated 06.06.2002 passed by the Chief Engineer, Operation & Maintenance, Kothagudem Thermal Power Station (KTPS), Paloncha, terminating his services.

The original petitioner claims that he was engaged, on contract basis, in KTPS between 1987 and 1988 and because of that, he was absorbed as a regular Mazdoor in the service of the erstwhile Andhra Pradesh State Electricity Board (APSEB), pursuant to the policy decision taken by the said Board in B.P.Ms.No. 37, dated 18.05.1997, etcetera. While so, the writ petitioner - appellant was put on a show cause notice on 22.10.1999. Upon verification of his antecedents, it was revealed that he was convicted of a crime booked against him under Section 325 of the Indian Penal Code and he has suppressed this information about his conviction in the attestation form filled-in by him. Column 12 of the attestation form sought for the following information from the candidates:

“Have you ever been convicted by a Court of law or detained under any State/Central Preventive Detention Laws for any offence?

Whether such conviction sustained in the Court of Appeal or set aside by the appellate Court, if appealed against?”

There is no dispute on the factual count that the writ petitioner - appellant has not furnished the information that in C.C.No. 678 of 1991, he was convicted by the Additional Judicial Magistrate of I Class Court at Kothagudem on 17.12.1993 and he was handed down a sentence to undergo Rigorous Imprisonment for six months apart from

paying a fine of Rs.1,000/-. On appeal preferred by the petitioner - appellant, in Criminal Appeal No. 18 of 1994, the learned Additional Sessions Judge at Khammam by judgment dated 15.10.1996 while upholding the conviction for the offence under Section 325 of the Indian Penal Code, modified the sentence to that of Rigorous Imprisonment for three months, while retaining the sentence of fine amount of Rs.1,000/-. From this fact, it clearly emerges that he has suffered conviction prior to 17.03.1998, the date on which the former APSEB has issued a memo seeking to absorb the writ petitioner - appellant into its service as a regular Mazdoor and that particular information is therefore, required to be furnished by the writ petitioner - appellant in the attestation form, which he did not.

One of the contentions urged before the learned Single Judge was that if an employee has committed any misconduct, he must be subjected to disciplinary proceedings and he should be penalized only after following the due procedure. Since such a procedure was not followed, the order of termination of services passed by the Chief Engineer on 06.06.2002 is bad in law. The learned Single Judge has examined Clause (xxx) of Regulation 6 of the Employees' Conduct Regulations and found that suppression of material information in an attestation form does not form part of the enumerated misconducts therein and hence, the termination of services resorted to by the Chief Engineer is not as a measure of discipline and control exercise, but due to suppression of materially-important information by the employee at the time of securing employment.

Learned counsel Sri Chandraiah Sunkara had made an attempt to demonstrate before us that the judgment rendered by the learned Single Judge is in the teeth of the judgments rendered by the Supreme Court in ***Secretary, Department of Home Affairs, Andhra Pradesh and others. v. B. Chinnam Naidu***^[1]. The Supreme Court has taken

note of its earlier view rendered in ***Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav*** (2003) 3 SCC 437. The Supreme Court has also noticed the contents of column 12 of the attestation form in ***Chinnam Naidu's case***. They are *in pari materia* the same as that of the contents of the attestation form filled in by the writ petitioner - appellant in the instant case. Having taken note of the contents of that column 12, the Supreme Court has drawn a clear distinction by pointing out that the candidate is not required to indicate as to whether he had been arrested in any case or as to whether any case was pending against him. Conviction by a Court or detention under any State/Central Preventive Detention Laws is different from arrest in any case or pendency of a case. In that view of the matter, the Supreme Court proceeded to observe that the State Government has proceeded on the basis that the respondent ought to have indicated the fact of arrest or pendency of the case, though column 12 of the attestation form did not require such information being furnished. In ***Chinnam Naidu's case***, he has not been convicted, but he was only involved in a criminal case, whereas, in the present case, the writ petitioner - appellant was not only convicted by the Court of first instance, but when appealed against, the appellate Court also has upheld his conviction, but however, granted him a reduced sentence of Rigorous Imprisonment for three months, while retaining the same fine amount imposed by the Court of first instance. Since there was no information furnished to us that there was a further criminal revision preferred there against, by the writ petitioner - appellant, we assume that the writ petitioner - appellant may have suffered the term of imprisonment imposed by the appellate Court and would have also paid the fine. It is that information, which he has withheld and suppressed by not disclosing while filling-up the attestation form.

Learned counsel for the original writ petitioner – appellant would also urge that by the time the learned Single Judge decided the

Writ Petition, the original writ petitioner died and hence, the judgment rendered by the learned Single Judge against a dead person is invalid. When we inquired from the learned counsel for the appellants, who are the legal representatives of the deceased employee as to whether they have brought the information about the death of the original petitioner to the notice of the learned Single Judge, Sri Chandraiah Sunkara candidly would submit that such an information may not have been brought to the notice of the learned Single Judge, otherwise, the learned Single Judge would not have decided the case and passed an order against the dead person. Hence, for want of bringing to the notice of the Court the information about the death of the writ petitioner, the learned Single Judge has proceeded to decide the matter assuming that the writ petitioner was alive.

It is apt to remember that in a public law domain, the information about the death of a party would seldom percolate to the Court in quick time unless the same is brought to the notice of the Court specifically by some one or the other. In the absence of any such information, the High Court would normally be assuming that the parties are happily alive and would proceed to decide matters, which are listed up on the board of the Court concerned and seldom would be inquiring as to whether the litigants are still surviving or not.

Therefore, for this reason also, the Writ Petition, which was decided after the day of the death of the original writ petitioner, does not render it ineffective at all.

Therefore, we find no merit in this Writ Appeal and it is accordingly, dismissed. No costs.

Consequently, the miscellaneous applications, if any shall also stand dismissed.

NOOTY RAMAMOHANA RAO, J

DR. B. SIVA SANKARA RAO, J

31st March 2016

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[\[1\]](#) (2005) 2 SCC 746