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

*****

Writ Petition No.29396 of 2015

Between

P.Laxmaiah

... Petitioner

and

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

... Respondents

DATE OF JUDGMENT PRONOUNCED: 09-5-2016

THE HON'BLE SRI JUSTICE R.KANTHA RAO

1	Whether Reporters of Local newspapers may be allowed to see the Judgments?	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 No.29396 of 2015

% 09-5-2015

P.Laxmaiah

... Petitioner

Vs.

$ TSRTC, Rep. By its MD, Bus Bhavan,
Musheerabad, Hyderabad; and another

... Respondents

! Counsel for the Petitioner: Sri V.Narasimha Goud

Counsel for Respondents 1 & 2: Sri A.Ravi Babu, Standing Counsel.

< Gist:

> Head Note:

? Cases referred:
1. (2011) 2 SCC 575
2. 2015 (2) CCC 60 (SC)

HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition Nos.29396 of 2015

Order:

Heard Sri V.Narasimha Goud, learned counsel appearing for the petitioner and Sri A.Ravi Babu, learned Standing Counsel for the respondents-Corporation.

2. The petitioner is a driver in the respondents-

Corporation. On 27-3-2015 when he returned from duty, the Assistant Engineer (Mechanical) asked him about the low mileage of the bus which he operated. It is said that he replied that the vehicle would give the same mileage. According to the petitioner, he was explaining to the
A.E. (M) that it may be due to various factors such as the condition of the vehicle, traffic jam, load of the passengers etc. The mileage of 5.38 kmpl., was expected of the vehicle but it gave 4.81 kmpl. When the petitioner replied that it would not give more than that, it was treated as disobedience and insubordination under Regulation 28 (viii) and also violating any other specific rule or instruction of the Corporation in force as contained in Regulation 28(xxxii) of the Andhra Pradesh State Road Transport Corporation Employees' (Conduct) Regulations, 1963, the petitioner was kept under suspension and the following charge was framed against him.

> "For having misbehaved and used abusive language against AE(M)/YGT while counselling for your low KMPL of 4.81 (The vehicle average KMPL is 5.38) after completion of your 12.40 YGT-MTKR N/O duty on 27-3-2015 at HSD Oil Bunk which constitutes serious misconduct on your part under Regulations 28(viii) and 28(xxxii) of APSRTC Employees' (Conduct) Regulations, 1963."

The petitioner submitted his explanation. Having not been satisfied with the said explanation,

a departmental enquiry was initiated against him by appointing
Mr. Prakash attached to R.M. office, Nalgonda as an Enquiry Officer. The version of the petitioner is that no order appointing Mr. Prakash as Enquiry Officer was passed. The said fact, however, has been denied by the Department. The enquiry was conducted and the Enquiry Officer found the petitioner guilty of misconduct covered by the charge framed against him and submitted a report to the Disciplinary Authority. The Disciplinary Authority invited comments of the petitioner on the enquiry report and issued a show cause notice proposing the punishment of removal from service. The petitioner submitted his explanation. The same was not considered and
a punishment of removal from service was imposed on the petitioner. Aggrieved by the said punishment, the petitioner filed the present writ petition.

3. The petitioner states that the post of Presiding Officer of Labour Court-III, Hyderabad had been vacant for more than 3 years and therefore he approached this Court invoking the jurisdiction under Article 226 of the Constitution of India. He also states that the entire episode which ultimately resulted in his removal from service is nothing but victimisation and resorting to unfair labour practice

and therefore he is entitled to invoke the jurisdiction of this Court under Article 226 of the Constitution of India.

4. On the other hand, it is the contention of the respondents-Corporation that the misconduct was proved in the course of enquiry, the petitioner participated in the enquiry, the petitioner has alternative remedies by way of appeal and revision in the Department and that he can also raise an industrial dispute and therefore the writ petition filed by him without availing the alternative remedies is not permissible in law. Thus, according to the respondents-Corporation, the writ petition is not maintainable and is liable to be dismissed.

5. In support of his contention, the learned Standing Counsel for the respondents-Corporation relied on **TRANSPORT & DOCK WORKERS UNION v. MUMBAI PORT TRUST**[1] wherein the Supreme Court having regard to the facts of the case before it held that the High Court should have dismissed the writ petition on the ground of existence of an alternative remedy under the Industrial Disputes Act. The learned Standing Counsel also invited the attention of this Court to the observation made by the Supreme Court in the above case that the Judges must maintain judicial

self-restraint while reviewing administrative or legislative decisions, that excessive interference is not proper and that the machinery of the Government would not work if it were not allowed some free play in its joints.

6. The judgment rendered by the Supreme Court relied upon by the learned Standing Counsel for the respondents-Corporation does not lay down any abstract and general principle and the observations were made with reference to the facts of the particular case.

7. As a matter of fact, in a catena of decisions, the Supreme Court took the view that mere existence of
an alternative remedy is no bar for filing a writ petition. However, this Court, while entertaining a writ petition filed by the petitioner without availing alternative remedy, has to look into the facts of a particular case. If the method adopted by the Department to deal with an employee and if the punishment ultimately inflicted shocks the conscience of the Court, more particularly when a major punishment is inflicted for a trivial misconduct, it would be appropriate on the part of this Court to entertain a writ petition filed invoking the jurisdiction under Article 226 of the Constitution

of India instead of subjecting the employee to pursue the departmental remedies and also before the Industrial Tribunal years together.

8. In **S.J. Coke Industries Pvt. Ltd. Etc. v. Central Coalfields Ltd. Etc.**[2], the Supreme Court held that the State should not rely on technicalities to defeat just and legitimate claims of citizens and the State must act as an honest person.

9. In Appeal (Civil) 4735 of 2006 (*Management of Aurofood Pvt. Ltd. v. S.Rajulu*), the Supreme Court dealing with identical situation held as follows:

> "3. … … … The learned Single Judge in his judgment and order dated 9th February 2001 observed that the misconduct even if held to be proved really amounted to the use of "unparliamentary language" and was trivial in nature and as the punishment of dismissal had shocked "the conscience of the Court" and as the punishing authority had without notice to the respondent workman, taken his antecedents into account, he directed the reinstatement of the respondent with full back wages.
> … … …
> 3. ……
> 4. ……
> 5. … … … The High Court has also found that the allegations against the workman even if taken to be true were trivial and could not justify an order of dismissal from service. The judgments cited by the learned counsel do not adequately meet the issues raised by the High Court. The questions of fact which have been decided by the High Court call for no interference by this Court

under Article 136 of the Constitution of India. ... ..."

10. In the instant case, the charge indicated that the petitioner misbehaved with the A.E. (M) and used abusive language. What is the misbehaviour and what is the abusive language used is not at all stated in the charge except stating that it constituted a serious misconduct.

The charge did not enable the petitioner to submit a proper explanation because it has no contents except the words "misbehaviour" and "abusive language". Admittedly, none of the witnesses at the enquiry did state that the petitioner used any abusive language. There is any amount of vagueness in the charge and it does not attract Regulations 28(viii) and 28(xxxii) of the Regulations. All the witnesses in the enquiry only stated that the petitioner replied that the vehicle would give the same mileage and nothing more. Even the words that the vehicle would give the same mileage are not part of the charge. The petitioner specifically contended in the enquiry that there was no order passed by the respondents-Corporation appointing Mr. Prakash attached to the R.M. office as Enquiry Officer. In the present writ petition, the respondents-Corporation did not file any order showing that Mr. Prakash was appointed as Enquiry Officer to conduct enquiry against the

petitioner. What all the respondents-Corporation says is that if the petitioner avails the departmental remedies they would produce the order appointing Mr. Prakash as Enquiry Officer. Because the charge does not contain the particulars of misconduct and also the words allegedly used by the petitioner against his superior, this Court is of the considered view that the charge itself is groundless.

The petitioner was suspended and was made to face the enquiry basing on a charge which is groundless.

The manner in which the petitioner was dealt with by the Department shocks the conscience of this Court.

This Court, therefore, can exercise the jurisdiction under Article 226 of the Constitution of India, more particularly having regard to the punishment imposed on the petitioner. Only evidence brought on record in the course of enquiry by the Department was that the petitioner replied that

“the vehicle would give the same mileage and also you could do whatever you like”. This Court is of the view that even if the entire evidence brought on record in the course of enquiry is considered to be true, it does not constitute any misconduct under Regulations 28(viii) and 28(xxxii) of the Regulations.

Moreover, for low mileage no action was initiated against the petitioner. The order of removing the petitioner from service, in the opinion of this Court,

is the result of colourable exercise of power and offending the right of the petitioner guaranteed to him under Article 21 of the Constitution of India.

11. Accordingly, the order of removal dated 20-8-2015 passed by the 2nd respondent-Depot Manager is set aside. The respondents-Corporation are directed to reinstate the petitioner into service with back wages and all consequential benefits. The writ petition is allowed.

The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

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R.KANTHA RAO, J.

09th May, 2016.
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Note:-
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HON'BLE SRI JUSTICE R.KANTHA RAO

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[1] (2011) 2 SCC 575

[2] 2015 (2) CCC 60 (SC)