

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

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WRIT PETITION No.10331 OF 2016

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ORDER:

This Writ Petition is filed under Article 226 of the Constitution of India for the following relief:

“to issue an order or direction more particularly one in the nature of WRIT OF MANDAMUS declaring the proceedings bearing Lr.No.E1/255(01)/2015-VKD, dated 24.02.2016 issued by the 3rd respondent whereby awarding major penalty of removal from service against the petitioner without considering the request of the petitioner for grant of time to the show cause notice as arbitrary, illegal, capricious and violative of right guaranteed under Article 14 of the Constitution of India apart from APSRTC Employees' (Conduct) Regulations, 1963 and consequently set aside the same and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

2. Challenge in the present writ petition is to the order passed by the 3rd respondent-Depot Manager, APSRTC, Vakadu Depot, Vakadu, SPSR Nellore District vide proceedings bearing Lr.No.E1/255(01)/2015-VKD, dated 24.02.2016, ordering removal of the petitioner from service.

3. Heard Sri Sai Gangadhar Chamorthy, learned counsel for the petitioner and Sri.A.Rama Rao, learned Standing Counsel for the respondent Corporation.

4. The 3rd respondent issued a show cause notice of removal bearing No.E1/225(01)/2015-VKD, dated 11.02.2016, calling upon the petitioner to show cause as to why the proposed penalty of

removal should not be inflicted on the petitioner. According to the petitioner, he received the said show cause notice dated 11.02.2016 on 17.02.2016. It is the further case of the petitioner that on 18.02.2016, he submitted a representation to the 3rd respondent, requesting to grant two months additional time for submission of explanation to the show cause notice. Subsequently, also on 22.02.2016, he submitted another representation to the same effect. There is absolutely no dispute with regard to the reality that the said requests were received by the 3rd respondent on 19.02.2016 and 23.02.2016 and the same is evident from the detailed track events of the postal acknowledgments enclosed to the present writ petition. The 3rd respondent, by virtue of the impugned order vide proceedings No.E1/225(01)/2015-VKD, dated 24.02.2016, terminated the petitioner from the service of the Corporation.

5. It is the submission of the learned counsel for the petitioner that the observation of the 3rd respondent in the impugned order that the petitioner submitted an explanation and the same was not convincing is totally incorrect as the petitioner herein did not submit any such explanation and in fact requested time for submission of the explanation. It is also the submission of the learned counsel for the petitioner that the order passed by the 3rd respondent, dispensing with the service of the petitioner herein, is totally unsustainable and tenable and in deviation to the principles of natural justice.

6. On the contrary it is vehemently contended by the learned counsel for the respondent Corporation that the petitioner cannot entertain the present writ petition before this Court having availed

alternative remedy of appeal as per the APSRTC Employees' (Conduct) Regulations, 1963 (*for short 'regulations'*) before the 2nd respondent on 16.03.2016 as stated in the writ affidavit.

7. As the petitioner herein already approached the appellate authority by way of filing appeal as per the Regulations and since the same is pending consideration before the 2nd respondent, this Court is not inclined to meddle with the impugned order which is the subject matter of appeal pending before the 2nd respondent. However, this Court is of the considered opinion that the ends of justice would be served if the 2nd respondent-appellate authority is directed to dispose of the appeal dated 16.03.2016 said to have been filed by the petitioner, against the impugned order of removal dated 24.02.2016, by fixing some timeframe.

8. For the aforesaid reasons, Writ Petition is disposed of, directing the 2nd respondent-appellate authority to pass appropriate orders on the appeal dated 16.03.2016 said to have been filed by the petitioner against the impugned order dated 24.02.2016 passed by the 3rd respondent, within a period of one month from the date of receipt of a copy of this order, after giving notice and opportunity of being heard to the petitioner herein. It is also made clear that the petitioner herein is also entitled to raise additional grounds before the 2nd respondent-appellate authority if he is advised to do so.

9. 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

07.04.2016
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