

***THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

+ WRIT PETITION No. 3172 OF 2017

%28.2.2017

G Govindu S/o late Gattanna
R/o Rajupally, Narva mandal
Mahabubnagar district

... Petitioner

Vs.

\$ Telangana State Road Transport Corporation
Rep by its Managing Director, Musheerabad
Hyderabad and another

.... Respondents

!Counsel for the petitioner : Sri V Narasimha Goud

Counsel for the Respondents : Sri G Vidyasagar senior counsel
For Sri B Mayur Reddy

<Gist :

>Head Note:

? Cases referred:



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

WRIT PETITION No. 3172 OF 2017

Between :

G Govindu S/o late Gattanna
R/o Rajupally, Narva mandal
Mahabubnagar district

.... Petitioner

And

Telangana State Road Transport Corporation
Rep by its Managing Director, Musheerabad
Hyderabad and another

. Respondents

JUDGMENT PRONOUNCED ON : 28.2.2017

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers may :
Be allowed to see the Judgments ? : YES
2. Whether the copies of judgment may be marked :
To Law Reporters/Journals : YES
3. Whether Their Ladyship/Lordship wish to : YES
See fair Copy of the Judgment ? :

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 3172 OF 2017

ORAL ORDER:

Petitioner is a driver in respondent corporation. On 16.12.2016 he was assigned service bus bearing registration NO. AP 10 Z 9964 from Makthal to Marikal via Undecode. The bus was stopped at Beerappagudi, Pattached village and after observing the bus stop, petitioner moved the bus. While so, persons standing nearby shouted to stop the bus, accordingly, petitioner stopped the bus. It appears, an old lady, standing near the bus stop, fell between the front and rear tyres of the bus and rear tyre moved over the body of the old lady and she died instantaneously. The Superintendent (Traffic), made a spot inspection to ascertain the reasons for accident and submitted his report on 17.12.2016. A preliminary enquiry was conducted on 27.12.2016 and the report was submitted to the competent authority. There was a joint enquiry by the Depot Manager-second respondent along with another Depot Manager and report was made on 5.1.2017. There after, on 9.1.2017, the Depot Manager, issued two proceedings, in one proceeding, petitioner was placed under suspension and in second proceeding, charge was framed against the petitioner. Petitioner filed his explanation on 12.1.2017; not satisfied with the explanation submitted by the petitioner, an Enquiry Officer, was appointed. Challenging the order of suspension and framing charges, this writ petition is filed.

2. Heard learned counsel for petitioner Sri V Narasimha Goud and learned standing counsel for respondent corporation Mr B Mayur Reddy.

3.1 Learned counsel for petitioner submitted that the suspension from service is wholly unwarranted; there was no negligence on the part of the petitioner; the old lady was handicapped and was standing by holding a stick, she suffered with fits and in that situation, she fell between the two tyres of the vehicle and there was no occasion for the petitioner to observe the old lady, therefore there was no rash and negligent driving by petitioner.

3.2 He would submit that in the report of the Superintendent – Traffic dated 17.12.2016, the Superintendent clearly states that there was no negligence on the part of the driver. In the further report of the Superintendent dated 27.12.2016, the Superintendent clearly says that Driver had taken all precautions as required and accident occurred only because the old lady, while she was crossing, fell down because she suffered with fits. The report of the Surpanch of the Grampanchayat also clearly stated that there was no negligence by the driver. The complainant, at whose instance, crime was registered, gave an affidavit on 9.1.2017 clearly stating that there was no negligence by the petitioner. Petitioner also relies on a statement given by a passenger viz., Sri M Surender Reddy, stating that petitioner was not responsible for the accident.

3.3 He would further submit that by notice dated 3.1.2017, addressed to the complainant, police informed complainant that on 31.12.2016 report was filed before the Judicial First Class Magistrate at Atmakur praying the learned Judge to close the case as 'action be abated' and that if he has any objection against such report, he should file his objections. According to learned counsel, no objections were filed by the complainant and on the contrary, his representation dated 9.1.2017 clearly substantiate that it was a false complaint.

3.4. He therefore submitted that on a false allegation he was placed under suspension and disciplinary action is initiated, causing lot of hardship and suffering to him; the petitioner is looked down in the community as if he has committed a serious offence on account of suspension from service; his suspension is causing stigma to him.

3.5 Learned counsel submits that initiation of disciplinary proceedings against petitioner amount to colourable exercise of power. He further submitted that explanation of the petitioner ought to have been considered and on account of the voluminous evidence in support of the petitioner, further action ought to have been dropped. On the contrary, the Depot Manager, was pre-determined to proceed against him on flimsy grounds. The action of the second respondent amounts to arbitrary exercise of power.

3.6 By placing reliance on circular No. PD-10-2002 dated 9.3.2002, it is contended that suspension need not be resorted to, if no prima facie case is established. The circular further emphasize that suspension should only be resorted to if warrants suspension in the circumstances mentioned therein. He would submit that none of the conditions mentioned therein are satisfied in the instant case.

3.7. He further submitted that according to Regulation 18 of Classification, Control and Appeal Regulations, 1967, suspension can be resorted to only if an investigation or enquiry is pending into grave charges and said suspension is necessary in public interest. In the light of the reports of the Superintendent Traffic and the statements given by various persons, it cannot be said that the allegation made against the petitioner is grave warranting suspension.

3.8 In support of his contentions, learned counsel for petitioner, placed reliance on the decision of Division Bench of this Court in **P.RAJENDER Vs UNION OF INDIA AND ANOTHER**¹; decisions of Supreme Court in **STATE OF ORISSA Vs BIMAL KUMAR MOHANTY**² and **SECRETARY TO GOVERNMENT AND ANOTHER Vs K.MUNNIAPPAN**³.

4.1 Sri Mayur Reddy, learned standing counsel for respondent corporation contended that the report dated 5.1.2017 points out that there was negligence on the part of the petitioner in driving the vehicle and if only he was careful and cautiously observed the old lady, he would have saved the life; that the report dated 5.1.2017 points out that the petitioner failed to take adequate precautionary measures to stop the bus. He therefore submitted that this is a matter which requires consideration in the enquiry and the Court cannot interject the enquiry proceedings at this stage. If what is contended by the petitioner is correct, petitioner can as well place the same in support of his defence before the Enquiry Officer and it is for the Enquiry Officer to evaluate the evidence on record and give his findings.

4.2. He submitted that as there is prima facie case of petitioner failing to perform his duties as driver properly, which resulted in death of an old lady, no illegality committed in suspending the petitioner from service. He would submit that Enquiry Officer was already appointed and within reasonable time enquiry proceedings would be concluded.

4.3. In support of his contentions, he placed reliance on decision of Division Bench of this Court in **DEPUTY INSPECTOR GENERAL OF POLICE, KURNOOL RANGE Vs R S MADHUBABU, RSI, KURNOOL**

¹ 2001 (5) ALD 290

² AIR 1994 SC 2296

³ AIR 1997 SC 2559

DISTRICT, KURNOOL⁴ and decision of Supreme Court in UNION OF INDIA AND ANOTHER Vs ASHOK KUMAR AGGARWAL⁵.

5. Two issues fall for consideration in this writ petition:
 - 1) Whether Court can interfere in disciplinary proceedings at the stage of charge memo?
 - 2) Whether suspension from service is justified?

ISSUE NO.1

6.1 On the scope of judicial review on a challenge to initiation of disciplinary proceedings, the law is well settled.

6.2.1 In **UNION OF INDIA Vs KUNISETTY SATYANARAYANA⁶** the employee challenged the charge memo dated 23.12.2003. In the said charge memo, it was alleged that the employee claimed reservation against ST roster point in the promotional post, though he did not belong to said category. Instead of replying to the aforesaid charge, the employee filed O.A., before the Central Administrative Tribunal. The Tribunal disposed of O.A. directing the employee to submit his reply to the charge memo. Instead of filing reply, he filed writ petition before the High Court and High Court allowed the writ petition. The Union of India preferred appeal before the Supreme Court.

6.2.2 On review of the precedent decisions, Supreme Court held as under:

“13. It is well settled by a series of decisions of this Court that ***ordinarily no writ lies against a charge-sheet or show-cause notice*** vide *Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh* [(1996) 1 SCC 327 : JT (1995) 8

⁴ 2009 (4) ALT 530 (DB)

⁵ (2013) 16 SCC 147

⁶ (2006) 12 SCC 28

SC 331] , *Special Director v. Mohd. Ghulam Ghouse* [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] , *Ulagappa v. Divisional Commr., Mysore* [(2001) 10 SCC 639] , *State of U.P. v. Brahm Datt Sharma* [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that ***at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so.*** It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. ***It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.***

15. Writ jurisdiction is discretionary jurisdiction and hence such ***discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.***

16. No doubt, in some ***very rare and exceptional cases*** the High Court can quash a charge-sheet or show-cause notice if it is ***found to be wholly without jurisdiction or for some other reason if it is wholly illegal.*** However, ordinarily the High Court should not interfere in such a matter.”

(emphasis supplied)

6.3.1 In **SECRETARY, MINISTRY OF DEFENCE AND OTHERS Vs PRABHASH CHANDRA MIRDHA**⁷ the employee was served with charge memo alleging that he demanded bribe and accepted. Challenging the said charge memo, employee filed O.A. before the Central Administrative Tribunal, alleging that the charge memo was issued by subordinate to the appointing authority; the O.A was allowed by the Tribunal on the ground that the charge memo was issued by authority subordinate to the appointing authority. Writ Petition preferred on

⁷ (2012) 11 SCC 565

behalf of Union of India was dismissed. On behalf of Union of India, appeal was preferred before the Supreme Court.

6.3.2. Supreme Court held as under:

“10. Ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the court. (Vide *State of U.P. v. Brahm Datt Sharma* [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , *Bihar State Housing Board v. Ramesh Kumar Singh* [(1996) 1 SCC 327] , *Ulagappa v. Commr.* [(2001) 10 SCC 639 : AIR 2000 SC 3603 (2)] , *Special Director v. Mohd. Ghulam Ghouse* [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] and *Union of India v. Kunisetty Satyanarayana* [(2006) 12 SCC 28 : (2007) 2 SCC (L&S) 304] .)

11. In *State of Orissa v. Sangram Keshari Misra* [(2010) 13 SCC 311 : (2011) 1 SCC (L&S) 380] (SCC pp. 315-16, para 10) this Court held that ***normally a charge-sheet is not quashed prior to the conducting of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that to determine correctness or truth of the charge is the function of the disciplinary authority.*** (See also *Union of India v. Upendra Singh* [(1994) 3 SCC 357 : 1994 SCC (L&S) 768 : (1994) 27 ATC 200] .)

12. Thus, the law on the issue can be summarised to the effect that the charge-sheet cannot generally be a subject-matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. ***Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings.***”

6.4.1. In **CHAIRMAN, LIFE INSURANCE CORPORATION OF INDIA AND OTHERS Vs M.MASILAMANI**⁸, it was alleged that there were certain irregularities and deviations in construction of house by the employee and the housing loan was obtained, upon non disclosure of the facts, charge sheet was drawn on 6.1.1998; employee filed his reply; not satisfied with the reply, domestic enquiry was ordered. Based on the report of the enquiry, penalty of reduction in the basic pay was imposed on the employee. The appeal as well as memorial were rejected. Challenging the order of punishment, employee preferred writ petition. Writ petition was allowed observing that witnesses were examined in violation of the statutory rules and principles of natural justice; that employee was not accorded adequate opportunity to cross examine the witnesses; that appellate authority failed to observe that there were procedural violations by the enquiry officer as well as by the disciplinary authority. It was also held that mere concurrence by the appellate authority with the findings recorded by the enquiry officer and without adequate reasoning cannot be said to amount to adequate application of judicial mind by the appellate authority. The appeal filed by the corporation was dismissed. Aggrieved thereby, appeal was preferred before the Supreme Court.

6.4.2. Dealing with various contentions, the Supreme Court observed as under:

“18. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as ***such a power is de hors the limits of judicial review***. In the event that the court/tribunal exercises such power, ***it exceeds its power of judicial review at the very threshold***. Therefore, a charge-sheet or show-cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by the court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary

⁸ (2013) 6 SCC 530

proceedings. The facts and circumstances of the case in question have to be examined taking into consideration the gravity/magnitude of charges involved therein. The essence of the matter is that the court must take into consideration all relevant facts and to balance and weigh the same, so as to determine if it is in fact in the interest of clean and honest administration, that the judicial proceedings are allowed to be terminated only on the ground of delay in their conclusion. (Vide *State of U.P. v. Brahm Datt Sharma* [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , *State of M.P. v. Bani Singh* [1990 Supp SCC 738 : 1991 SCC (L&S) 638 : (1991) 16 ATC 514 : AIR 1990 SC 1308] , *Union of India v. Ashok Kacker* [1995 Supp (1) SCC 180 : 1995 SCC (L&S) 374 : (1995) 29 ATC 145] , *Prohibition & Excise Deptt. v. L. Srinivasan* [(1996) 3 SCC 157 : 1996 SCC (L&S) 686 : (1996) 33 ATC 745] , *State of A.P. v. N. Radhakishan* [(1998) 4 SCC 154 : 1998 SCC (L&S) 1044 : AIR 1998 SC 1833] , *M.V. Bijlani v. Union of India* [(2006) 5 SCC 88 : 2006 SCC (L&S) 919 : AIR 2006 SC 3475] , *Union of India v. Kunisetty Satyanarayana* [(2006) 12 SCC 28 : (2007) 2 SCC (L&S) 304] and *Ministry of Defence v. Prabhash Chandra Mirdha* [(2012) 11 SCC 565 : (2013) 1 SCC (L&S) 121 : AIR 2012 SC 2250] .)”

7. The principles deducible from the above decisions are:
 - (i) Ordinarily writ does not lie against show cause notice/charge memo;
 - (ii) entertaining writ petition against show cause notice/ charge memo is dehorse the limit of judicial review/ exceeds the power of judicial review at the threshold;
 - (iii) issuance of show cause notice/charge memo, does not adversely affect/infringe the rights of the employee; does not amount to an adverse order;
 - (iv) normally a charge-sheet is not quashed prior to the conducting of the enquiry on the ground that the facts stated in the charge are erroneous as determination of correctness or truth of the charge is the function of the disciplinary authority. It would be premature to deal with the issues;
 - (v) in only very rare and exceptional cases, if it is found to be wholly without jurisdiction or for some other reason, if it is

wholly illegal, Court can exercise power of judicial review at the stage of show cause notice/ charge memo;

- (vi) discretion under Article 226 should not ordinarily be exercised to quash charge sheet/ show cause notice.

8. Keeping in mind above principles, it is necessary to assess the issue. The basic facts are not in dispute. It is also not in dispute that the Depot Manager is disciplinary authority and the charge sheet was issued by the competent authority.

9. Counsel for petitioner sought to assail correctness of charge sheet by relying on statements of Sarpanch of the village, a passenger and Superintendent (Traffic). If what is contended by the petitioner is accepted, this Court is required to evaluate the evidence available on record and give a finding that the allegation made against the petitioner in the charge memo is not true and therefore the charge is liable to set aside. In other words, at the preliminary stage, this Court is asked to go into the merits of the allegations and record a finding. I am afraid, in exercise of power of judicial review under Article 226 of the Constitution, this Court cannot undertake such an exercise. Whether there was negligence by the petitioner in not properly observing the movements of old lady and that if he has taken precautionary measures to stop the bus, he could have saved the life of the old lady, can be gone into in the domestic enquiry. Evaluation of evidence is the prerogative of disciplinary authority. What is sought now amounts to stepping into the shoes of disciplinary authority. In fact, writ Court cannot undertake such exercise even after disciplinary proceedings are concluded. The jurisdiction of the writ Court under Article 226 of the Constitution of India is very limited in disciplinary proceedings matters. That being so,

at the preliminary stage, Court can not undertake the exercise of evaluation of evidence. It is dehorse the limits of judicial review.

10. Thus, the challenge on the first issue fails.

ISSUE NO.2

11. The duties and responsibilities, conduct and discipline of an employee in public service are governed by service rules/ regulations. On allegation of misconduct, employer is entitled to take disciplinary action which may result in dismissal/ removal from service. The power to suspend an employee flows out of power to take disciplinary action on allegation of misconduct. The conduct rules/ regulations delineate the power of suspension and competent authority to exercise such power. When an allegation of misconduct comes to the notice of disciplinary authority and in the opinion of disciplinary authority that it is not desirable to entrust duties to the delinquent employee while enquiry/ investigation is in progress/ proposed, he may place his service under suspension. Suspension of service results in temporary withdrawal of duties and responsibilities of the delinquent employee. During the period of suspension the relationship of master and servant remains; the employee continues to be on the rolls of employment and is not entitled to take up any other assignment. He is still amenable to disciplinary control of the employer for any other misconduct also. He is only disabled from attending to his work. He is not entitled to draw pay and allowances. For his sustenance during the period of suspension, he is paid allowance which in normal parlance called 'subsistence allowance'. It is normally fixed at 50 % of last pay drawn, which can be enhanced to 75 %.

12. Ordinarily an employee's services can be placed under suspension in the following contingencies:

- a) Where disciplinary proceedings are contemplated or pending.
- b) Where the disciplinary authority was of the prima facie opinion that the employee is engaged in activities prejudicial to the interest and security of the State;
- c) Where the case against him in respect of criminal offence is under investigation, enquiry or trial;
- d) Pending investigation/ enquire into allegations, it is found not desirable to continue the employee in service in public interest;
- e) Such continuation in service during pending enquiry/ investigation is likely to prejudice the investigation, trial, enquiry; there is a possibility of tampering of documents, influencing the witnesses, etc;
- f) It is also permissible to suspend an employee if his continuation is likely to cause /encourage indiscipline in the organization.

13. In matters of suspension, there are two competing interests. On the one side is employer's eagerness to ensure transparent operation of public service and to enforce discipline. Therefore, he would mince no words to take disciplinary action when it comes to his notice of misconduct. When allegations are grave/ disobedience is palpable, it is also in public interest to place such employee under suspension. On the other hand is the concern of the employee. It is an accepted fact that though suspension does not take away the employment and is not a punishment per se, but it has deleterious effect on the employee and his family and attaches stigma as he would be looked down in the

community whenever person is placed under suspension. The suspension from service continues for months together and in many cases for years together.

14. In matters of suspension, the exercise of extra-ordinary power of judicial review vested in this court under Article 226 of the Constitution of India is very limited. Scope of consideration is limited to the extent of examining the competence of the authority who places an employee under suspension; arbitrary exercise of power; selective suspension; allegations are frivolous/ technical in nature; suspension was wholly unwarranted; and there was no application of mind. In matters of suspension, each case has to be examined in the factual background of given case.

15.1 At this stage, it is necessary to parade briefly the precedent pronouncements of Supreme Court and this Court on the issue of suspension.

15.2 In **O.P. GUPTA V. UNION OF INDIA**⁹, Supreme Court held that order of suspension should not be lightly passed:

“15. We have set out the facts in sufficient detail to show that there is no presumption that the government always acts in a manner which is just and fair.....*The real effect of the order of suspension as explained by this Court in Khem Chand v. Union of India*¹ is that he continues to be a member of the government service but is not permitted to work and further during the period of suspension he is paid only some allowance — generally called subsistence allowance — which is normally less than the salary instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension, unless the departmental inquiry is concluded within a reasonable time, affects a government servant injuriously. The very expression “subsistence allowance” has an undeniable penal significance. The dictionary meaning of the word “subsist” as given in Shorter Oxford English Dictionary, Vol. II at p. 2171 is “to remain alive

⁹ AIR 1987 SC 2257

as on food; to continue to exist". "Subsistence" means — means of supporting life, especially a minimum livelihood. Although suspension is not one of the punishments specified in Rule 11 of the Rules, ***an order of suspension is not to be lightly passed against the government servant.*** In the case of *Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni*² the court held that the expression "life" does not merely connote animal existence or a continued drudgery through life. The expression "life" has a much wider meaning. Suspension in a case like the present where there was no question of inflicting any departmental punishment prima facie tantamounts to imposition of penalty which is manifestly repugnant to the principles of natural justice and fair play in action....."(emphasis supplied).

15.3. In **STATE OF ORISSA Vs BIMAL KUMAR**

MAHANTY¹⁰ Supreme Court laid down parameters of suspension and scope of judicial review. Supreme Court held:

"13. It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. ***It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee.*** The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. ***Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry etc.*** But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the

¹⁰ [(1994) 4 SCC 126]

indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. ***The suspension must be a step in aid to the ultimate result of the investigation or inquiry.*** The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge.”(Emphasis supplied)

15.4. In **UNION OF INDIA V. ASHOK KUMAR AGGARWAL**¹¹, Supreme Court held,

“21. The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as vindictive misuse of power. Suspension should be made only in a case where there is a strong prima facie case against the delinquent employee and the allegations involving moral turpitude, grave misconduct or indiscipline or refusal to carry out the orders of superior authority are there, or there is a strong prima facie case against him, if proved, would ordinarily result in reduction in rank, removal or dismissal from service. The authority should also take into account all the available material as to whether in a given case, it is advisable to allow the delinquent to continue to perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry.

22. In view of the above, the law on the issue can be summarised to the effect that suspension order can be passed by the competent authority considering the gravity of the alleged misconduct i.e. serious act of omission or commission and the nature of evidence available. It cannot be actuated by *mala fide, arbitrariness, or for ulterior purpose.* Effect on public interest due to the employee's continuation in office is also a relevant and determining factor. The facts of each case have to be taken into consideration as no formula of universal application can be laid down in this regard. *However, suspension order should be passed only where there is a strong prima facie case against the delinquent, and if the charges stand proved, would ordinarily warrant imposition of major punishment i.e. removal or dismissal from service, or reduction in rank, etc (emphasis supplied).*

27. Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered. Suspension is an interim measure in the aid of disciplinary proceedings so that the delinquent may not gain custody or control of papers or take any advantage of his position. More so, at this stage, ***it is not desirable that the***

¹¹ (2013) 16 SCC 147

court may find out as to which version is true when there are claims and counterclaims on factual issues. The court cannot act as if it is an appellate forum de hors the powers of judicial review.

29. However, as the *suspension order constitutes a great hardship to the person concerned as it leads to reduction in emoluments, adversely affects his prospects of promotion and also carried a stigma*, an order of suspension should not be made in a perfunctory or in a routine and casual manner but *with due care and caution after taking all factors into account.*”(emphasis supplied)

15.5. In **K. MUNIAPPAN**, Supreme Court held:

“order of suspension can be resorted to pending further investigation or contemplate disciplinary action in only grave charges. It is permissible to place an employee under suspension only grave charges in contemplation of the disciplinary action”

15.6. In **P. RAJENDER**, Division Bench of this Court held as under:

“8. Suspension pending investigation, inquiry or trial is interim in nature. The aforementioned rule clearly suggests that an order of suspension **is not** required to be passed only because it will be lawful to do **so**. An application of mind on the part of the competent authority is sine qua non for passing such order of suspension. **Before** passing of an order of suspension, therefore, it is expected that the appropriate authority shall not only take into consideration the public interest but shall also take into consideration the relevant facts and attendant circumstances as to how far and to what extent the public interest may suffer if the delinquent officer is not placed under suspension.

9. An order of suspension, in such cases, may have to be considered upon taking into consideration the relevant facts. The authority empowered to place an employee under suspension, must, therefore, pose to itself a correct question and answer it having regard to the material on record....”

15.7 In **R.S. MADHUBABU**, Division Bench of this Court held as under:

“18. Having regard to the facts and circumstances of the case, we are of the opinion that the Tribunal ought not to have interfered with the order of suspension passed by competent authority, particularly when the authorities have got the power

under Rule 8 of the APCS (CCA) Rules 1991 to place an employee under suspension pending enquiry. All the aspects have to be gone into by the fact finding authority and the enquiry will disclose the truth and otherwise of the allegations. Further, it is settled preposition of law that suspension pending enquiry cannot be interfered with and the Courts can direct only to conclude and complete the proceedings. In the circumstances of the case, the Tribunal instead of directing the authorities to complete and conclude the disciplinary proceedings pending against the respondent within the time frame, exceeded its limit and over stepped its jurisdiction by directing the authorities that he should be transferred to a far off place, which is impermissible under law and unwarranted. As the task undertaken by the Tribunal is impermissible under law, the order passed by it suffers from various serious legal infirmities and therefore, the impugned order is liable to be set aside.”

16. The principles that can be culled out from above precedent decisions are:

- (i) The real effect of the order of suspension is that employee continues to be a member of service of employer but is not permitted to work and further during the period of suspension he is paid subsistence allowance.
- (ii) It would not be as an administrative routine or an automatic order to suspend an employee and not to be lightly passed. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee.
- (iii) The suspension must be a step in aid to the ultimate result of the investigation or inquiry.
- (iv) The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground, as vindictive and in misuse of power.
- (v) Suspension should be made only when there is a strong prima facie case of delinquency.

- (vi) Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered.
- (vii) order of suspension can be resorted to pending further investigation or contemplated disciplinary action only on grave charges.
- (viii) Competent Authority should take into consideration relevant facts and attendant circumstances as to how far and to what extent public interest would suffer if the delinquent is not placed under suspension.

17. As noted above, though, power to place an officer/ employee under suspension is conceded to employer/competent authority and can be resorted to enforce discipline; convey to all the employees that dereliction of duty cannot be tolerated; to ensure that employee would not create impediment; and having regard to the gravity of allegations, in larger public interest, it is necessary to suspend, but such power must be exercised sparingly and should not be made as an administrative routine or an automatic consequence of alleged disobedience and detailed assessment must be made. It should not be resorted to as a matter of course in all and sundry cases of allegation of misconduct and should be resorted to such course sparingly and in the larger interest of the organization and in public interest. Whenever, a person is placed under suspension, the disciplinary proceedings should be concluded within a fixed time frame. The Courts are cautioning the employer to resort to suspension on careful consideration of the pros and cons and should be resorted to sparingly.

18. To appreciate the contentions of the learned counsels, having regard to the broad principles noted above, it is necessary to consider the provisions in Regulation 18 of the CCA Regulations.

19. Regulation 18 vests power in the competent authority to place an employee under suspension (i) pending investigation or enquiry into **grave charges** and such suspension is necessary in the **public interest** and (ii) whether criminal offence is under investigation or trial. This Regulation also guides the disciplinary authority when to resort to suspension.

20. It is appropriate to note that order of suspension is based on report of Superintendent (Traffic) dated 17.12.2016. Strangely, though this order was made after the report dated 5.1.2017, it does not refer to the said report. In the report dated 17.12.2016 strongly relied by the learned counsel for petitioner, the Superintendent (Traffic) said that the old lady fell down because of fits and that accident did not occur because of the carelessness of the driver. In the order of suspension, the disciplinary authority observed that accident occurred due to negligent driving and if petitioner had taken proper precautions, accident would have been averted.

21. In the instant case, the initial reports would point out that accident was not caused due to negligence of the petitioner. Even in the report dated 5.1.2017 what was pointed out was petitioner failed to take adequate precautionary measures to stop the bus. In the light of the earlier preliminary reports and report dated 5.1.2017, I am of the considered opinion that in the instant case, suspension was wholly unwarranted. There is no scope for employee to tamper the record. In the light of allegation made, prima facie, it cannot be said that by

continuing petitioner in service, he could cause mischief or hinder progress of enquiry. It is made more as an administrative routine. Facts of case do not warrant suspension of employee. There was no application of mind. The power to place an employee under suspension was exercised in arbitrary manner.

22. The issue no.2 is answered accordingly.

23. It is made clear that the tenability of the allegation and the involvement of petitioner can be gone into during the departmental enquiry and Court has not expressed any opinion on merits at this stage. It is made clear that what is discussed in the above paragraphs is only for the purpose of considering the validity of the order of suspension and shall not prejudice the disciplinary proceedings. It is also made clear that if petitioner do not cooperate in early conclusion of disciplinary proceedings, the competent authority shall take a decision on the desirability of placing the petitioner under suspension on that ground.

24. In the result, the challenge to the charge memo is rejected; the order of suspension is set aside. Accordingly, the writ petition is partly allowed. No costs. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE: 28.2.2017
TVK

Note : L R copy to be marked. YES

HONOURABLE SRI JUSTICE P. NAVEEN RAO



WRIT PETITION No. 3172 OF 2017

Date : 28-02-2017