

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.1132 of 2012

ORDER:

Heard the learned counsel for the petitioner and Sri B.Mayur Reddy, learned Standing Counsel, appearing for respondents.

2. Petitioner in this Writ Petition has assailed proceedings dt.19-04-2007 of 1st respondent substituting punishment of removal imposed by 3rd respondent on 03-06-2006 by a direction to give fresh appointment to the petitioner.

3. Learned counsel for the petitioner would contend that under the APSRTC Employees (Classification, Control and Appeal) Regulations, 1967, which has been followed by the respondents, 1st respondent is not empowered to substitute for a punishment of removal imposed by the disciplinary authority, an order of fresh appointment on an employee since such power is not vested in him under the said Regulations. He contended that 1st respondent, who is the appellate authority, in exercise of powers under Regulation 27, has no discretion to impose a penalty which is not specified in the regulations.

4. He relied on the decision of this Court in **K.C.Narayana Vs. Managing Director, APSRTC, Hyderabad and others**¹. In that case, this Court held that the Regulations referred to above are statutory in character; that regulation 8 (1) shows the penalty which

¹ 2007 (5) ALD 416

may for good and sufficient reason be imposed on an employee; that punishment in nature of appointment afresh is not one among the enumerated penalties; and a statutory authority must exercise power strictly in accordance with statute or the statutory rules, and that exercise of power contrary thereto would be *ultra vires* and illegal. The Court held categorically that the appellate authority does not have the discretion to impose or substitute a fresh appointment in the place of penalty imposed by the disciplinary authority since such discretion is not conferred on him in the regulations.

5. The Court relied in that case on the judgment of the Supreme Court in the **State Bank of India Vs. T.J. Paul**². It also took the view that the Division Bench judgment of this Court in **T.Habeeb Sahenb Vs. Andhra Pradesh State Road Transport Corporation, rep. by its Managing Director, Hyderabad and others**³ cannot be considered to be good law in the light of the judgment in **T.J. Paul** (2 supra).

6. Learned counsel for the respondents on the other hand contended that in **Subhash Vs. Divisional Controller Maharashtra State Road Transport Corporation and another**⁴, the Supreme Court had directed fresh appointment to a driver in the Maharashtra State Transport Corporation by substituting the punishment imposed on him and therefore there is nothing wrong in the appellate authority/1st respondent in imposing the said punishment.

² AIR 1999 S.C. 1994

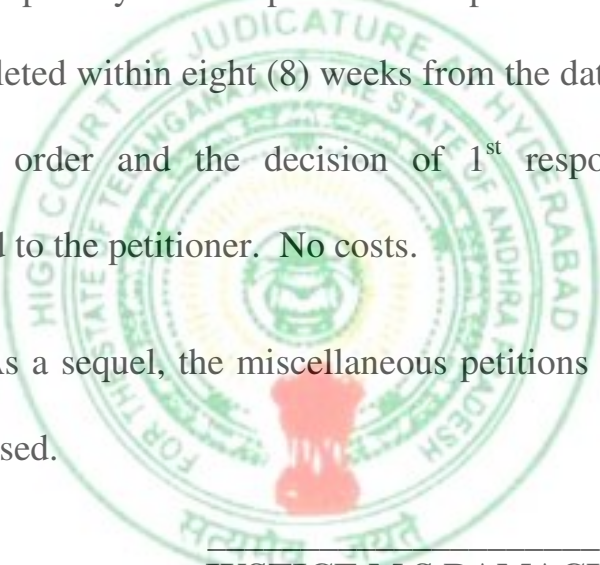
³ 1995 (1) ALT 553 (D.B.)

⁴ (2009) 9 S.C.C. 344

7. A perusal of the said judgment indicates that to render substantial justice, the Supreme Court granted the said relief to the driver in that case. The Supreme Court exercised its power under Article 142 of the Constitution of India, which power this Court lacks.

8. Accordingly, the Writ Petition is allowed, the order dt.19-04-2007 passed by the 1st respondent granting fresh appointment to the petitioner is set aside and the matter is remitted back to 1st respondent to consider the appeal filed by the petitioner and decide on the appropriate penalty to be imposed on the petitioner. This exercise shall be completed within eight (8) weeks from the date of receipt of a copy of this order and the decision of 1st respondent shall be communicated to the petitioner. No costs.

9. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.



JUSTICE M.S.RAMACHANDRA RAO

Date: 04-07-2017
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