

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs.18375 & 20439 OF 2018

Date: 25.06.2018

WP No.18375 OF 2018:

Between:

Sk.Masthan, s/o. Chotemia, Aged 55 years,
Process Server, Labour Court-III, Hyderabad,
R/o. Hyderabad.

.....Petitioner

and

The State of Telangana, rep.by its Principal
Secretary, Labour Employment, Training and
Factories Dept., Secretariat, Hyderabad and
another.

.....Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs18375 & 20439 OF 2018

COMMON ORDER:

Petitioner was initially appointed as Attender on Nominal Muster Roll (NMR) basis in the Office of Labour-Court-III, Hyderabad. Vide proceedings dated 18.01.1993, petitioner was appointed as Attender on temporary basis. Vide proceedings dated 19.12.1994, his services were regularized as Attender w.e.f. 18.01.1993 and was placed on probation. On successful completion of probation, his probation was declared vide proceedings dated 30.04.1997. By proceedings dated 6.11.2008, petitioner was converted as Process Server. According to petitioner, his annual increments on 18.1.2017 and 18.1.2018 were not released. Special grade scale due from 18.01.2018 is also not sanctioned. Petitioner attributes motives to Sri. T.Srinivasa Rao, working as Office Superintendent in the second respondent Office. It is alleged that T.Srinivasa Rao instigated the Presiding Officer alleging that petitioner does not possess the qualification required when he was appointed as Attender and by making false claim, he secured employment. On a letter addressed by the Presiding Officer, the District Educational Officer, Khammam, vide his proceedings dated 20.04.2017, informed the Presiding Officer that petitioner studied from class 5th to class 7th in Government Primary School at Nizampet. Even after the report submitted by the District Educational Officer, his increments were not released in spite of requesting the successive Presiding Officers, on the contrary by proceedings dated 10.05.2018 petitioner was placed under suspension and by proceedings dated 11.06.2018 he was

served with charge memo. Challenging the order of suspension dated 10.05.2018, petitioner filed W.P.No.18375 of 2018 and challenging the charge memo, petitioner filed W.P.No.20439 of 2018. Both writ petitions are disposed of by this common order.

2. Heard Mr. V.Jagapathi, learned counsel for petitioner and learned Assistant Government Pleader for respondents.

3.1. Learned counsel for petitioner would submit that when petitioner joined service, he has produced all relevant certificates. Petitioner did not pass 7th class examination. Petitioner did not prosecute further studies from 7th class onwards due to personal reasons and financial constrains. Later, he applied to write 10th class examination as a private candidate, but he failed in the said examination. At the time of joining service, petitioner informed the employer about his qualification and has produced 10th class fail certificate issued by the Board of Secondary Education and the same was also recorded in the service book. Thus, employer was aware of his qualification when employment was granted to him on NMR basis and when he was temporarily appointed. Having regard to the service rendered by him and as there was a requirement of Process Server, petitioner was appointed as Process Server on due verification of his eligibility. He would therefore submit that at this distance of time, it is not open to respondents to enquire into the allegation of not informing the employer about the qualification possessed by him and on that ground initiating disciplinary proceedings.

3.2. He would further submit that for an instance of 1993, even assuming that respondents are entitled to initiate disciplinary

proceedings, there is no justification to place the petitioner under suspension. In the case on hand, the issue is based on the entries in the service record and the material supplied by the petitioner at the time of joining service, obtaining information from the District Educational Officer and, therefore, consideration of issue is based on the record already available with the respondents. Petitioner has no access to that record and, therefore, there is no scope for petitioner to indulge in tampering of record or influencing witnesses. Thus, suspension is wholly unwarranted and amounts to arbitrary exercise of power and authority.

3.3. He would further submit that even assuming that petitioner did not have the qualification when he entered into service after having rendered 25 years of unblemished service, on the sole ground that petitioner lacks the educational qualification of pass in 7th class at the time of appointment in the year 1993, his services cannot be terminated, at this distance of time. The experience gained by petitioner in the post of Attender and later as Process Server is sufficient to make him suitable to hold the post. In support of said contention, he placed reliance on the decision of Supreme Court in **Bhagwati Prasad v. Delhi State Mineral Development Corporation**¹.

3.4. He would submit that there was no suppression of his qualification. Petitioner informed the qualification possessed by him and only after considering the suitability, petitioner was appointed. At this distance of time, it is not open to respondents to initiate disciplinary action on the allegation of suppressing the

¹ AIR 1990 SC 371

fact that petitioner did not submit requisite educational qualification at the time of appointment. It amounts to vindictive exercise of power and throwing the petitioner out of employment at this distance of time, would cause grave hardship and suffering to him and his family. Not furnishing information about his failure in 7th class, even assuming that information was not furnished would not constitute misconduct and, therefore, disciplinary proceedings are not maintainable. In support of said contention, learned counsel placed reliance on the decision of Supreme Court in **Agnani v. Badri Das**².

4.1. Based on the instructions furnished and record concerning the employment of petitioner, learned Assistant Government Pleader would submit that petitioner made a misstatement of fact about his eligibility by producing SSC fail certificate. He gave an impression that petitioner prosecuted his course of study leading to writing 10th class examination and produced 10th class fail certificate. According to the Rules governing the service of Attender, a person is eligible to be appointed as Attender only if he has passed 7th class. As petitioner has not disclosed the factum that he did not pass 7th class examination and only produced 10th class fail certificate, the appointing authority was misled to believe that petitioner was qualified to be appointed as Attender. As soon as this fact came to light, letter was addressed to the District Educational Officer to verify the educational qualification of petitioner and as per the information furnished by the District Educational Officer, it is seen that petitioner was admitted to Government School in Nizampet in the year 1973 into 5th class and

² LAWS (SC) 1963 (3) 37

he prosecuted 5th, 6th and 7th classes in the said school. He was in 7th class when he took transfer certificate. The transfer certificate discloses that petitioner was not qualified in 7th class. He has not produced the transfer certificate, but produced only the SSC fail certificate. The factum of petitioner not passing 7th class came to light only recently and District Educational Officer report establishes this fact. This action of petitioner would amount to suppressing the facts about his eligibility to be selected and appointed as Attender and, therefore, the disciplinary proceedings are validly initiated.

4.2. He would submit that as petitioner secured employment by misleading and playing fraud, his further continuation in service pending enquiry is not in public interest and, therefore, he was placed under suspension. He would further submit that Presiding Officer is competent to place him under suspension and initiate disciplinary proceedings and, therefore, writ petitions are not maintainable at this stage. Petitioner has to participate in the enquiry.

4.3. He would further submit that petitioner ought to have availed remedy of appeal against suspension and could not have rushed to this Court directly without availing remedy of appeal.

5. When WP No.18375 of 2018 was taken up for consideration, learned counsel for petitioner contended that at the time of joining service, he produced all the certificates relevant for consideration of employment and the service record also contains the information furnished by the petitioner and the suspension is resorted to without looking into the record. Having regard to the said

contention, learned Assistant Government Pleader was directed to produce the service record. Matter underwent two adjournments for production of service record of petitioner. In the mean time, by proceedings dated 11.6.2018 charge memo was drawn up and served on him. Challenging the same W.P.No.20439 of 2018 is filed. When both writ petitions are heard, the service book as well as other relevant material are placed before this Court.

6. The original service book of petitioner is seen. The service book was opened on 28.07.1993. In page nos.2 and 3, the personal particulars of the petitioner are noted in tabulated statement. Column-5 of the table deals with educational qualification. Against this column, it was written as 10th fail (not qualified).

7. Learned Assistant Government Pleader produced the correspondence between the Presiding Officer and the District Educational Officer. By letter dated 1.3.2017, the Presiding Officer requested the District Educational Officer to verify the genuineness of documents i.e., Study and Conduct Certificate from class 5th to 7th dated 14.2.2017 and submit a report in a sealed cover. It appears, petitioner produced Study and Conduct Certificate issued on 14.02.2017 by the Government Primary School, Nizampet. This certificate discloses that petitioner was not qualified in 7th class. In response, District Educational Officer informed the Presiding Officer vide his letter dated 20.04.2017 that petitioner has prosecuted 5th to 7th classes in Government Primary School, Nizampet during the period from 20.04.1976 to 10.7.1979 and the certificates submitted by the individual are tallied with the office records. It appears, the certificates verified are the certificate

of Study and Conduct dated 14.02.2017 and the transfer certificate issued on 10.07.1979. To the letter of District Educational Officer, he has also enclosed the report of Mandal Parishad Officer, photocopy of Admission and Withdrawal Register of School to show that petitioner prosecuted 5th to 7th classes during the relevant period. After obtaining the report from the district Educational Officer, Office note was prepared on 08.05.2018. In the Office note, the qualifications required for the post of Office Subordinate are mentioned and it was recorded further that qualification required for the post is not possessed by petitioner as he has not passed in 7th class. The Presiding Officer noted on 8.5.2018 to place the petitioner under suspension and to initiate disciplinary action. Accordingly, on 10.05.2018 order of suspension was made. The record placed before this Court also disclose that attempts made to serve the charge memo earlier were unsuccessful and petitioner received charge memo only on 15.06.2018.

8. As noted above, in this writ petition, petitioner is challenging the suspension from service and charge memo issued to him. The competency of Presiding Officer to place him under suspension and to initiate disciplinary proceedings is not doubted. On a reading of order of suspension and charge memo, it also cannot be said that no application of mind by the disciplinary authority while placing the petitioner under suspension and/or initiating disciplinary proceedings.

9. The issues for consideration in these writ petitions are:

1) Whether the writ petition is maintainable against charge memo ? and

2) In the facts of the case, whether the suspension from the service on the issue of suppression of educational qualification at the time of employment in the year 1993 is warranted at this distance of time?

ISSUE NO.1:

10. The scope of judicial review against suspension from service and initiation of disciplinary action was exhaustively considered by this Court in **G.Govindu v. Telangana State Road Transport Corporation, Hyderabad and another**³.

11. On the review of precedent decisions, this Court noted the principles of judicial review against charge memo as under:

“22. 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

³ 2017 (3) ALD 755

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.

12. In **Secretary, Ministry of Defence and others v. Prabhash Chandra Mirdha**⁴, petitioner challenged the charge memo on the ground that said charge memo was issued by the Subordinate to the Appointing Authority. The Tribunal (Central Administrative Tribunal) set aside the charge memo on the ground that writ petition preferred against said decision was dismissed by the High Court. On appeal, Supreme Court held ***“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”***. In support of the said dictum, Supreme Court referred to earlier decisions on the subject. Supreme Court further held:

“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***

⁴ (2012) 11 SCC 565

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. (emphasis supplied)

13. In **Chairman, Life Insurance Corporation of India and others v. M.Masilamani**⁵, Supreme Court held 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 dehors 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 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*

⁵ (2013) 6 SCC 530

[(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])” (emphasis supplied)

14. In the above decision, Supreme Court was also dealing with delay in initiation and conclusion of disciplinary proceedings. As can be seen from the above extracted paragraph, Supreme Court held that exercise of jurisdiction at the initial stage on the issue of delay in initiation is *de hors* the limits of judicial review, exceeds power of judicial review at the very threshold.

15. In the case on hand, as noted above, the Presiding Officer of Labour Court-III, is competent to initiate disciplinary proceedings against petitioner.

16. It is seen from the office note placed before the Presiding Officer after report of District Educational Officer, Presiding Officer noted that petitioner did not pass 7th class, which is prerequisite qualification for appointment. According to the preliminary assessment of the competent authority, at the time of joining service, petitioner did not inform the qualification possessed by him, but has produced his certificate of fail issued by Board of Secondary School Education. He came to the conclusion that disciplinary action needs to be initiated. If what is alleged is established, it cannot be said that disciplinary action is not warranted. Thus, it cannot be said that there was no application of mind by the disciplinary authority before taking a decision.

17. Whether petitioner failed to inform the employer that he failed in 7th class or the employer was aware of the qualification possessed by petitioner, but was granted employment at that time, are matters require considered by the disciplinary authority. It cannot be said that, on the face of record placed before this Court, *prima facie*, there is no justification to initiate disciplinary proceedings. The decision to initiate disciplinary action cannot be classified as perverse, warranting interference by this Court at the threshold.

18. Though several contentions are urged by the learned counsel for petitioner, Court is not recording its finding on the said contentions as it would prejudice the disciplinary authority and also would affect the defence of petitioner in the disciplinary proceedings and they are left open to be agitated in pending disciplinary proceedings.

19. Learned counsel for petitioner placed reliance on two decisions. Both decisions do not come to the aid of petitioner.

19.1. In **Bhagwati Prasad**, Supreme Court considered the factum of not possessing requisite qualification by the employee, but was allowed to work for considerable period and, therefore, court observed that on account of long service rendered by the employee, it is deemed that he is suitable to the post. Court also noticed that petitioners were appointed on daily wages between 1983 and 1986 and they were working continuously. Supreme Court observed that “practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the

suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications". In the case on hand, that is not the issue. He has become a regular employee. What is alleged against petitioner is that he suppressed the factum of his fail in 7th class and, therefore, the suppression of said fact amounts to securing employment by misleading the employer. Thus, said decision do not come to the aid of petitioner. On the contrary, observations made by the Supreme Court in the extracted portion would also go against the petitioner.

19.2. In **Agnani**, disciplinary action was initiated against employee resulting in termination of his services. The substance of allegation against employee was that he threatened Provision Shop Keeper, who runs his shop in the colony established by the employer. It appears co-employee borrowed some money from the shop keeper and he pledged his coat, attaché case and a ring as security. Petitioner threatened shop keeper with dire consequences that if those items are not immediately returned to him. It appears, the employee and his co-employee were required to travel to Delhi on the said date and probably these items are required for the purpose of journey. The incident was outside the employment place and nothing to do with the employment. Supreme Court observed as under:

“It would be difficult to lay down a general rule in respect of this problem. Acts which are subversive of discipline amongst the employees would constitute misconduct; rowdy conduct in the course of working hours would constitute misconduct; misbehaviour committed even outside working hours but within the precincts of the concern and directed towards the employees of the said concern may, in some cases, constitute misconduct; if the conduct proved against the employee is of such a character that he would not be regarded as worthy of employment, it may, in certain circumstances, be liable to be called misconduct. What is misconduct will naturally depend upon the circumstances of each case.”

19.3. Supreme Court observed that it is not open to the employer to post facto assess the conduct of employee as amounting to misconduct. In the instant case, the conduct of petitioner is not assessed as amounting to misconduct post facto. Thus, said decision also does not come to the aid of petitioner.

20. I, therefore, see no illegality in the charge memo warranting interference by this Court.

21. As noticed in earlier proceedings, the issue is in a very narrow compass. Therefore, second respondent is directed to complete the disciplinary proceedings as expeditiously as possible, preferably within a period of two months from the date of receipt of copy of this order, subject to petitioner cooperating in the disciplinary proceedings. Subject to above, W.P.No.20439 of 2018 is dismissed.

ISSUE NO.2:

22. On the scope of judicial review, in matters concerning suspension from service, in **G.Govindu**, this Court observed as under:

“27. 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.

28. 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.

29. In matters of suspension, the exercise of extraordinary 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 back ground of given case.”

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31. In **O.P. GUPTA V. UNION OF INDIA**⁶, 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 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 as on food; to continue to exist”. “Subsistence” means — means of supporting life,

⁶ AIR 1987 SC 2257

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* 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)

23. As noted by this Court in the above decision while considering the issue against suspension from service, Court is required to note whether suspension was resorted to enforce discipline; convey to all the employees that dereliction of duty cannot be tolerated; to ensure that employee would not create impediment in smooth conduct of enquiry and in the larger public interest, it is necessary to suspend, the employee. Court is required to see whether such power is exercised not as an administrative routine or an automatic consequence of alleged misconduct. Was there a careful consideration of the issue in a right perspective and on due assessment of misconduct of employee. Though, in the facts of this case disciplinary action may be warranted, placing him under suspension is not warranted. Issue in this case concerns verification of records and assessment of explanation of petitioner. There is no scope of tampering of evidence or influencing of witnesses. The issue relates to petitioner

appointment in the year 1993. Thus, in the facts of this case, suspension is not warranted. Order of suspension is set aside while granting liberty to proceed with departmental action. However, if petitioner does not cooperate for early conclusion of disciplinary proceedings and protracts the matter, it is open to disciplinary authority to review such conduct and to assess whether it is necessary to place the petitioner under suspension. Writ Petition No.18375 of 2018 is allowed accordingly.

24. It is made clear that there is no expression of opinion on merits. The discussion on various aspects is with reference to scope of judicial review against suspension from service and initiation of disciplinary proceedings. Ordered accordingly. Pending miscellaneous petitions shall stand closed. There shall be no order as to costs.

Date: 25.06.2018
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JUSTICE P.NAVEEN RAO

HONOURABLE SRI JUSTICE P.NAVEEN RAO



WRIT PETITION NOs18375 & 20439 OF 2018

Date: 25.06.2018

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