

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.18600 of 2018

Date : 02.07.2018

Between:

Smt K Anuradha, W/o P S Vinod Kumar,
aged 40 years, Sub Inspector of Police,
Traffic Cell Compounding Booth, Nampally,
Hyderabad.

.... Petitioner

And

The State of Telangana, rep. by its Principal Secretary,
Home Department Telangana Secretariat Hyderabad
and two others

.....Respondents

The Court made the following:



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ORAL ORDER:

Petitioner is working as Sub-inspector of Police. On registering crime against her on the allegation of demanding illegal gratification she was placed under suspension. In C.C.No.22 of 2011 the Principal Special Judge for SPE and ACB cases convicted the petitioner and sentenced her to undergo rigorous imprisonment for 2 years and imposed fine of 5000/-. Challenging the conviction and sentence, petitioner filed Criminal Appeal No.1481 of 2018 in this Court. This Court by order dated 2.5.2018 made in I.A.No.1 of 2018 suspended operation of sentence. Petitioner now apprehends that in view of conviction, she may be dismissed from service. Petitioner submitted representation on 24.5.2018 requesting not to dismiss her from service as sentence was suspended by the High Court and Criminal Appeal is pending.

2. Heard learned counsel for petitioner and learned Government Pleader.

3. According to learned counsel for petitioner, criminal appeal is in continuation to Trial Court proceedings and during pendency of Criminal Appeal, no adverse decision can be taken. He would therefore submit that until the Criminal Appeal is decided, petitioner should not be removed from service. Learned counsel placed reliance on decision of Supreme Court in **Maya Devi (dead) through legal representatives Vs Raj Kumari Batra (dead)**¹.

¹ (2010) 9 SCC 486

4. The undisputed facts are, on an allegation of demand and acceptance of illegal gratification, petitioner was prosecuted, and the Criminal Court held petitioner guilty of offences punishable under sections 7 and 13(2)(d) of the Prevention of Corruption Act, 1988 and is convicted under section 248(2) of Criminal Procedure Code. In the Criminal Appeal filed before this Court, this Court only suspended sentence. Thus, conviction stands as on today. An employee can be dismissed from service for committing misconduct during employment. If an employee is to be dismissed from service on the allegation of misconduct, procedure as envisaged by Telangana State Civil Services (Classification, Control & Appeal) Rules, 1991 are required to be followed before imposing punishment of dismissal. However, Rule 25 of the rules makes an exception. If employee is already convicted by competent criminal Court, the conviction itself can be the basis to dismiss an employee from service and there is no requirement to conduct domestic enquiry. As long as conviction stands, merely because sentence was suspended by appellate court is no ground for an employee to request the employer to defer imposing punishment till his criminal appeal is decided.

5. The law on this point is well settled. Having regard to provision in Rule 25 this very issue was considered by the Supreme Court in **Government of Andhra Pradesh Vs B.Jagjeevan Rao** [(2014)13 SCC 239]. Supreme Court held as under:

“8. The question, thus, emerges whether an inquiry should have been held under Article 311(2) of the Constitution, regard being had to the scheme of Rule 25(1)

of the Rules. In this context, we would like to extract a passage from the pronouncement of the Constitution Bench in *Union of India v. Tulsiram Patel* [(1985) 3 SCC 398 : 1985 SCC (L&S) 672 : AIR 1985 SC 1416] . In the said case, the officer concerned was convicted under Section 332 IPC and the learned Magistrate had released him on probation under the Probation of Offenders Act. Considering the said factual position the Constitution Bench opined thus: (SCC pp. 514-15, para 153)

“153. The second ground upon which the High Court rested its decision is equally unsustainable. The circumstances which were taken into consideration by the disciplinary authority have been sufficiently set out in the order of compulsory retirement, they being that the respondent's conviction under Section 332 of the Penal Code, 1860 and the nature of the offence committed which led the disciplinary authority to the conclusion that the further retention of the respondent in the public service was undesirable. The mention of Section 332 of the Penal Code, 1860 in the said order itself shows that respondent was himself a public servant and had voluntarily caused hurt to another public servant in the discharge of his duty as such public servant or in consequence of an act done by that person in the lawful discharge of his duty. The facts here are eloquent and speak for themselves. The respondent had gone to the office of his superior officer and had hit him on the head with an iron rod. It was fortunate that the skull of Raj Kumar was not fractured otherwise the offence committed would have been the more serious one under Section 333. The respondent was lucky in being dealt with leniently by the Magistrate but these facts clearly show that his retention in public service was undesirable. In fact, the conduct of the respondent was such that he merited the penalty of dismissal from government service and it is clear that by imposing upon him only the penalty of compulsory retirement, the disciplinary authority had in his mind the fact that the Magistrate had released him on probation. We accordingly hold that clause (i) of Rule 19 of the Civil Services Rules was rightly applied to the case of the respondent.”

9. Having stated the principle, we shall now advert to the rule position. Rule 25(1) being relevant is reproduced below:

“25. Special procedure in certain cases.—
Notwithstanding anything contained in Rule 20 to Rule 24
—

(1) where any penalty is imposed on a government servant on the ground of conduct which has led to his conviction on a criminal charge,

The disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit.”

The requirement of the said Rule, as it seems, is that the conduct of government servant that had led to conviction on the criminal charge and the circumstances of the case are to be considered by the disciplinary authority before imposing the appropriate punishment.

10. In the case at hand, the respondent was convicted under Sections 7 and 13(1)(d) read with Section 13(2) of the Act and sentenced to one year rigorous imprisonment. In almost a similar case in *S. Nagoor Meera [Director of Collegiate Education (Admn.) v. S. Nagoor Meera, (1995) 3 SCC 377 : 1995 SCC (L&S) 686 : (1995) 29 ATC 574]*, a two-Judge Bench, after referring to the conceptual mandate of Article 311(2) and after referring to the dictum in *Shankar Dass v. Union of India [(1985) 2 SCC 358 : 1986 SCC (Cri) 242 : 1985 SCC (L&S) 444]* has expressed thus: (*S. Nagoor Meera case [Director of Collegiate Education (Admn.) v. S. Nagoor Meera, (1995) 3 SCC 377 : 1995 SCC (L&S) 686 : (1995) 29 ATC 574]*, SCC p. 382, paras 10-11)

“10. What is really relevant thus is the conduct of the government servant which has led to his conviction on a criminal charge. Now, in this case, the respondent has been found guilty of corruption by a criminal court. Until the said conviction is set

aside by the appellate or other higher court, it may not be advisable to retain such person in service. As stated above, if he succeeds in appeal or other proceeding, the matter can always be reviewed in such a manner that he suffers no prejudice.

11. The Tribunal has given yet another reason for quashing the show-cause notice viz. that whereas the conviction of the criminal court was on 4-2-1991, the impugned show-cause notice was issued only on 27-10-1993. The appellant has explained that though the respondent (sic appellant) had come to know the conviction soon after the judgment of the criminal court, there was a doubt whether action can be taken against the respondent in view of the order of the High Court suspending the sentence. It is stated that after obtaining legal advice, the show-cause notice was issued. In our opinion, the delay, if it can be called one, in initiating the proceedings has been properly explained — and in any event, the delay is not such as to vitiate the action taken.”

11. Regard being had to the aforesaid enunciation of law and keeping in view the expected standard of administration, conviction on the charge of corruption has to be viewed seriously and unless the conviction is annulled, an employer cannot be compelled to take an employee back in service. Therefore, the High Court has clearly erred in its interpretation of Rule 25(1) and further committed illegality in not keeping in mind the distinction between stay of conviction and suspension of sentence as envisaged under Section 389(1) of the Code.”

6. The facts in the said case are identical to the facts in this case. As in this case, in the above case also, employee was convicted under the Prevention of Corruption Act. In the appeal preferred by him, Appellate Court only suspended sentence and not conviction. Thus, petitioner is not entitled to the relief claimed. The decision relied upon by learned counsel has no relevance to the issue on hand. The Writ Petition is dismissed. Pending

miscellaneous petitions shall stand closed. There shall be no order as to costs.

P NAVEEN RAO,J

DATE: 02-07-2018
TVK



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