

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.22951 OF 2018

Date: 26.07.2018

Between:

M.Ravi Chandra Raju, s/o. late M.Venkat Raju,
Aged about 55 years, occu: Assistant Manager,
Manager I/c (under suspension), Siddavatam
Branch of the Kadapa District Cooperative Central
Bank, R/o. H.No.48/157, Ravindra Nagar, Kadapa
City, YSR Kadapa district, Andhra Pradesh.

.....Petitioner

and

The State of Andhra Pradesh, rep.b its Prl.Secretary,
Department of Agriculture and Cooperative,
Secretariat, Velagapudi village, Amaravathi,
Guntur district, A.P., and another.

.....Respondents



The Court made the following:

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ORDER:

Petitioner was working as Manager on in-charge basis in Siddavatam branch of Kadapa District Cooperative Central Bank. In this writ petition, petitioner is challenging the order dated 20.04.2018 placing him under suspension.

2. Heard learned counsel for petitioner, learned Government Pleader for respondent No.1 and learned standing counsel for 2nd respondent-bank.

3. According to learned counsel for petitioner, suspension is resorted to based on news item published in Telugu daily newspaper on 19.04.2018 and perfunctory enquiry seems to have been conducted behind back of petitioner and based on said enquiry, he was placed under suspension. According to learned counsel, order of suspension could not have been passed without notice or opportunity to petitioner and more so responding to news item in Telugu daily newspaper. He further submitted that only on 04.06.2018 charges were framed and for almost six weeks, there was no progress in the disciplinary action. According to learned counsel, what is alleged is only negligence in discharging his duties, does not amount to grave misconduct warranting suspension from service. Suspension cannot be resorted to as an administrative routine. In support of said contention, he placed reliance on the decision of Supreme Court in **State of Orissa vs.**

Bimal Kumar Mohanty¹ and the decision of Division Bench of this Court in **P.Rajender v. Union of India and another**².

4. Reading of order of suspension would show that noticing the news item published in daily newspaper alleging missing of 13,00,000/- worth of gold bags, preliminary enquiry was conducted. In the preliminary enquiry it was pointed out that four gold bags were not traced out in the chest and in the branch and petitioner and two others were jointly made responsible for missing of four gold bags worth 13,00,000/-. Thus, it cannot be said that there was no application of mind or mere reaction to the news item. Based on findings in preliminary enquiry, petitioner was placed under suspension. On 04.06.2018 charge memo was drawn. It contained five charges. On going through charge memorandum it cannot be said charges are trivial and would be amounting to only negligence, if proved, as sought to be projected by learned counsel for petitioner. Further, admittedly petitioner was Manager of the Branch and Manager is responsible to overall functioning of Bank including ensuring safe custody of gold bags, gold chest movement register, keys movement register and working of CCTV cameras.

5. In paragraph-13 of **Bimal Kumar Mohanty**, Supreme Court observed as under:

“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

¹ AIR1994 SC 2296

² 2001 (5) ALD 290 (DB)

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 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.”

6. According to observations of Supreme Court, suspension cannot be an administrative routine or an automatic order, but it should be on consideration of the gravity of the alleged

misconduct. 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 and 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. Supreme Court observed that each case must be considered on its own facts.

7. In **P.Rajender**, petitioner was implicated in a case on an offence punishable under Sections 494 and 498-A of IPC. The Division Bench of this Court observed that there was total non-application of mind while suspending the petitioner. This Court observed as under:

“12. The question as to when the petitioner had undertaken the second marriage and whether it had any impact on the petitioner’s continuing to work in public service despite the fact that investigation had already been completed and charge-sheet had also been filed in a case filed by the petitioner’s wife, were relevant factors to be taken into consideration at the time of passing the order.

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20. There is lot of difference between a case where the Government servant is charged with allegations of corruption and misuse of official position and where an employee is charged of offences in relation to a private dispute.”

(emphasis supplied)

8. In this case, the allegations if proved are grave as the issue concerns loss of gold bags valued at 13,00,000/- and allegations pertain to branch where he was Manager.

9. The scope of judicial review against suspension from service was exhaustively considered by this Court in **G.Govindu v.**

Telangana State Road Transport Corporation, Hyderabad and another³. 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

³ 2017 (3) ALD 755

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.

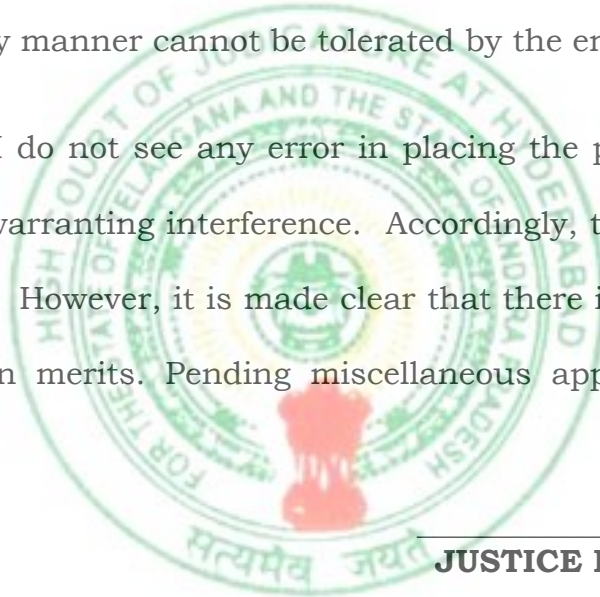
29. In matters of suspension, the exercise of extraordinary power of judicial review vested in this court under Article 226 of the Constitution of India is very limited. Scope of consideration is limited to the extent of examining the competence of the authority who places an employee under suspension; 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.”

10. 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; whether there was careful consideration of the issue and in right perspective and due assessment of misconduct of employee.

11. According to assessment of the disciplinary authority missing of four gold bags valued at 13,00,000/-, not maintaining gold chest key movement register and key movement register in a bank is a serious issue and amounts to grave misconduct, if proved. When the allegations amount to grave misconduct, it

cannot be said that the employee cannot be suspended, and discretion was not validly exercised. Whether the Bank is subjected to loss or possibility of loss being caused and whether petitioner was responsible to the alleged loss of four gold bags, not maintaining gold chest key movement register and key movement register are matters for consideration in the disciplinary enquiry. In the facts of this case, it cannot be said that the disciplinary authority resorted to suspending the petitioner as an administrative routine. In a case of this nature, suspension can be resorted to convey the message to all the employees that dereliction of duty in any manner cannot be tolerated by the employer.

12. Thus, I do not see any error in placing the petitioner under suspension warranting interference. Accordingly, the Writ Petition is dismissed. However, it is made clear that there is no expression of opinion on merits. Pending miscellaneous applications stand disposed of.



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