

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 24493 of 2018

Date : 25.9.2018

Between:

T Mallaiah S/o Malsoor aged 53 years
Occ Sr Asst F E No 250483 R/o 664/6 Main Road Kudakuda
Chivvemla Mandal Suryapet District

Petitioner

And

Telangana State Road Transport Corporation
Rep by its Managing Director
Bus Bhavan Musheerabad Hyderabad & others

Respondents

The Court made the following:



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ORAL ORDER:

Heard learned counsel for petitioner and learned standing counsel for respondent corporation.

2. First Petitioner is working as Senior Assistant and second petitioner is working as Junior Assistant in Telangana State Road Transport Corporation (for short TSRTC). In this writ petition, petitioners though challenged the suspension from service vide orders 2.7.2018 and charge memo dated 2.7.2018, while hearing, learned counsel for petitioners submitted that the prayer is confined to the validity of order of suspension from service only.

3. Reason assigned for suspension is, petitioners boarded the bus in drunken condition, scolded the driver, abused him in filthy language, scolded and beaten the passengers tarnishing the image of the corporation and same would amount to misconduct.

4. According to learned counsel for petitioners, when petitioners boarded the bus, they were not on duty and therefore incident alleged is outside the employment and acts of employees outside employment are not amenable to disciplinary action and thus suspension is wholly unwarranted. He would further submit that the allegation of drunken condition also cannot be leveled as petitioners were not on duty and at any rate there was no medical examination to hold that they were in intoxicated condition. He would therefore submit that suspension would amount to arbitrary exercise of power and authority. In support of his contention that for the incidents happened outside employment are not amenable to disciplinary action, learned counsel

placed reliance on the judgment of the Supreme Court in **GLAXO LABORATORIES (INDIA) LIMITED Vs. PRESIDING OFFICER, LABOUR COURT, MEERUT**¹

5. Per contra, learned standing counsel for respondent corporation would submit that Regulation 28 (xi) of TSRTC Employees (Conduct) Regulations, 1963 clearly envisages that for any incident happened in the vehicles of the corporation is within the scope of employment, therefore amenable to disciplinary action and thus suspension is valid. He would further submit that the issue of assault and drunken condition are now subject matters of disciplinary proceedings and as enquiry is in progress, petitioners can raise all these pleas before the disciplinary authority.

6. It is not in dispute that the Depot Manager is competent to place the petitioners under suspension. Reading of the suspension order would show that based on material placed before him, he was prima facie satisfied that petitioners committed misconduct and liable for disciplinary action and therefore placed them under suspension. Thus, the primary ingredients to test validity of an order of suspension are satisfied in the case on hand.

7. The only issue for consideration is whether suspension from service was warranted on the ground of petitioners assaulting the driver in the bus belonging to corporation when petitioners were not on duty at the relevant point of time.

8. Relevant provisions of Regulation 28 which have a bearing on the issue, read as under:

“28. Without prejudice to the generality of the forgoing regulations, the following acts or omissions shall be treated as misconduct:--

.....

¹ (1984) 1 SCC 1

(xi):-- assaulting any person inside the premises or in the vehicles of the Corporation.

(xv) :-- any act involving moral turpitude which is punishable under the provisions of the Indian Penal Code.

(xviii) :-- riotus or disorderly behaviour or intimidation in the premises of the Corporation; or outside while on duty or any act subversive of discipline; this includes shouting of slogans criticizing the Corporation or any of its servants and wearing 'protest badges'.

(xxi) :-- Insolence, impertinence or unruly behaviour towards members of the public or any employee while on duty.

.....

(xxxi) :-- any other act not specifically mentioned above but which is prima facie detrimental to the interests of the Corporation."

9. It is not in dispute that the bus wherein the alleged incident occurred belongs to respondent corporation. It appears petitioners boarded the said bus and allegedly misbehaved with the driver. At the relevant point of time, bus was in operation and the Driver was performing his duties. It is manifest from reading of charge sheet that petitioners were not asking the bus to be stopped as citizens and were not traveling as passengers. They scolded the driver contending that as they are employees of the corporation, bus ought to have been stopped when hand was raised by them and they could not have been forced to run to a far of place where bus was stopped and then altercation took place between petitioners and driver inside the bus. It appears, they have also scolded passengers and beaten them. In view of the scope of misconduct as incorporated in Regulation 28, prima facie, it cannot be said that the incident against which the disciplinary action is set in motion is outside the employment. Incident is having direct bearing on petitioners' status as employees of the corporation and alleged act of

misconduct has direct connection to employment and incident happened in the premises of the corporation.

10. In **GLAXO LABORATORIES (INDIA) LIMITED**, alleged incident occurred outside the factory premises, in a bus hired by the company. Supreme Court held as under:

9. Therefore, the primary question that needs consideration is whether the various acts of misconduct collocated in clause 10 would constitute misconduct punishable under Standing Order 23, if committed within the premises of the establishment or in the vicinity thereof or irrespective of the time-place content, they are per se such acts of misconduct that they would be punishable notwithstanding where and when they were committed.

.....

13.. To enable an employer to peacefully carry on his industrial activity, the Act confers powers on him to prescribe conditions of service including enumerating acts of misconduct when committed within the premises of the establishment. The employer has hardly any extraterritorial jurisdiction. He is not the custodian of general law and order situation nor the Guru or mentor of his workmen for their well regulated cultural advancement. If the power to regulate the behaviour of the workmen outside the duty hours and at any place wherever they may be was conferred upon the employer, contract of service may be reduced to contract of slavery. The employer is entitled to prescribe conditions of service more or less specifying the acts of misconduct to be enforced within the premises where the workmen gather together for rendering service. The employer has both power and jurisdiction to regulate the behaviour of workmen within the premises of the establishment, or for peacefully carrying the industrial activity in the vicinity of the establishment. When the broad purpose for conferring power on the employer to prescribe acts of misconduct that may be committed by his workmen is kept in view, it is not difficult to ascertain whether the expression "committed within the premises of the establishment or in the vicinity thereof" would qualify each and every act of misconduct collocated in clause 10 or the last two only, namely, "any act subversive of discipline and efficiency and any act involving moral turpitude". To buttress this conclusion,

one illustration would suffice. Drunkenness even from the point of view of prohibitionist can at best be said to be an act involving moral turpitude. If the misconduct alleging drunkenness as an act involving moral turpitude is charged, it would have to be shown that it was committed within the premises of the establishment or vicinity thereof but if the misconduct charged would be drunkenness the limitation of its being committed within the premises of the establishment can be disregarded. This makes no sense. And it may be remembered that the power to prescribe conditions of service is not unilateral but the workmen have right to object and to be heard and a statutory authority namely, Certifying Officer has to certify the same. Therefore, keeping in view the larger objective sought to be achieved by prescribing conditions of employment in certified standing orders, the only construction one can put on clause 10 is that the various acts of misconduct therein set out would be misconduct for the purpose of Standing Order 22 punishable under Standing Order 23, if committed within the premises of the establishment or in the vicinity thereof.

14. ***What constitutes establishment or its vicinity would depend upon the facts and circumstances of each case.***

.....

16. Reference was also made to **Central India Coalfields Ltd., Calcutta v. Ram Bilas Shobnath [AIR 1961 SC 1189 : (1961) 1 LLJ 546 : 19 FJR 302]** in which scope and ambit of Standing Order 29(5) came up for consideration before this Court. The Industrial Tribunal had held that the alleged misconduct had taken place outside the working hours as well as outside the pit where the respondent had to discharge his duties and accordingly he could not be punished under Standing Order 37. This Court while allowing the appeal of the employer observed that “normally this standing order would apply to the behaviour on the premises where the workmen discharge their duties and during the hours of their work”. It was further observed that “it may also be conceded that if a quarrel takes place between workmen outside working hours and away from the coal premises that would be a private matter which may not fall within Standing Order 29(5)”. ***This Court then observed that in the special circumstances of this case it is clear that the incident took place in the quarters at a***

short distance from the coal-bearing area. If the incident occurred in the quarters occupied by the workmen who were working in a nearby coal bearing area, one can safely conclude that the incident occurred in the vicinity of the establishment and that was the governing factor which swayed the decision. And the decision was reached as specifically stated in the special circumstances of the case while leaving no trace of doubt about the normal approach in law to the construction of a standing order that it would apply to the behaviour on the premises where the workmen discharge their duties and during working hours of their work. This clearly imports time-place content in the matter of construction. ***This decision would rather clearly indicate that the misconduct prescribed in a standing order which would attract a penalty has a casual connection with the place of work as well as the time at which it is committed which would ordinarily be within the establishment and during duty hours.***

.....

18. Even where a disorderly or riotous behaviour without the premises of the factory constitutes misconduct, every such behaviour unconnected with employment would not constitute misconduct within the relevant standing order. ***Therefore, even where the standing order is couched in a language which seeks to extend its operation far beyond the establishment, it would none the less be necessary to establish causal connection between the misconduct and the employment. In order to avoid any ambiguity being raised in future and a controversial interpretation question being raised, we must make it abundantly clear and incontrovertible that the causal connection in order to provide linkage between the alleged act of misconduct and employment must be real and substantial, immediate and proximate and not remote or tenuous.***

(emphasis supplied)

11. Ratio of decision in **GLAXO LABORATORIES (INDIA)**

LIMITED should be understood in the contest of allegations leveled against workmen and the relevant clauses of Standing Order 22 therein,

extracted in paragraph 7 of the judgment. In the said case, the alleged incident occurred outside duty hours, far away from the factory, in a bus on a public road. Employees involved in the incident were not on duty. It is pertinent to note observations of the Supreme Court in paragraphs 13, 14 and 16 extracted above. As held in **GLAXO LABORATORIES (INDIA) LIMITED**, scope of misconduct must be specifically prescribed, must have casual connection with the place of work as well as time at which it was committed.

12. In **GLAXO LABORATORIES (INDIA) LIMITED**, there was no similar provision as in RTC Service Regulations. Standing Order 22 considered in the said case holds that misconducts listed out therein must be committed within the premises of the establishment or in the vicinity thereof. In **GLAXO LABORATORIES (INDIA) LIMITED**, the incident occurred far away from factory premises. The employer therein was involved in manufacturing activity in the factory premises. The facts in this case are clearly distinguishable.

13. The respondent corporation is transport corporation involved in public transport. The main activity of the respondent corporation is to operate its bus services to transport people. The alleged incident happened in the bus belonging to respondent corporation while it is in operation. Thus, assaulting a driver in the bus amounts to committing misconduct as per Regulation 28 (xi). Though, the petitioners were not on duty but are employees of the Corporation, the incident occurred in the bus belonging to the corporation while it was in operation and victim was on duty and thus it has direct connection to the employment and in fact occurred within the precincts of the corporation.

14. In P.Ramanatha Aiyar's Law Lexicon, **misconduct** is defined as :

“The term misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a **relative term**, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. **Misconduct literally means wrong conduct or improper conduct.** In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskilfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected.”

15. In **STATE OF PUNJAB AND OTHERS Vs RAM SINGH - EX CONSTABLE**², Supreme Court held:

“6. Thus it could be seen that the word ‘misconduct’ though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order.”

² (1992) 4 SCC 54

16. Instances of misconduct referred to in Regulation 28 are wider and all encompassing. In terms thereof, the consequence of alleged incident has direct bearing to employment of petitioners and further the incident happened in the bus of respondent corporation, more so, when bus was in operation. It is deemed that incident has occurred within the premises of the corporation. Merely, because petitioners were not on duty cannot be a ground to hold that disciplinary action is not maintainable, more so in view of provision in Regulation 28, extracted above.

17. In **PALGHAT BPL & PSP THOZHILALI UNION V. BPL INDIA LTD³**, workmen were on strike; management backed out from settlement and workmen resumed strike. While workmen were standing at Bus Stop, they sighted officers passing through the way and assaulted them. Disciplinary action resulted in dismissal from service. The facts of the case are somewhat similar to facts in this case. Supreme Court considered the scope of Clause 39 (h) of Standing Order and observed as under:

“4. The learned counsel for the appellants contended that the alleged acts of the appellants are not misconduct within the meaning of clause 39(h) of the certified Standing Orders of the Company and that the findings of the High Court are, thus, illegal. We find no force in the contention. Clause 39(h) of the Standing Orders of the Company reads:

“39(h): Drunkenness, riotous or disorderly behaviour during working hours within the premises of the company or any act subversive of discipline either within or outside the premises of the Company.”

5. A reading of clause 39(h) indicates that drunkenness, riotous or disorderly behaviour

³ (1995) 6 SCC 237

during working hours within the premises of the Company is misconduct. The second part thereof indicates that any act subversive of discipline committed either within or outside the premises of the Company is also misconduct. Though the learned counsel seeks to contend that it is not a misconduct, it is difficult to accept the contention. Any act subversive of discipline committed outside the premises is also misconduct. Any act unrelatable to the service committed outside the factory would not amount to misconduct. **But when a misconduct vis-à-vis the officers of the management is committed outside the factory, certainly the same would be an act subversive of discipline.** The object appears to be that workmen need to maintain discipline vis-à-vis its management. What amounts to misconduct is a question of fact. It would be decided with reference to the facts, the situation in which the act was alleged to have been committed, and the attending circumstances leading thereto.” (emphasis supplied)

18. Thus, it cannot be said that the alleged incident resulting in suspension from service of petitioners is outside the employment. I do not see any error in the decision of Depot Manager to place the petitioners under suspension. It is within his competence to place an employee under suspension. Writ Petition fails and is accordingly dismissed. It is made clear that observations made herein above are only to consider the contention on alleged misconduct vis-à-vis suspension and there is no expression of opinion. Miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE:25-09-2018
TVK

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