

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO. 25990 OF 2018

Date: 31.07.2018

Between:

N Narasimha S/o N Muthaiah
E No. 176768
H No. 5-9-259 Indiranagar colony
Behind Veterinary hospital, Nalgonda

.....Petitioner

And

TSRTC rep by its VC & MD
Bus Bhavan, Musheerabad, Hyderabad and another

.....Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO**WRIT PETITION NO. 25990 OF 2018****ORAL ORDER:**

Petitioner is working as conductor. By separate proceedings, on 20.6.2018 petitioner was placed under suspension from service and was also served charge sheet. Challenging the suspension from service, this writ petition is filed.

2. According to learned counsel for petitioner, false allegation is made against petitioner and based on said false allegation he was illegally placed under suspension. Petitioner did not commit any misconduct. According to learned counsel, passenger gave only Rs.10/- denomination note which resembled like Rs.200/- denomination note and asked to give two tickets from Mallepalle to Venkatapet; petitioner issued ticket of Rs.12/- but passenger demanded another ticket. Petitioner informed passenger that he gave only Rs.10/- note. Passenger did not listen and was creating nuisance as if he has given Rs.200/- note. At that stage TTIS checked the bus at stage No.08 (Mall) and found that those two passengers were traveling without tickets. Though petitioner explained the background story, TTIS checked the bus cash and private cash and allowed the passengers to alight from the bus and closed the ticket tray. According to learned counsel after closure of tickets tray passengers were issued tickets. Learned counsel would submit that the fact that tickets were issued after ticket tray was closed would show that petitioner did not commit any irregularity. According to learned counsel for the lapses on the part of passengers, petitioner cannot be penalized.

3. Issue for consideration is whether suspension from service is justified?

4. The duties, responsibilities, conduct and discipline of an employee in public service are governed by service rules/ regulations. On allegation of

misconduct, employer is entitled to take disciplinary action which may result in dismissal/ removal from service. The power to suspend an employee flows out of power to take disciplinary action on allegation of misconduct. The conduct rules/ regulations delineate the power of suspension and competent authority to exercise such power. When an allegation of misconduct comes to the notice of disciplinary authority and in the opinion of disciplinary authority that it is not desirable to entrust duties to the delinquent employee while enquiry/ investigation is in progress/ proposed, the competent authority may place his service under suspension. Suspension of service results in temporary withdrawal of duties and responsibilities of the delinquent employee. During the period of suspension, the relationship of master and servant subsists; the employee continues to be on the rolls of employment and is not entitled to take up any other assignment. He is still amenable to disciplinary control of the employer for any other misconduct also. He is only disabled from attending to his work. He is not entitled to draw pay and allowances. For his sustenance during the period of suspension, he is paid allowance which in normal parlance called 'subsistence allowance'.

5. In matters of suspension, the exercise of extra-ordinary 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. Each case be examined in the factual back ground of given case.

6.1 At this stage, it is necessary to note briefly the precedent pronouncements of Supreme Court and this Court on the issue of suspension.

6.2. In **STATE OF ORISSA Vs BIMAL KUMAR MAHANTY**¹ Supreme Court laid down parameters of suspension and scope of judicial review. Supreme Court held:

“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 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.”(Emphasis supplied)

6.3. In **UNION OF INDIA V. ASHOK KUMAR AGGARWAL**², Supreme Court held,

“21. The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as vindictive misuse of power. Suspension should be made only in a case where there is a strong prima facie case against the delinquent employee and the allegations involving moral turpitude, grave misconduct or indiscipline or refusal to carry out the orders

¹[(1994) 4 SCC 126]

²(2013) 16 SCC 147

of superior authority are there, or there is a strong prima facie case against him, if proved, would ordinarily result in reduction in rank, removal or dismissal from service. The authority should also take into account all the available material as to whether in a given case, it is advisable to allow the delinquent to continue to perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry.

22. In view of the above, the law on ***the issue can be summarised to the effect that suspension order can be passed by the competent authority considering the gravity of the alleged misconduct i.e. serious act of omission or commission and the nature of evidence available.*** It cannot be actuated by *mala fide*, arbitrariness, or for *ulterior purpose*. Effect on public interest due to the employee's continuation in office is also a relevant and determining factor. The facts of each case have to be taken into consideration as no formula of universal application can be laid down in this regard. *However, suspension order should be passed only where there is a strong prima facie case against the delinquent, and if the charges stand proved, would ordinarily warrant imposition of major punishment i.e. removal or dismissal from service, or reduction in rank, etc (emphasis supplied).*

27. ***Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered.*** Suspension is an interim measure in the aid of disciplinary proceedings so that the delinquent may not gain custody or control of papers or take any advantage of his position. More so, at this stage, ***it is not desirable that the court may find out as to which version is true when there are claims and counterclaims on factual issues.*** The court cannot act as if it is an appellate forum de hors the powers of judicial review.

29. However, as the *suspension order constitutes a great hardship to the person concerned as it leads to reduction in emoluments, adversely affects his prospects of promotion* and also carried a *stigma*, an order of suspension should not be made in a perfunctory or in a routine and casual manner but *with due care and caution after taking all factors into account.*"(emphasis supplied)

6.4 In **R.S. MADHUBABU**, Division Bench of this Court held as under:

"18. Having regard to the facts and circumstances of the case, we are of the opinion that the Tribunal ought not to have interfered with the order of suspension passed by competent authority, particularly when the authorities have got the power under Rule 8 of the APCS (CCA) Rules 1991 to place an employee under suspension pending enquiry. All the aspects have to be gone into by the fact finding authority and the enquiry will disclose the truth and otherwise of the allegations. Further, it is settled preposition of law that suspension pending enquiry cannot be interfered with and the Courts can direct only to conclude and complete the proceedings. In the circumstances of the case, the Tribunal instead of directing the authorities to complete and conclude the disciplinary proceedings pending against the respondent within the time frame, exceeded its limit and over stepped its jurisdiction by directing the authorities that he should be transferred to a far off place, which is impermissible under law and unwarranted. As the task undertaken by the Tribunal is impermissible under law, the order passed by it suffers from

various serious legal infirmities and therefore, the impugned order is liable to be set aside.”

7. The principles that can be culled out from long line of precedent decisions on scope of judicial review are:

- (i) The real effect of the order of suspension is that employee continues to be a member of service of employer but is not permitted to work and further during the period of suspension he is paid subsistence allowance.
- (ii) It would not be as an administrative routine or an automatic order to suspend an employee and not to be lightly passed. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee.
- (iii) The suspension must be a step in aid to the ultimate result of the investigation or inquiry.
- (iv) The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground, as vindictive and in misuse of power.
- (v) Suspension should be made only when there is a strong prima facie case of delinquency.
- (vi) Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered.
- (vii) order of suspension can be resorted to pending further investigation or contemplated disciplinary action only on grave charges.
- (viii) Competent Authority should take into consideration relevant facts and attendant circumstances as to how far and to what extent public interest would suffer if the delinquent is not placed under suspension.

8. Regulation 18 of the TSRTC (CCA) Regulations vests power in the competent authority to place an employee under suspension, (i) pending investigation or enquiry into **grave charges** and such suspension is necessary in the **public interest**; and (ii) where criminal offence is under investigation or trial. This Regulation also guides the disciplinary authority when to resort to suspension.

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

10. The substance of the allegations against petitioner is he collected higher amount from passengers, issued ticket of smaller denomination and did not return balance money due to passengers. It appears from the reading of charge memo, petitioner was required to issue tickets worth Rs. 180/- but issued only one ticket worth Rs.12/- and did not return balance money to passengers and violated rule of collect money, issue correct ticket and start. It cannot be said that allegation, if proved, would not be amounting to gross misconduct. It cannot be said that on such allegation placing the employee under suspension would amount to arbitrary exercise of power and that discretion was not validly exercised. Whether petitioner committed misconduct of collecting Rs.200/- and did not issue proper tickets to two passengers and whether he violated rule of collect money, issue ticket and start is matter 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.

11. Thus, I do not see any error in placing the petitioner under suspension warranting interference.

12. Accordingly, the Writ Petition is dismissed. It is made clear that the tenability of the allegation and the involvement of petitioner can be gone into during the departmental enquiry and Court has not expressed any opinion on merits at this stage. It is made clear that what is discussed in the above paragraphs is only to appreciate the contentions on behalf of petitioner on the validity of the suspension and there is no expression of opinion on merits. Pending miscellaneous petitions stand closed.

DATE: 31-07-2018
TVK

P NAVEEN RAO,J



HONOURABLE SRI JUSTICE P.NAVEEN RAO



WRIT PETITION NO. 25990 OF 2018

Date:31.07.2018