

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 26043 of 2018

Date :5.9.2018

Between:

P Venkatarathnam Rao S/o P C Yannadi Setty
Aged 57 years
Executive Engineer Incharge
A P Education and Welfare Infrastructure Development
Corporation
West Godavari Division
Eluru West Godavari District

Petitioner

And

The State of A P
rep by its Principal Secretary to Government Secondary Education
Department A P Secretariat Velagapudi Amaravathi Guntur
District

Respondents

The Court made the following:



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ORAL ORDER:

Petitioner is holding the substantive post of Deputy Executive Engineer and is placed In-charge of the post of Executive Engineer. He earlier worked in Anantapur division and in the year 2016 he was transferred to West Godavari Division in Eluru. While so, he was placed under suspension by the order impugned dated 29.6.2018. Aggrieved thereby, this writ petition is filed.

2. Heard learned counsel for petitioner Sri Y.V. Satyanarayana, learned Government Pleader for Education and learned standing counsel for respondents 2 and 3 Sri G Seena Kumar.

3. According to learned counsel for petitioner, the incident against which petitioner is now placed under suspension relates to the period 2012-13 and there is no justification to suspend the petitioner after five years of the alleged incident. He would therefore submit that the suspension would amount to arbitrary exercise of power and authority. He would submit that as per tender notification only up to two years after completion of work action can be taken against the contractor and/ or officials on any allegation of irregularities in the construction. Thus, disciplinary action can not be initiated now for an incident of the year 2012-13. That being so, suspension of the petitioner on the alleged irregularities during the period 2012 to 2013, at this distance of time is ex-facie illegal. There is no possibility of petitioner tampering with the material available on record nor influence the witnesses, as the petitioner was moved out to a far-off place. Further, the allegations are based on enquiry report and thus there is no scope to tamper the record. It would show total non-application of mind.

4. Per contra, according to learned standing counsel, the allegations leveled against petitioner are grave. It would clearly show that there was laxity on the part of the petitioner in executing the work. As Executive Engineer, he ought to have undertaken through review of the work executed by the contractor and ought not to have allowed the contractor to claim the bills unless quality of work was ensured, and complete work was executed in all respects. Due to his lapses in discharging his duties and responsibilities, grave financial loss is caused to the respondent corporation and also affected its reputation in the eye of the public.

4.1 In view of the conduct of the petitioner, credibility of the organization is affected. Suspension is validly made and merely because petitioner is not working in the same place where the incident occurred is no ground to contend that the suspension is illegal. To ensure discipline, it is permissible to place on officer under suspension. In support of his contentions, learned counsel placed reliance decisions of this Court in **V.Vishnu Murthy Vs. APSRTC, Hyderabad and another** ¹ and **M. Raghunath and others Vs Telangana State Road Transport Corporation, Hyderabad and others**².

5. I have carefully considered rival submissions.

6. On the scope of judicial review in matters concerning suspension from service, in **G. Govindu Vs Telangana State Road Transport Corporation**³ this Court reviewed the law laid down in the precedent decisions and culled out principles. Paragraphs 37 and 38 read as under:

¹ 2016 (3) ALD 633

² 2017 (3) ALD 364

³ 2017 (3) ALD 755

“37. The principles that can be culled out from above precedent decisions 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.

38. As noted above, though, power to place an officer/ employee under suspension is conceded to employer/competent authority and can be resorted to enforce discipline; convey to all the employees that dereliction of duty cannot be tolerated; to ensure that employee would not create impediment; and having regard to the gravity of allegations, in larger public interest, it is necessary to suspend, but **such power must be exercised sparingly and should not be made as an administrative routine or an automatic consequence of alleged disobedience** and detailed assessment must be made. It should not be resorted to as a matter of course in all and sundry cases of allegation of misconduct and should be resorted to such course sparingly and in the larger interest of the organization and in public interest. Whenever, a person is placed under suspension, the disciplinary proceedings should be concluded

within a fixed time frame. The Courts are cautioning the employer to resort to suspension on careful consideration of the pros and cons and should be resorted to sparingly.”

(emphasis supplied)

7. The two decisions relied by learned standing counsel do not come to his aid. In **V.Vishnu Murthy**, the allegation was one of demanding illegally higher amount from passenger by a TIM Driver. Immediately on receipt of complaint from the passenger, he was placed under suspension. In **M. Raghunath and others** allegation against the petitioner was that actions of petitioner resulted in huge financial loss to the RTC. In the facts of those cases, decision to suspend was held valid.

8. 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 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.

9. 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. Court can also examine the justification for further continuation in suspension if suspension is prolonged and there is no progress in the domestic enquiry and delay is not attributable to employee. In matters of suspension, each case be examined in the factual back ground of given case.

10. In exercise of power of judicial review, Writ Court must resort to balancing process to assess the competing interests of employee and employer, within the narrow compass. Be it noted employer's right to regulate the behavior of his employees is unfettered. What is required, more particularly in public employment, is whether there is any transgression in exercise of such power by authority enjoying power of disciplinary control, within well laid down parameters of judicial review. Judicial review is intended to check excesses by the public authority, but not to act as appellate authority and undertake microscopic scrutiny of his decisions.

11. In the case on hand, the incident relates to the year 2013 when petitioner was working in Anantapur district; he was transferred to West Godavari Division in Eluru in the year 2016. On the allegation of improper assessment of the construction and defects in the construction relating to the year 2012-2013, after two years of his transfer and five after the incident, the present suspension order is made. As petitioner was transferred out from the place of alleged incident, there cannot be scope of tampering of evidence. Further, the allegations are based on the enquiry report, which pointed out defects in the assessment of construction of the building, therefore, the issue is based on the material already available on record with the disciplinary authority. Further, the allegations related to technical matters. In the facts of this case, the Court opines that suspension of the petitioner is wholly unwarranted; is

made more as an administrative routine; and amounts to arbitrary exercise of power.

12. In the result writ petition is allowed. However, it is open to disciplinary authority to continue disciplinary action. In such an event, petitioner shall cooperate for early conclusion of disciplinary proceedings. However, if the petitioner does not cooperate for early conclusion of the disciplinary proceedings and for any other misconduct, it is open to disciplinary authority to resort to suspension from service. Pending Miscellaneous Petitions are closed.

DATE: 05-09-2018
TVK

P NAVEEN RAO,J



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