

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT: HYDERABAD**

Coram :

*** The Honourable Mr. Justice V.RAMASUBRAMANIAN
and
The Honourable Mr. Justice P. KESHA VA RAO**

+ Writ Petition No.4236 of 2010

% Delivered on: 23-04-2019

Between:

M. Shyam Sunder S/o Satyanarayana,
Junior Accounts Officer (dismissed from service)
R/o. H. No. 2256, Jillelaguda, Saroornagar Mandal,
Ranga Reddy District

.. Petitioner

vs.

\$ 1. Transmission Corporation of A.P., rep.by its
Chairman Managing Director, Vidyut Soudha,
Khairatabad, Hyderabad and others.

... Respondets.

! For Petitioner : Mr. D. Krishna Murthy for
Mr. K. Ananda Rao

^ For Respondents : Mr. K. Krishna Keshav for
Mr. N. Siva Reddy for AP TRANSCO

< GIST :

> Head Note :

? Cases Referred :

C/15

HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HONOURABLE SRI JUSTICE P. KESHA RAO
WRIT PETITION No.4236 OF 2010

ORDER: (*Per Hon'ble Sri Justice V. Ramasubramanian*)

Challenging an order of dismissal passed pursuant to conviction by the Criminal Court, the petitioner has come up with the above writ petition on the short ground that he has been subsequently acquitted by the appellate Court.

2. Heard Mr. D. Krishna Murthy, learned counsel for the petitioner, Mr. K. Krishna Keshav, learned counsel appearing on behalf of Mr. N. Siva Reddy for the Andhra Pradesh Transco and Mr. G. Vidya Sagar, learned Senior Counsel, appearing for the Transmission Corporation of Telangana.

3. When the petitioner was working as Junior Accounts Officer, in the Andhra Pradesh State Electricity Board, he was placed under suspension on 29.11.1994. A criminal prosecution as well as disciplinary proceedings were simultaneously initiated. The Inquiry Officer submitted a report suggesting that necessary action should be taken only after receipt of the final report from the CBCID in the criminal case. Disagreeing with the findings so recorded, the Board appointed another Inquiry Officer for conducting a *de nova* inquiry.

4. But, the *de nova* inquiry was stayed by this Court in a writ petition, W.P. No.19949 of 1996. Therefore, the Board decided to drop the *de nova* inquiry.

5. However, the Inquiry Officer was changed and the new Incumbent submitted a report on 14.06.2007 holding the petitioner not guilty of the charges.

6. In the meantime, the police filed charge sheets in Calendar Case Nos.125, 126 and 132 of 1996, on the file of the VI Chief Metropolitan Magistrate, Hyderabad. By a judgment, dated 23.12.2009, the Court convicted the petitioner for the offences under Sections 468, 420 and 471 read with 120B of the Indian Penal Code, 1860 and 248 (2) of the Code of Criminal Procedure, 1973.

7. The petitioner filed appeals in Criminal Appeal Nos.439, 440 and 441 of 2009. During the pendency of these appeals, the petitioner was dismissed from service by an order, dated 07.01.2010, solely on the basis of conviction by the Criminal Court. Challenging the dismissal primarily on the ground that the conviction in all the 3 cases were suspended by the appellate court, the petitioner came up with the above writ petition.

8. During the pendency of the above writ petition, the IV Additional Metropolitan Sessions Judge, Hyderabad, by a judgment, dated 30.05.2016, allowed the appeals filed by the petitioner and acquitted him of all the charges. The said judgment has attained finality. Therefore, today the case of the petitioner stands strengthened by the subsequent acquittal.

9. A careful look at the impugned order of dismissal dated 07.01.2010 would show that the dismissal was solely based upon the conviction by the Criminal Court. Therefore, once the conviction is set

aside, the order of dismissal will have no legs to stand and should naturally follow suit.

10. There is no dispute by the respondents about the fact (i) that the dismissal was solely based upon conviction by the Criminal Court; and (ii) that though disciplinary proceedings were initiated simultaneously, they never reached their logical end. Therefore, the order of dismissal is liable to be set aside and the petitioner is liable to be reinstated into service. If the petitioner was under suspension on the date of dismissal, it may be open to the respondents to reinstate him into service, treat him as having been under suspension throughout this period, pay him the subsistence allowance for the entire period from 2010 till date and proceed further with the disciplinary proceedings which were left half-way through.

11. But, such a simple solution, has now become complicated in view of the bifurcation of the State and the creation of separate entities for Power Generation and Distribution in both the States. Today, the Transmission Corporation of Andhra Pradesh has taken a stand before us that the responsibility to reinstate the petitioner, pay all his dues and to proceed further with the inquiry, rests only with the Transmission Corporation of Telangana State. But, the Transmission Corporation of Telangana has taken a stand that the responsibility lies with their counter-part in Andhra Pradesh.

12. Thus, the fight between the petitioner and what was once upon a time, a common entity, has now become a fight between two-sets of respondents, leaving the petitioner in the lurch.

13. The State got bifurcated with effect from 02.06.2014. The question of allocation of employees has become a vexed issue and the Hon'ble Supreme Court has now appointed a One Man Committee of Justice D. M. Dharmadhikari for resolving the issue of final allocation of employees. On the date of bifurcation, viz., 02.06.2014, a provisional allocation was made. Admittedly, the petitioner was working in the Headquarters at Hyderabad, at the time of his dismissal from service in the year 2010. But, since his dismissal was in the year 2010, he was not provisionally allotted to any one of the States at the time of bifurcation in 2014. Therefore, the Corporations of both the States are now throwing the responsibility upon each other. But, both of them agree that once the One Man Committee of Justice D.M. Dharmadhikari finalises the allocation, the petitioner will get finally allocated to one of the States. But, the question as to when the same would happen, is a moot question. The petitioner cannot be made to suffer until a final allocation is made by the One Man Committee appointed by the Supreme Court.

14. Therefore, we have to find out whose responsibility it is to take the petitioner back to service and to take a call whether to proceed with the disciplinary inquiry or not, from the stage where it was left. The Corporations of both the States have filed certain documents, throwing the responsibility upon each other. Let us now find out from those documents as to who should reinstate the petitioner and take further action.

15. In the counter affidavit filed by the Transmission Corporation of Andhra Pradesh, it is claimed (i) that their Chairman and Managing

Director sent a letter dated 11.09.2014 claiming that Andhra Pradesh Transco is the competent authority to finalise the disciplinary cases of employees working in both Corporations until the issue of final allocation orders; (ii) that in response, the Managing Director of Transmission Corporation of Telangana sent a reply dated 06.12.2014 claiming that they have the power to proceed with the disciplinary cases against employees provisionally allotted to Telangana Transco; (iii) that accordingly the Executive Director of Andhra Pradesh Transco sent a letter dated 01.04.2015 to Telangana State Transco, for further action against the petitioner, as the allegations against him related to misappropriation of funds belonging to Kothagudam Thermal Power Station; (iv) that the Divisional Engineer, Disciplinary Cases, T.S. Transco, acknowledged the receipt of the files by a letter, dated 28.04.2015; (v) that the petitioner filed a writ petition much before bifurcation in W.P. N.18673 of 2006 seeking revision of subsistence allowance on the basis of revision of Pay-scales; (vi) that the order passed in the writ petition became the subject matter of an appeal in W.A. No.6 of 2007; (vii) that the said appeal was disposed of by a Division Bench on 28.01.2015 after bifurcation; (viii) that thereafter T.S. Transco paid the differential amount of subsistence allowance by a memo dated 03.06.2015; and (ix) that since all the files including the service register and nativity related documents are with T.S. Transco, they are liable to take the petitioner into service and proceed further.

16. T.S. Transco has filed a counter affidavit contending that under G.O.Ms.No.26, Energy Department, dated 29.05.2014, by which

T.S.Transco was created, the guidelines meant for Government Employees for allocation was directed to be followed even for the employees of the Corporation; that pending such final allocation, the staff working in District Offices, Field Offices, Zonal Offices etc., should continue to work in their respective places; that the staff working in the Head-office to the extent of the posts in T.S. Transco will be provisionally transferred to T.S. Transco.

17. From the rival contentions made by A.P. Transco and T.S. Transco, we are unable to decipher with full conviction as to which among the two is responsible to take the petitioner back and proceed further with the disciplinary action. If it is merely a question of reinstatement with back wages, we could have resolved the issue by directing both Corporations to share the monetary burden equally until the final allocation is made by Justice Dharmadhikari Committee. After the final allocation by Justice Dharmadhikari Committee, the amount paid by one Corporation could be directed to be returned to them, by the Corporation to whom the petitioner is finally allocated.

18. But, this is not a simple case of reinstatement with back wages. It is a case, in which, the Corporation to whose services we direct reinstatement should also be able to proceed further with the disciplinary action, in case they want to continue with the disciplinary action. This issue has actually made our task little difficult. However, let us try to resolve the same with the available material.

19. By a letter dated 11.09.2014 sent by A.P. Transco to T.S. Transco, they (A.P. Transco) took a stand which is as follows:

“As such it is appropriate that all the disciplinary cases of both the organizations shall be kept under the disposal of A.P. Transco as it is the principal employer of all the employees of both the organizations and disciplinary wing of T.S. Transco along with incumbents may be placed under the control of A.P. Transco till final allocation orders are issued.”

20. Thus, the A.P. Transco asserted its right even after the bifurcation of the States, to proceed with disciplinary action against the employees. Though T.S. Transco sent a reply dated 06.12.2014 asserting their rights, the same was confined only to persons provisionally allotted to T.S. Transco. The relevant portion of the reply dated 06.12.2014 of T.S. Transco reads as follows:

“Hence, it is appropriate that the disciplinary proceedings in respect of those employees/officers who are provisionally allocated to the Telangana Transco shall continue to vest with Telangana Transco consequent on the adoption of the Acts, Rules and Regulations by Telangana Transco vide Office Order, dated 12.06.2014.”

21. Therefore, what we are supposed to find out is as to which of the two Corporations, the petitioner would have been provisionally allocated, if he had been in service on the date of bifurcation, viz., 02.06.2014.

22. It is admitted that the petitioner was working in the Head Office at Hyderabad. Under G.O.Ms.No.26, Energy Department, dated 29.05.2014, it was directed that the guidelines meant for Government employees shall be followed for permanent transfer of employees between both the Transmission Corporations. Paragraph-6 of G.O.Ms.No.26 reads as follows:

“6. Transfer of employees between two TRANSCOs: The guidelines meant for Government employees shall be followed for permanent transfer of

employees between two TRANSCOs. Pending such transfer of employees, all staff working in District offices, Field offices, Zonal offices and CTI as on effective date shall continue to work there and draw their salaries accordingly. Staff working at Head Quarter, to the extent of posts in TG TRANSCO, shall be provisionally transferred to TG TRANSCO as on effective date following Government guidelines for allotment of staff.”

23. Therefore, insofar as staff working at the Head Quarters are concerned, they were allotted to Telangana Transco provisionally, to the extent of posts in Telangana Transco. It appears that following G.O.Ms. No.26, an order was passed by A.P. Transco on 02.06.2014 containing two Annexures. Employees whose names were included in Annexure-I were posted to places coming under A.P. Transco. Employees mentioned in Annexure-II were directed provisionally to serve under T.S. Transco.

24. It is seen from the earliest order of allotment (made immediately after appointment), issued way back in 1991, in respect of the officers selected as Trainee Accountants that the petitioner was first allotted to Rajahmundry. The proceedings of the erstwhile A.P. State Electricity Board dated 17.07.1991 show that the petitioner was originally allotted to Rajahmundry and later re-allotted to the Head Office. There are five other persons who were originally allotted to other places, viz., Vizianagaram, Adilabad, Eluru and Nizamabad, along with the petitioner by the proceedings dated 17.07.1991, to the Head office. Eluru to which one person, by name, M.V. Muralidhar was allotted originally and later re-allotted to the Head Office, is now in the State of Andhra Pradesh just as Rajahmundry is. Therefore, the name of M.V. Muralidhar finds a place in Annexure-I at serial No.14. Therefore,

it appears that if the petitioner had been in service on the date of bifurcation, he would have been allotted to A.P. Transco.

25. While A.P. Transco asserted its rights by their letter dated 11.09.2014, to continue with the disciplinary proceedings of all employees, T.S. Transco's response was only to the extent of the employees provisionally allotted to them. Therefore, as a person, who was selected and posted originally to Rajahmundry and re-allotted to the Head Office, the petitioner, along with persons like him would have naturally been allotted after bifurcation, to A.P. Trnasco. If this had been done, it would have been the responsibility of A.P. Transco to reinstate the petitioner.

26. The learned counsel for A.P. Transo relied upon certain proceedings of T.S. Transco issued pursuant to an order passed in W.A. No.6 of 2007, to contend that T.S. Transco had taken the responsibility to pay revised subsistence allowance to the petitioner. But, W.A. No.6 of 2007 arose out of the judgment in W.P. No.18673 of 2006. This writ petition and the writ appeal were confined only to the payment of subsistence allowance. At the time when the writ petition was disposed of and the writ appeal was filed, the petitioner had not been dismissed from service. The order in the writ petition was passed on 26.10.2006 and the writ appeal was filed in 2007. The writ appeal was disposed of in January, 2015. The only question before the Court in that case was whether subsistence allowance is to be calculated on the basis of the old scales of pay or on the basis of revised scales of pay. Since the petitioner was not yet a dismissed employee at the time of disposal of the writ

petition and also since the liability to revise the subsistence allowance on the basis of the revision of pay scales was only up to the date of dismissal, T.S. Transco took the responsibility. This cannot be taken to be an indicator that the petitioner would have been allotted only to T.S. Transco.

27. Therefore, we are of the considered view that if the petitioner had been in service as on the date of bifurcation of the State, he would have been provisionally allocated to A.P. Transco. Hence, they cannot avoid responsibility to reinstate and proceed further.

28. In view of the above, the Writ Petition is allowed, the impugned order of dismissal is set aside and A.P. Transco is directed to reinstate the petitioner within 4 weeks of receipt of a copy of this order. After reinstatement, 2 options are available to A.P. Transco namely (i) to terminate the disciplinary proceedings and pay full back wages with all other attendant monetary and service benefits or (ii) to treat the petitioner as having continued under suspension during this entire period, pay the subsistence allowance for this entire period and proceed further with the enquiry so as to take it to its logical end. Though we do not wish to advice AP Transco as to which option they should choose, we think no useful purpose will be served in continuing with the disciplinary action due to the long lapse of time (25 years) from the date of alleged commission of misconduct. The orders of reinstatement exercising any one of the above options shall be passed by A.P. Transco within a period of four (4) weeks from the date of receipt of a copy of this order. If T.S. Transco is in possession of the disciplinary files

relating to the petitioner, they shall forthwith send those files to A.P. Transco.

29. However, in the circumstances of the case, there shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the writ petition shall stand closed.

V. RAMASUBRAMANIAN, J

P. KESHA VA RAO, J

April 23rd, 2019

Mgr/KTL

