

(2008) 09 AP CK 0078

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14015 of 2008

A. Hanumantha Prasad and Others

APPELLANT

Vs

Coal Mines Provident Fund Organisation and Another

RESPONDENT

Date of Decision : 04-09-2008

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 10, 10(1), 10(2), 10(5), 10(6)

Coal Mines Provident Fund (Staff and Conditions of Service) Regulations, 1964 — Rule 30

Industrial Disputes Act, 1947 — Section 12, 12(3), 33, 33(1)

Citation : (2009) 2 ALT 370

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Ravi Chemalapati, for the Appellant; J. Prabhakar, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—Coal Mines Provident Fund Organisation (for short "the Organisation") was created to cater to the needs of the employees working in the Coal Mines. Regional offices of the organization are established at different parts of the country. One regional office was established at Ramavaram of Karimnagar District, in the year 1963. It was shifted to Hyderabad, in 1973, on the basis of the decision taken by the Board of Trustees of the organization. After about 21/2 decades, the Board of Trustees, at their meeting held on 23.3.1999, decided to shift the regional office, from Hyderabad to Godavarikhani, and a consequential office order was issued by the competent authority, on 7.12.2000.

2. 75 employees, who were working in the regional office at Hyderabad, filed W.P. No. 25340 of 2000, challenging the steps taken by the organization, to shift its regional office from Hyderabad to Godavarikhani. The writ petition was dismissed on 5.4.2004. Writ Appeal No. 798 of 2004, filed against it, was dismissed. SLP filed before the Supreme Court is also said to have been dismissed.

3. Dissentions persisted over the shifting of the office. It is stated that the union of the employees went on strike and after 39 days of strike, the conciliation machinery under the Industrial Disputes Act is stated to have been set in motion. An agreement is said to have been signed on 31.01.2006, between the representative of the regional office, and the employees union, before the Assistant Labour Commissioner (Central). It is also stated that after certain meetings of conciliation, the Assistant Labour Commissioner issued proceedings dated 15.6.2007, u/s 33 of the Industrial Disputes Act (for short "the Act"), directing the parties to maintain status quo.

4. The Commissioner of the organization, the 1st respondent herein, passed an order dated 5.10.2007, placing the petitioners herein under suspension. The petitioners earlier approached this Court, by filing W.P. No. 5109 of 2008, complaining that they are not being paid subsistence allowance. They pleaded that the orders of suspension were not served upon them. The plea raised by the respondents was that apart from being placed under suspension, the petitioners were transferred to the Regional Offices, at New Delhi, Nagpur, Jabalpur, etc, and that they have to collect subsistence allowance, at the relevant place. The writ petition was disposed of through an order dated 9.4.2008, directing that the respondents shall pay subsistence allowance, together with accrued arrears, as and when the petitioners approach the Regional Office at Godavarikhani.

5. Respondents filed writ appeal, against the order in W.P. No. 5109 of 2008. An objection was raised to the effect that the petitioners cannot claim subsistence allowance, unless the order of suspension is challenged, and in that view of the matter, the petitioners have withdrawn the writ petition, and filed this writ petition, challenging the order of suspension.

6. The petitioners contend that having passed an order of suspension dated 5.10.2007, the 1st respondent did not serve the copies thereof on them, and it is only at a later point of time, that the copies are made available to them. They contend that the suspension was untenable, in view of the orders passed by the Assistant Labour Commissioner, in exercise of power u/s 33 of the Act. It is also pleaded that the transfer of the petitioners to very far off places, even while suspending them, is a malafide exercise of power. Another contention raised by the petitioners is that the suspension was not reviewed, as provided for under Rule 10(7) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short "the Rules"). Certain other grounds also urged.

7. On behalf of respondents, counter affidavit and additional counter affidavit are filed. The order of suspension and transfer is sought to be justified, on the ground that the petitioners have resorted to serious acts of indiscipline. It is stated that the delay in service of the orders of suspension, was on account of non-availability and non-cooperation of the petitioners. According to the respondents, the provisions of the Industrial Disputes Act, do not apply, and the official, who signed the understanding before the Assistant Labour Commissioner, was not vested with the power. Various steps that have been taken, after placing

the petitioners under suspension, are also mentioned. It is ultimately pleaded that the matter is proceeded, strictly in accordance with the Rules, and no illegality has crept into the impugned orders.

8. Sri Ravi Chemalapati, learned Counsel for the petitioners, submits that the action of the 1st respondent, in placing the petitioners under suspension and transferring them to far off places, through the same order is malafide. He submits that when the petitioners were kept out of duty, by virtue of suspension, there was no basis for transferring them to distant places. He further submits that once the competent authority u/s 12 of the Act issued directions, it was not at all open to the 1st respondent, to place the petitioners under suspension. Learned Counsel further submits that the action of the 1st respondent is discriminatory, inasmuch as the petitioners alone were chosen for being proceeded against, though the strike was called by the union itself. Another submission of the learned Counsel for the petitioners is that the suspension cannot be continued, inasmuch as it was not reviewed, as provided for under rule 10(7) of the Rules.

9. Sri J. Prabhakar, learned Counsel for the respondents, submits that there is no prohibition in law, for an appointing authority, to transfer an employee, even while suspending him. He contends that such a step was resorted to, in the instant case, in view of the lawless behaviour of the petitioners and the hurdles that were being created by them, in the functioning of the office at Godavarikhani. Learned Counsel submits that the service conditions of the employees of the organization are governed by the Coal Mines Provident Fund (Staff & Conditions of Service) Regulations 1964 (for short "the Regulations") and that the regulations do not provide for review of the case of an employee placed under suspension. He submits that the Rules do not apply to the employees of the organization, particularly, to the extent the matter is covered by the Regulation, and in that view of the matter, the petitioners cannot insist on compliance with Rule 10(7) of the Rules. He further submits that the cases of the petitioners were reviewed by the competent authority, though it was not required under the law.

10. The petitioners and their fellow employees have opposed shifting of a regional office of the organization, from Hyderabad to Godavarikhani. They have unsuccessfully challenged the various steps taken by the respondents for shifting the office. A strike ensued, and the same, in turn, resulted in orders of suspension against the petitioners. Identical but separate orders dated 5.10.2007, were passed by the 1st respondent, against the petitioners herein. The order reads as under:

Whereas a disciplinary proceedings against Sri P.L. Prasanna Kumar (3rd petitioner), UDC, CMPFO, Godavarikhani, is contemplated.

Now therefore, the undersigned in exercise of the powers conferred by Rule 30 of the Coal Mines Provident Fund (Staff & Conditions of Service) Regulation 1964,

and Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, hereby places the said P.L.Prasanna Kumar, UDC, under suspension with immediate effect. It is further ordered that during the period that this order shall remain in force, the headquarters of Sri P.L. Prasanna Kumar UDC, shall be at Regional Office, CMPFO, Margherita and the said Sri P.L. Prasanna Kumar, UDC, shall not leave the Headquarters, without obtaining the previous permission of the Assistant Commissioner, Grade-I, Regional Office, CMPFO, Margherita.

11. Apart from placing the petitioners under suspension, the 1st respondent has transferred them to various places. The petitioners challenged the orders of transfer, on the following grounds:

- a) The Assistant Labour Commissioner (Central) passed an order on 15.6.2007, in exercise of power u/s 33 of the Act, directing maintenance of status quo, and that the impugned order is passed in violation thereof.
- b) The review committee was under obligation to review the orders of suspension, before expiry of 90 days from the date of suspension, and since such a review was not undertaken, the order of suspension became inoperative;
- c) Transferring the petitioners, even while placing them under suspension, amounts to malafide exercise of power and victimization; and
- d) The petitioners were discriminated, in the matter of initiation of disciplinary proceedings. It has, therefore, to be seen whether there is any substance in the points urged by the petitioners.

12. Considerable amount of controversy has arisen, in the matter of shifting the regional office of the organization from Hyderabad to Godavarikhani. Writ petition, assailing the decision, ended in dismissal. The employees went on strike, protesting the shifting of the office. The employees union approached the Assistant Labour Commissioner (Central). Conciliation was initiated, and an agreement was signed by the representative of the management and the employees union, on 31.1.2006, u/s 12(3) of the Act. In view of certain developments, which took place later, the union issued strike notice on 16.5.2006, and it was in this context, that the Assistant Labour Commissioner issued proceedings, dated 15.6.2007, directing both the parties to maintain status quo. Section 33 of the Act mandates that the parties to the proceedings, before the Conciliation Officer, shall not take any steps, and the employer shall not alter the conditions of service, except with the permission of the authority, before whom the proceedings are pending. The provision reads as under:

33 (1): during the pendency of any conciliation proceedings before a conciliation officer or a Board or any proceeding before an arbitrator or a Labour Court or a Tribunal or National Tribunal in respect of an industrial dispute, no employer shall-

- (a) in regard to any matter connected with the dispute, alter, to the prejudice of the workman concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

13. The respondents themselves failed a copy of settlement arrived at between the union of employees and the organization. A plea, however, is taken to the effect that Sri R.S. Kashyap, Assistant Commissioner Grade-I of the Regional Office of the organisation, did not have the power or competence to represent the organization before the Assistant Labour Commissioner. Another plea is that the provisions of the Act do not apply to the employees of the organization.

14. Once a settlement was arrived at before an authority, u/s 12 of the Act, it is binding on the parties thereto, till it is set aside by a competent court of law. One of the parties to the settlement cannot disown it, by taking any plea whatsoever. As long as the settlement subsists, directions issued by the authority would operate, and a prohibition imposed u/s 33(1) of the Act, would apply. It is not in dispute that the Assistant Labour Commissioner passed an order on 15.6.2007, directing the parties to maintain status quo. Therefore, the impugned order passed on 5.10.2006, is in violation of Section 33 of the Act.

15. The second submission is about non-compliance of rule 10 of the Rules. The order of suspension and transfer has been extracted, in its entirety. It was issued in exercise of powers conferred upon the 1st respondent, under regulation 30 of the Regulations and Rule 10 of the Rules. Sub-rule (6) of rule 10, provides for review of the order of suspension by a committee constituted for this purpose. The relevant provision reads as under:

An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority which is competent to modify or revoke the suspension before expiry of ninety days from the date of order of suspension on the recommendation of review committee constituted for the purpose and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding one hundred and eight days at a time.

16. Sub-rule (7) of rule 10 mandates that, an order of suspension pending enquiry under Sub-rules (1) and (2) of rule 10, shall not be valid after a period of 90 days, unless it is extended after review for a further period before expiry of 90 days. It reads as under:

Notwithstanding anything contained in Sub-rule (5) (a) an order of suspension made or deemed to have been made under Sub-rule (1) or (2) of this rule shall not be valid after a period of ninety days, unless it is extended after review, for a further period before the expiry of ninety days.

17. To know whether or not the orders of suspension passed against the

petitioners were reviewed by the committee, an application was made on behalf of the petitioners on 14.6.2008 to the Public Information Officer, under the Right to Information Act, Ministry of Coal, Government of India. In response to the same, the Government of India, Ministry of Coal, issued a reply dated 22.7.2008, to the effect that the Review Committee of the Ministry, constituted under Sub-rule (6) of rule 10 met on 7.6.2007, 3.12.2007, 28.2.2008 and 30.6.2007, to extend the period of suspension against the officials concerned. The 1st respondent has also communicated orders dated 6/7-5-2008, stating that the suspension of the petitioners were reviewed by the competent authority, and it has been extended until further orders. The review is obviously long after expiry of 90 days, from the date of initial order of suspension. Therefore, the consequences provided for under rule 10(7) must ensue.

18. An effort was made on behalf of the respondents, to overcome these consequences, by pleading that the Rules do not apply to the employees of the organization. The reason advanced in support of this plea is that a separate set of regulations, specifically dealing with the employees, were framed, and the Rules, which are general in nature, do not apply.

19. The ground urged by the respondents, in this regard, during the course of arguments, is contrary to their own pleadings. Specific reference made to Rule 10 of the Rules, in the impugned orders. Further, in his counter affidavit, the 1st respondent pleaded inter alia as under:

(I)t is submitted that the employees of the CMPFO are governed by the CMPF Staff and Service Regulations and are also covered by CCS (Conduct), CCS (CCA) Rules of the Government of India.(Para 32)

(I)t is submitted that orders issued by the respondent No. 1 regarding continuance of suspension till further orders and rate of subsistence allowance payable on satisfactory observance of conditions laid down in the suspension orders, is in accordance with CCS (CCA) Rules.(Para 27)

(I)t is submitted that enquiry has been set up, in accordance with the CCS (CCA) Rules.... It is further submitted that relevant CCS (CCA) Rules have been followed, and if the petitioners desired any material, it is for them to approach the enquiry officer and take the same.(Para 29)

20. Para 21 of the counter affidavit reads as under:

It is further submitted that a number of employees of erstwhile Regional Office at Hyderabad have joined their duties at Godavarikhani by withdrawing themselves from the strike and only those employees who are placed under suspension for misconduct under CCS (CCA) Rules(Conduct) & (CCA) Rules are continuing the strike. Hence, the allegations made in the para are denied.

21. In the additional counter affidavit, the 1st respondent stated as under:

...The Government of India's decisions and the CCS (CCA) Rules and the Coal

Mines Provident Fund (Staff Regulation and Conditions of Service) of the respondents organization, rule 4, read with rule 30 clearly state and explain the grounds....

22. In view of these clear admissions, on the part of the 1st respondent, it was not open to him to plead that the Rules do not apply to the employees of the organization. It was only an attempt by him, to wriggle out from the situation, that emerged on account of the non-compliance with Sub-rule (7) of rule 10. Therefore, the impugned orders of suspension ceased to be operative, with the expiry of 90 days from the date of order, on account of the fact that suspensions were not reviewed within 90 days.

23. The third plea is about the action of the 1st respondent, in placing the petitioners under suspension, and at the same time transferring them to different places. From a perusal of the orders of suspension and transfer, passed against the petitioners, it is evident that the petitioners were transferred to Regional Offices at New Delhi, Jabalpur, Margherita, Chindwara, Sambalpur and Deoghar, respectively. The petitioners contend that transferring them to distant places, even while placing them under suspension, is a malafide exercise of power. In this regard, it needs to be observed that the power to suspend an employee, pending enquiry, is almost incidental. Except that the rules provide for various circumstances, under which the employees of the concerned organization can be placed under suspension, the phenomenon is common.

24. Transfer of an employee is almost a matter of convenience. Instances do exist, when employees are transferred on punitive grounds, which are mostly termed as on administrative grounds. Transfers, otherwise than on completion of tenure at a particular station, or on request made by the employees, are made, where the employer finds that the conduct of the employee is such that it is not at all advisable to continue him at the same station, pending further verification of the matter, but the situation is not that grave, as to warrant suspension. Such transfer is treated, almost as an alternative to suspension pending enquiry. Hardly one comes across instance of placing an employee under suspension and transferring him to a station. The incongruity, in such a course, is not difficult to discern. On transfer, an employee has to report duty, at the office, to which he is transferred. If the order of transfer itself disables him from functioning or discharging his duties, the exercise becomes a contradiction in terms. The situation assumes seriousness, when the transfer to a far off place. The subsistence allowance to an employee would be only a fraction of his ordinary emoluments. He cannot meet the expenditure of shifting and maintenance of his family, at the transferred place. Even where official accommodation is provided, it would be somewhat ridiculous to expect the authorities of the other station, to provide accommodation to a suspended employee, for the first time.

25. Learned Counsel for the petitioners relied upon the judgment of the Gujarat High Court in J.S. Solanki v. Principal Chief Conservator of Forests 1986 GLR 141. It was also a case, where an employee of the Forest Department of the

State, was placed under suspension and was transferred to another place within the State. The judgment of the Supreme Court in *The Government of India, Ministry of Home Affairs and Others Vs. Tarak Nath Ghosh*, was also discussed. While examining the permissibility of suspension pending enquiry, the Supreme Court observed that transfer of an employee to another place on administrative grounds, and suspension pending enquiry, are treated as alternatives, before the employer. The Gujarat High Court held that there is nothing in law, which prohibits the transfer of an employee who is placed under suspension. A note of caution, however, was sounded about the indiscriminate exercise of such power. An illustration was furnished to indicate the circumstances, under which such power can be resorted to. It reads as under:

In cases where a delinquent is alleged to have accepted illegal gratification it would be necessary not suspend him from service because transferring him to another place would not serve the purpose inasmuch as the possibility of his indulging in similar activity else where cannot be ruled out. Such a Government servant who is under suspension may be found to be interfering with the course of inquiry namely recording of statements of his erstwhile subordinates tampering with the evidence of witnesses other than civil servants etc. and hence it may become necessary for the State Government to change his headquarters even while under suspension to put him out of harms way. While it may be true to say that the exercise of such a power of suspension as well as transfer may become necessary in rare cases it is not possible to agree with the view that the power does not exist.

26. The only allegation against the petitioners, in the instant case, is that they have resorted to strike, in the context of shifting of the regional office from Hyderabad to Godavarikhani. Even assuming that there was no justification for them to go on strike, it cannot be said that the alleged misconduct on their part is so grave, as to warrant their being shifted to places, which are hundreds of kilometers away from their place of working, even while suspending them. The 1st respondent may be unhappy with the attitude of the petitioners. However, he cannot act in an arbitrary manner. Assuming that the 1st respondent had unbridled power to affect transfer, even while suspending an employee, the circumstances must justify the exercise thereof. It is not as if the charges against the petitioners are so grave, that they must be shifted to distant places. There is intrinsic evidence to prove that the action of the 1st respondent, in transferring the petitioners to long distances, is unjustified.

27. Along with the petitioners, an employee, by name Laxmi Bai, was also placed under suspension on the same day, and she was transferred to Deoghar. Having fought the litigation up to certain extent, along with the petitioners, she made a representation, dated 20.8.2008 as under:

With due respect, I request you to kindly revoke my suspension and transfer from R.O. CMPFO, Deoghar to R.O., CMPFO, Godavarikhani. That I have four children (one male and 3 female) all are studying in Medicine/Engineering/

Intermediate and they need their mother's presence with them in this crucial stage in their life to build themselves for their bright future.

That, I became helpless financially and psychologically after suspension and transfer to R.O., CMPFO, Deoghar. At this stage, I am not in a position to leave my children lonely, that is why I am unable to go for R.O. CMPFO, Deoghar. Hence, I request you with folded hand to consider my representation sympathetically and revoke my suspension and transfer me from R.O., CMPFO, Deoghar to R.O., CMPFO, Godavarikhani. This is for your kind consideration and necessary action please.

28. On the same day, the 1st respondent passed an order, which reads thus:

Whereas the disciplinary authority under the CCS (CCA) Rules 1965, has received an appeal of Smt. M. Lakshmi Bai, Superintendent, who was placed under suspension and her headquarters so changed to R.O. Deoghar in public interest, vide this office order No. CMPFO/120/G.Khani/vig/135-142 dated 5.10.2007. Now, therefore, the disciplinary authority in consideration of her appeal, has further ordered that the orders of suspension of Smt. M. Lakshmi Bai, dated 5.10.2007, will remain in force, however, the headquarters of Smt. Lakshmi Bai, Superintendent, shall be the Regional Office, CMPFO, Kothagudem. It is further ordered that the said Smt.M. Lakshmi Bai, Superintendent (Under suspension) shall not leave her headquarters, which is Regional Office, Kothagudem, without the written permission of Regional Commissioner, Kothagudem and Commissioner, CMPFO, Headquarters, Dhanbad.

29. These documents are furnished by the respondents themselves, along with the additional counter affidavit. There cannot be any doubt that had the petitioners also approached the 1st respondent "with folded hands", he would have given the same relief to them, as he did to Laxmi Bai. The reason is that there is no difference as to the acts or omissions alleged against them. These facts clearly disclose that the exercise of power was not bonafide.

30. The last ground urged by the petitioners is about discrimination. This Court is not impressed by the contentions advanced on behalf of the petitioners. It is for the employer itself to proceed against the erring delinquent employee, and no hard and fast rule can be laid to the effect that the disciplinary proceedings must be initiated against every employee, who resorts to strike or on the basis of any other criteria.

31. For the foregoing reasons, the writ petition is allowed. The impugned orders of suspensions became inoperative, on account of the failure, on the part of the competent authority, to review the order of suspension within 90 days from the date of order of suspension, as required under Rule 10(7) of the Rules. It is held that the action of the 1st respondent, in transferring the petitioners to far off places, while placing them under suspension, is not bonafide. The 1st respondent is directed to, forthwith, reinstate the petitioners, on their reporting to duty at the Regional Office at Godavarikhani, and pay arrears of subsistence allowance

for three months from the date of suspension, and full salary from the date of expiry of 90 days, from the date of suspension, within a period of four weeks, from the date of their reporting to duty. Such reporting shall be without prejudice to their rights in the proceedings if any, under the Industrial Disputes Act. There shall be no order as to costs.