

(1999) 06 AP CK 0043
In the Andhra Pradesh High Court
Case No : Writ Petition No. 14656 of 1998

B. Baburao

APPELLANT

Vs

Assistant Works Manager-II, Zonal Workshop, APSRTC,
Vizianagaram and others

RESPONDENT

Date of Decision : 17-06-1999

Acts Referred:

Andhra Pradesh State Road Transport Corporation Employees (Conduct) Regulations,
1963 — Regulation 28
Constitution of India, 1950 — Article 226

Citation : (1999) 5 ALD 139 : (1999) 4 ALT 112

Hon'ble Judges : D.S.R. Varma, J

Bench : Single Bench

Advocate : T.S. Venkataramana, for the Appellant; Mr. Y. Vivekananda Swamy,
SC for APSRTC, for the Respondent

Judgement

1. This writ petition has been filed seeking issuance of a Writ of Certiorari calling for the records relating to and connected with the proceedings No.M2/118(21)97-ZWS-VZM dated 30-4-1998 and quash the same by holding it as being illegal, arbitrary, void and against the principles of natural justice.

2. WP MPNo.17591 of 1998 is filed seeking to suspend the operation of the proceedings mentioned supra.

3. When the WP MP is listed, both the parties consented to argue the main writ petition itself and accordingly, the writ petition itself is taken up for consideration.

4. The averments made in the writ petition are that the petitioner worked in the respondent-Corporation as a Welder; that charges have been framed against the petitioner viz.

"1. For having refused and failed to perform the job entrusted to you by your Section Supervisor i.e., AMF, with regard to the welding works to luggage carriers of certain C.O., vehicles on 23-7-1997, which constitutes serious misconduct

under Clauses (viii) and (xxxii) of Reg.28 of APSRTC Employees (Conduct) Regulations, 1963.

2. For having refused and failed to carry out your duties as entrusted by your Section Supervisor during the period from 24-7-1997 to 29-7-1997 also, by simply loitering on the floor of the Workshop, even though you had reported for your duty at ZWS : VZM during that period, which constitutes serious misconduct under Clauses (viii), (xxxii) and (xxvii) respectively of Rcg.28 of APSRTC Employees (Conduct) Regulations, 1963."

For those charges explanation was offered by the petitioner. Through a show-cause notice dated 2-4-1998 the petitioner was called upon to show cause why the punishment of removal shall not be taken against the petitioner for the alleged irregularities committed by him. The petitioner has offered his explanation on 21-4-1998. The first respondent-Competent Authority, having received the explanation offered by the petitioner passed final orders of removal through the impugned proceedings dated 30-4-1998. It is this order of removal from service that has been challenged in this writ petition.

5. It is the contention of the learned Counsel for the petitioner that even though the petitioner had offered his explanation on 21-4-1998, the first respondent-Competent Authority, without considering the same passed orders of removal on 30-4-1998, which day happened to be the date of retirement of the first respondent. It is further submitted that the first respondent had received the explanation of the petitioner on 30-4-1998 and passed the impugned order on the same day contrary to the rules. It is finally, contended that when similar charges are levelled against the other persons, they were not removed from service and the petitioner was singled out by passing the order of removal. On the contrary, the learned Standing Counsel for the respondent-Corporation tried to justify the order of the first respondent saying that the competent authority has passed the order after following the procedure prescribed and after giving full opportunity to the petitioner and that the first respondent has the authority and jurisdiction to pass the order of removal and the said action is absolutely legal.

6. The petitioner did not question the impugned proceedings on the ground of any material irregularity with regard to conduct of disciplinary enquiry. This Court exercising its jurisdiction under Article 226 of the Constitution normally would not interfere with the finding given by the competent authority if the competent authority passes orders after following the procedure laid down in the matter of conduct of disciplinary enquiry and after satisfying the principles of natural justice. Therefore, I cannot hold that the conduct of disciplinary proceedings and the consequential final order dated 30-4-1998 as illegal.

7. The learned Counsel for the petitioner specially pleaded that the first respondent having received the explanation offered by the petitioner on the show-cause notice and the first respondent having received the explanation on

30-4-1998 ought to have passed final orders on the very same day, particularly that day happened to be the date of retirement of the first respondent. This argument in normal course would not be convincing, but the record placed before the Court by the learned Standing Counsel for the respondent-Corporation would reveal that the explanation of the petitioner dated 21-4-1998 was received in the office of the first respondent at 10-50 a.m. on 30-4-1998 which is the day on which the first respondent was due to retire. Further, it appears that the final order of removal has been passed on the very same day, the time of which significantly was not indicated in the said proceedings. It is pertinent to note that the first respondent being conscious and careful about noting down the date and time of receipt of the explanation did not indicate the time when the final order was prepared and signed by him. A perusal of the record further discloses that the said final order dated 30-4-1998 has been despatched to the petitioner on 8-5-1998, through Registered Post-Acknowledgment Due. On this aspect, it is the submission made by the learned Standing Counsel for the respondent-Corporation that the impugned proceedings were personally dictated by the competent authority and got it fair typed by him well before 14.00 hours on 30-4-1998. No doubt in the impugned proceedings, every aspect has been elaborately discussed in the order which runs into 17 pages, before coming to the conclusion of awarding punishment of removal from service, but this Court is of the view that such a short time viz., three hours is not at all sufficient for the competent authority to look into all the aspects and the material placed before it in the matter of awarding severe punishment of removing from service. Even assuming that it is possible that such an order can be passed in that short time, it is likely that the scope of appreciation of facts and the material placed on record and the application of mind would be reduced which eventually may cause unintentional prejudice to the delinquent employee. It is my considered view that in such circumstances, it is desirable for the authority to show some restraint as far as possible before awarding punishment, particularly that of removal from service. It does not mean that every order passed in similar circumstances are to be doubted. In the case on hand the circumstances which culminated into passing orders of removal from service are sufficient to raise an eyebrow.

8. In view of the foregoing discussion, I hold that the impugned proceedings No.M2/ 118(21)97-ZWS-VZM passed by the first respondent dated 30-4-1998 are arbitrary and illegal and they are accordingly set aside. Consequently, the competent authority is directed to pass appropriate orders afresh on the basis of the material available on record and in accordance with the Rules, uninfluenced by any of the findings given in the impugned order as well as any of the observations made by this Court in this order.

9. The writ petition is accordingly allowed. No costs.