
(2014) 02 AP CK 0113
In the Andhra Pradesh High Court
Case No : W.P. No. 1846 of 2006

B. Eswaraiah

APPELLANT

Vs

Presiding Officer

RESPONDENT

Date of Decision : 11-02-2014

Acts Referred:

Constitution of India, 1950 — Article 141
Government of India Act, 1935 — Section 212
Industrial Disputes Act, 1947 — Section 2(s), 33-C(2)

Citation : (2014) 4 ALT 118 : (2014) 142 FLR 459 : (2014) 2 LLJ 530

Hon'ble Judges : D. Seshadri Naidu, J

Bench : Single Bench

Advocate : P. Raghavender Reddy, Advocate for the Appellant

Final Decision : Allowed

Judgement

Dama Seshadri Naidu, J.—The petitioner, a casual driver, working in the 2nd respondent Corporation (A.P.S.R.T.C.), was removed from service on 27.03.2003 on an allegation of certain misconduct on his part. Initially, before taking the eventual step of removing the petitioner from service or disengaging him as he was only a casual employee, the Corporation "put him off duty" for a certain period. In that context, the petitioner filed the present writ petition claiming that he ought to have been paid full wages for the period from 03.05.2002 to 27.03.2003, for which period he had been kept under put off duty, since it is without any regulatory support. The facts in brief are that on 02.05.2002 while the petitioner was driving the bus of the Corporation, it met with an accident. Initiating departmental proceedings, the Corporation issued a charge sheet on 22.05.2002, apart from putting the petitioner off duty on the said date. Not satisfied with the explanation submitted by the petitioner in response to the charge sheet, the Corporation issued orders of disengagement through proceedings dated 26.12.2002, based on the enquiry report dated 14.12.2002.

2. Later on 12.03.2003, the respondent Corporation issued further proceedings

cancelling or recalling the order of disengagement dated 26.12.2002 on the ground that it had been erroneously given and further issued a show cause notice for the deletion of the petitioner's name from the approved list. Once again, when the petitioner submitted his explanation to the said show cause notice on 25.03.2003, the respondent Corporation, apparently not being satisfied with the explanation, proceeded further and issued the final orders of disengagement on 27.03.2003.

3. Contending that till there was a disengagement of the petitioner, there existed an employer and employee relationship between the Corporation and the petitioner, i.e., essentially for the period from 03.05.2002 to 27.03.2003, when the petitioner had been under the put off duty, the petitioner claimed full wages for the said period. When his representations yielded no result, the petitioner approached this Court by filing the present writ petition.

4. The learned counsel for the petitioner has stated that "put off duty" is not a recognized mode of punishment or suspension under A.P.S.R.T.C. Employees Conduct Regulations, 1963 ("the Regulations, 1963"). Since the petitioner was prevented from attending duty under the cover of an illegal or void directive, his employer, contended the learned counsel, should pay the wages for the said period - from 03.05.2002 to 25.03.2003. In other words, the petitioner ought to be treated to have been on duty during the said period. In this regard, the learned counsel has placed reliance on certain judicial pronouncements of this Court - some reported and some unreported; some by learned Single Judges and some by learned Division Benches. Since all the series of judicial pronouncements of the learned Single Judges got subsumed into those of learned Division Benches, I will examine those judgments of the Division Benches, especially for the reasons mentioned below.

5. Per contra, the learned Standing Counsel for the respondent Corporation, in tune with the averments made in the counter affidavit filed by the Corporation, has submitted that the petitioner was only a daily wage employee, and that even before the Labour Court, he has made a specific claim for full wages for the period of put off duty, but it was expressly denied. He has further contended that it is a well established principle that a daily wage earner would be paid only for the days he was in service and not otherwise. As a matter of alternative submission, the learned Standing Counsel has also stated that put off duty can be likened to suspension of the regular employees pending disciplinary proceedings. On that count too, at best, the petitioner is entitled to have subsistence allowance, as if he were a suspended regular employee. The learned Standing Counsel has also brought to the notice of the Court that the petitioner was already paid an amount of Rs. 9,537/- through a cheque dated 06.11.2007 in terms of Circular No. PD-3/05, dated 25.01.2005, the said amount being 50% of wages for the period from 22.05.2002 to 26.12.2002.

6. According to the learned Standing Counsel, the Corporation has already paid 50% for the put off period, and as such, no further amount need be paid to the

petitioner under whatever circumstances. Accordingly, the learned Standing Counsel has urged this Court to dismiss the writ petition.

7. Heard the learned counsel for the petitioner and the learned Standing Counsel for the 2nd respondent-Corporation, apart from perusing the record.

8. The facts indeed are not in dispute. The controversy runs in a very narrow compass. The petitioner had been a casual driver on daily wage basis and he was later disengaged on the ground of proven misconduct, to wit, having caused an accident, which was held to be due to his rash and negligent driving. It is further not in dispute that the petitioner was kept under put off duty from 22.05.2002 to 26.12.2002 before he was eventually disengaged with effect from 27.03.2003.

9. The issue is whether, in the absence of any specific provision in the Regulations, 1963 of the Corporation specifying put off duty as an interim measure pending departmental proceedings, the workman is entitled to payment of full wages or whether the said put off duty can be treated as suspension pending enquiry as in the case of the regular workman of the Corporation.

10. Before any discussion is under taken on this issue, it may have to be observed that there are plethora of precedents on this aspect. Some have been rendered by the learned single Judges and some by the learned Division Benches of this Court. In fact, most of them held that unless it has been specifically mentioned in Regulations, 1963, put off duty cannot be pressed into service by the Corporation. But there is a cleavage of judicial opinion among certain co-equal benches, and it is required to be resolved, before the principle of stare decisis is applied to the present case.

11. At the earliest point of time, by order dated 09.12.1986 in W.P. No. 18033 of 1986, a learned single Judge of this Court has held that if an employee was prevented from attending duty without any order of suspension passed by the competent authority, the management is liable to pay full salary to the workman who had been prevented from discharging his duties without any valid suspension order having been passed vis-?-vis the said workman. It can be seen that this order does not directly deal with the concept of "put off duty".

12. Even in W.P. No. 14816 of 1991, a learned single Judge directed the management to pay full wages to the workman for the period he was prevented from attending the duty pending enquiry, in the absence of any effective order of suspension. In the first place, the copy of the said order dated 29.11.1991 passed on by the learned counsel for the petitioner is absolutely illegible. From whatever I could make out of the order, it can be seen that this order does not deal with the concept of the put off duty either.

13. In the Depot Manager, A.P.S.R.T.C., Musheerabad v. Addl. Labour Court, Hyderabad and Others 2012 (1) ALD 368 (DB), a learned single Judge of this Court has held as follows:

The reason which occasioned the employees to go before the Labour Court with

their applications u/s 33-C(2) was to seek adjudication of the propriety of "putting them off duty" on allegations of cash and ticket irregularities. They were "put off duty" from 11-1-1985 and that position continued till the dates on which they were removed from service, namely, 24-5-1985 and 25-6-1985. It is not denied before me that neither the Conduct Regulations nor the Service Regulations provide for putting any employee "off duty". That was neither a punishment nor an intermediate measure in aid of any punishment prescribed under the Service Regulations. Counsel for the petitioner submits that the respondent-workmen may at best be considered to have been suspended from service for the period in question, in which case, they will be entitled to claim only subsistence allowance. He may be begging the question. They could be suspended only if they were employees. They could be offered subsistence allowance only if, by a valid order passed in exercise of powers contained in Regulation 18 of the Classification, Control and Appeal Regulations the petitioner-employer had suspended them from service. No order of suspension having been validly issued, it is not open for the petitioner to contend that the entitlement of the workmen was only for subsistence allowance.

Admittedly, the respondent-workmen were in the employment and the employer-employee relationship continued till it was terminated by the orders of removal. The order of the Labour Court awarding wages due to the workmen for the period during which they were forcibly prevented from rendering service to the Corporation during subsistence of employer-employee relationship, therefore, eminently just. I do not find any defect of jurisdiction or illegality in the orders impugned in these proceedings.

14. In APSRTC, Mushirabad, Hyd. and another Vs. M. Ramulu and another, , another learned single Judge of this Court has held as follows:

On careful reading of this decision, I am of the considered view that the respondent No. 1 is a daily wager and he is a workman within the definition of Section 2(s) of the Industrial Disputes Act and he is entitled to receive from the employer any money or any benefit which is applicable in terms of money and the application before the Labour Court u/s 33-C(2) is maintainable and the Labour Court has correctly allowed the claim for wages of the respondent No. 1 workman for the put-off duty with effect from 23-2-1995 to 8-11-1995 and I see there is no illegality in the order passed by the Labour Court-II, Hyderabad. Accordingly, the writ petition is devoid of merits and the same is liable to be dismissed.

15. In Depot Manager, APSRTC, Pargi Bus Depot Vs. Labour Court-III, Hyderabad and another, this Court has once again held that the workman is entitled to full wages for the put off period. Thus, in all those three decisions, it is positively affirmed that "put off duty" is no from of suspension.

16. In an unreported Judgment dated 18.01.2001 in W.A. No. 1751 of 2000, a learned Division Bench of this Court has dealt with the aspect of put off duty. It

was held that an employee can only be suspended in terms of the rules pending departmental proceedings and during the course of that suspension, he would be entitled to subsistence allowance. If it falls short of suspension and if the workman is kept away from duty in the name of put off duty, the workman shall be entitled to full wages. Accordingly, modifying the orders of the learned single Judge, the learned Division Bench has directed the Corporation to pay full wages to the workman for the period he had been put off duty.

17. Subsequently another Division Bench of this Court through a Judgment dated 28.10.2003 in MD, A.P.S.R.T.C., Hyderabad and Another v. Labour Court-II, Hyderabad and Another (W.P. No. 34628 of 1998) and batch, placing reliance on the judgment in the earlier writ appeal, has held that the workman is entitled to full wages for the put off duty.

18. In APSRTC, Mushirabad, Hyderabad and another Vs. Harikrishna and another another learned Division Bench of this Court has placed reliance on the judgment of a learned Single Judge in A.P.S.R.T.C. rep. by its Managing Director and Another v. M. Ramulu, Ex-Casual Driver and Another (supra) and has held that the workman is entitled to full wages during the put off period.

19. In all those decisions this Court, per either a learned Single Judge or per a learned Division Bench, has taken the view that put off duty has not been enumerated in the Regulations of the Corporation and it cannot be likened to suspension. Thus, it is nothing but preventing the workman from discharging his duty without any lawful order of suspension. Accordingly, it is concluded that the affected workman shall be paid full wages for the said period of put off duty.

20. But in the interregnum, another Division Bench of this Court in The Regional Manager, APSRTC Vs. Sk. Gulam Rasool, has, however, held as follows:

His complaint is that after this charge sheet was served on him he was not given any job to work and was not paid any wages. The respondents who have filed this appeal submitted that he was placed on "put off duty". This concept of "put off duty" has already been considered by a Division Bench of this Court in W.A. No. 218 of 1993. Rules does not provide for placing any employee on put off duty. The learned counsel for appellants submits that since the Writ petitioner was a casual employee therefore there was no question of application of conduct rules in his case therefore he could be simply told not to come to work till the enquiry was completed. This has not been accepted by the earlier Division Bench and we are also not inclined to accept this plea on the ground that the Writ petitioner was charged for the misconduct under Regulation No. 28(xxii) of A.P.S.R.T.C. Employees (Conduct) Regulation, 1963. Had the writ petitioner not been amenable to the conduct Rules then how could he be charged under those rules. Since these rules do not provide for any "put off duty" but provide for suspension during the pendency of enquiry therefore, we agree with the earlier Bench judgment that "put off duty" should be construed as "on suspension". While such casual labours are being proceeded against for misconduct in terms of

A.P.S.R.T.C. Employees Conduct Regulations the appellants cannot chose to apply certain regulations and refuse to apply certain regulations. Therefore, this appeal has no merits. However, the learned counsel for the appellants submits that since the writ petitioner was not being paid any particular scale of pay and he was only paid as and when required therefore it would be difficult to ascertain as to on what rates the allowance during suspension would be payable to him. We leave it to the appellants to make rules in that behalf, but till rules are framed the employees on "put off duty" who have been proceeded against A.P.S.R.T.C. Employees (Conduct) Regulation, 1963 shall be paid at least one-half of the basic of the scale which is available for the post against which such employee was working before he was put off duty, or he shall be paid the wages for 15 days for every month during the period of suspension.

21. From the above pronouncements of the Division Bench, it is clear that, in the first place, the other judgments of this Court referred to above have not been brought to the notice of the learned Division Bench. Accordingly, treating the put off duty as a mode of suspension, their Lordships have held that the workman could be entitled only to subsistence allowance or at least one half of the basic of the scale, which is available for the post, as a measure of subsistence allowance during the put off period.

22. There is a direct conflict of judicial opinion involving co-equal Benches. One set of rulings followed the line of reasoning as has been enunciated and Another decision, though singular, of a co-equal Division Bench in Regional Manager, A.P.S.R.T.C., Nellore and Another v. Sk. Gulam Rasool (supra) took a different line, that there is a seeming conflict of judicial opinion.

23. One prevalent school of judicial thought is that in a series of judgments of co-equal benches, in the face of cleavage or conflict of judicial opinion, the latest judgment should prevail. This school of thought, I am afraid, is fallacious. In fact, the said issue, though, has not been decided by any definitive pronouncement of the Hon"ble Supreme Court under Article 141 of the Constitution of India, guidance is available in the form of Full Bench judgments and also Larger Bench pronouncements of various other High Courts.

24. Indeed, the doctrine of precedent or stare decisis is a common law phenomenon that has gained constitutional recognition in the form of Article 141 of the Constitution of India. In fact, Section 212 of the Government of India Act, 1935 provided for the binding nature of the decisions of the Federal Court and Privy Council upon all Courts. Of course, in independent India, the decisions of the Federal Court and the Privy Council do not bind the Supreme Court. Lord Halsbury commenting on the principle of precedent has said that there is more to the law a mere mechanical process of logical deduction. Echoing the same view, Oliver Wendell Holmes Jr., the Judge of American Supreme Court and Jurist, has said that the life of the law has not been logic; it has been experience. Proceeding further, I may observe that in Deena alias Deen Dayal and Others Vs. Union of India (UOI) and Others, , the Supreme Court has observed thus:

Any case, even a locus classicus, is an authority for what it decides. It is permissible to extend the ratio of a decision to cases involving identical situations, factual and legal, but care must be taken to see that this is not done mechanically, that is, without a close examination of the rationale of the decision cited as a precedent.

25. A Larger Bench of Five Judges of the Madhya Pradesh High Court in Jabalpur Bus Operators Association and Others Vs. State of M.P. and Another, , examined in depth the issue of precedential value of conflicting judgments of coequal Benches. In fact, the initial reference to Larger Bench was occasioned in the light of an earlier Full Bench judgment of the same High Court in State of M.P. and others Vs. Balveer Singh and others, , in which the High Court of Madhya Pradesh has held:

48. Further where there is a direct conflict between the decisions of the Hon'ble Supreme Court in its co-equal benches, the High Court has to follow the judgment, which appears to it to state the law more elaborately and more accurately and in conformity with the scheme of the Act. The date of delivery of the judgment cannot be a guiding factor. This was so indicated by a Division Bench of this Court in its decision in the case of Municipal Corporation, Indore and others Vs. Smt. Ratnaprabha Dhanda, Indore and another, .

26. Having doubted the above proposition, a large Bench (Five Judge Bench) of the same High Court in Jabalpur Bus Operators Association and Others v. State of Madhya Pradesh and Another (supra), after surveying the entire case law as has been obtaining by that time, has held as follows:

8. Having considered the matter with broader dimensions, we find that various High Courts have given different opinion on the question involved. Some hold that in case of conflict between two judgments on a point of law, later decision should be followed; while others say that the Court should follow the decision which is correct and accurate whether it is earlier or later. There are High Courts which hold that decision of earlier Bench is binding because of the theory of binding precedent and Article 141 of the Constitution of India. There are also decisions which hold that single Judge differing from another single Judge decision should refer the case to Larger Bench, otherwise he is bound by it. Decisions which are rendered without considering the decisions expressing contrary view have no value as a precedent. But in our considered opinion, the position may be stated thus--

with regard to the High Court, a single Bench is bound by the decision of another single Bench. In case, he does not agree with the view of the other single Bench, he should refer the matter to the Larger Bench. Similarly, Division Bench is bound by the judgment of earlier Division Bench. In case, it does not agree with the view of the earlier Division Bench, it should refer the matter to Larger Bench. In case of conflict between judgments of two Division Benches of equal strength, the decision of earlier Division Bench shall be followed except when it is

explained by the latter Division Bench in which case the decision of latter Division Bench shall be binding. The decision of Larger Bench is binding on smaller Benches.

In case of conflict between two decisions of the Apex Court, Benches comprising of equal number of Judges, decision of earlier Bench is binding unless explained by the latter Bench of equal strength, in which case the later decision is binding. Decision of a Larger Bench is binding on smaller Benches. Therefore, the decision of earlier Division Bench, unless distinguished by latter Division Bench, is binding on the High Courts and the Subordinate Courts, Similarly, in presence of Division Bench decisions and Larger Bench decisions, the decisions of Larger Bench are binding on the High Courts and the subordinate Courts. No decision of Apex Court has been brought to our notice which holds that in case of conflict between the two decisions by equal number of Judges, the later decision is binding in all circumstances, or the High Courts and subordinate Courts can follow any decision which is found correct and accurate to the case under consideration. High Courts and Subordinate Courts should lack competence to interpret decisions of Apex Court since that would not only defeat what is envisaged under Article 141 of the Constitution of India but also militate hierarchical supremacy of Courts. The common thread which runs through various decisions of Apex Court seems to be that great value has to be attached to precedent which has taken the shape of rule being followed by it for the purpose of consistency and exactness in decisions of Court, unless the Court can clearly distinguish the decision put up as a precedent or is per incuriam, having been rendered without noticing some earlier precedents with which the Court agrees. Full Bench decision in *State of M.P. v. Balveer Singh* (supra) which holds that if there is conflict of views between the two co-equal Benches of the Apex Court, the High Court has to follow the judgment which appears to it to state the law more elaborately and more accurately and in conformity with the scheme of the Act, in our considered opinion, for reasons recorded in the preceding paragraph of this judgment, does not lay down the correct law as to application of precedent and is, therefore, over ruled on this point.

(emphasis supplied)

27. In my considered opinion, the position would be this: When the subsequent co-equal bench renders the judgment in ignorance of the earlier pronouncement of co-equal bench, the judgment of the previous bench will have binding effect. On the other hand, if the latter bench refers to the earlier one and distinguishes it, to that extent of distinction, the latter one binds.

28. A learned Division Bench of this Court in *S.K. Mahaboob Ali, Ex-CRPF Constable Vs. Director General of Police, Central Reserve Police Force and Others*, , has held:

9. This is a very delicate area where the Courts are expected to be more careful and cautious while following the binding decisions of the Apex Court. It is no

doubt true that a later decision of the co-ordinate Bench normally may have to be followed but however there may be cases where the later decision might not have considered the relevant statutory provisions or the binding prior precedents on the point and would have decided the question without proper supporting reasons. It is no doubt true that the judicial propriety and judicial discipline require that binding precedent shall be necessarily followed, but however, while adopting cautious approach in case of conflicting Judgments of the Apex Court of co-ordinate Benches cited before the Courts, Courts may have to carefully scrutinize whether reasons had been recorded while laying down the ratio and whether the concerned statutory provisions had been considered and whether the other prior decisions or the binding decisions also had been referred to, if any available on the point by the Court while rendering such Judgments. These principles at any rate cannot be said to be exhaustive, but only just illustrative.

(emphasis supplied)

29. In *Ushodaya Enterprises Ltd. Vs. Commissioner of Commercial Taxes, A.P., Hyderabad*, a Full Bench of this Court has held as follows:

22. Without making inroads into the settled principles governing the binding force of a decision of the Supreme Court either by virtue of its presidential value or the mandate of Article 141, we can safely evolve the principle that in a case of conflict arising from the decisions of co-equal benches of the Supreme Court, the High Court is free to disregard the decision which is based on an obvious mistake of fact or the one which purports to follow the ratio of an earlier decision though such ratio is found to be non-existent. The High Court can legitimately decline to follow such decision and follow the earlier decision which is backed by reasoning-whether it is acceptable to the High Court or not, and which is free from any such apparent flaw. We are unable to persuade ourselves to subscribe to the view that the later decision should be automatically followed despite the fact that it rests on a conclusion based on an erroneous impression that an earlier decision took a particular view which in fact it has not taken. By doing so, we are neither questioning the hierarchical superiority of the Supreme Court nor the higher wisdom of the Hon'ble Judges of the Supreme Court. We are preferring one decision to the other - both rendered by Division Benches, for obvious reasons so as to avoid an incongruity leading to travesty of justice.

(emphasis supplied)

30. The learned Full Bench of this Court, in the said judgment, has held that the previous judgment of a co-equal bench would be binding even in the face of subsequent contrary judgment, once the previous judgment has dealt with the issue more appropriately and with reference to all previous precedents obtaining on that point.

31. Thus, having been guided by the precedents that have been referred to above without fear of contradiction, I hold that judgment rendered by the learned Division Bench of this Court in *Regional Manager, A.P.S.R.T.C., Nellore*

and Another v. Sk. Gulam Rasool (supra) cannot said to be correct law in the light of the previous, as well as subsequent, judgments of Co-equal Benches.

32. Thus, it is to be held that the put off duty cannot be equated with suspension and in the absence of any statutory support from the Regulations, 1963, it shall be treated as absence of the workman induced by compulsive proscription on the part of the 2nd respondent Corporation, which, in fact, denied him an opportunity to work during the said period.

33. Accordingly, the petitioner - in the light of the submissions of the 2nd respondent Corporation that already 50% of the wages have been paid - shall be entitled to the remaining 50% of the wages for the put off duty period with effect from 03.05.2002 to 27.03.2003. Accordingly, the 2nd respondent Corporation is hereby directed to pay the said differential amount of 50% for the put off duty period, as early as possible, at any rate, not beyond two months' time from the date of receipt of a copy of this order. Accordingly, the writ petition is allowed. No costs. As a sequel to it, miscellaneous petitions, if any pending in this writ petition, shall stand closed.