

(2017) 03 AP CK 0037

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2666 of 2017

G. Shashi Kumar

APPELLANT

Vs

Telangana State Road Transport Corporation

RESPONDENT

Date of Decision : 22-03-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 3 ALT 316 : (2017) 3 AndhLD 605 : (2017) 2 LLJ 477

Hon'ble Judges : Sri P. Naveen Rao, J.

Bench : Single Bench

Advocate : Sri V. Narasimha Goud, Counsel, for the Petitioner; Sri N. Vasudeva Reddy, Counsel, for the Respondent

Final Decision : Disposed Off

Judgement

Sri P. Naveen Rao, J.—Petitioner is working as conductor in respondent Corporation. He was assigned duty on the Bus between Huselli to Zaheerabad on 19.12.2016. At about 0850 hours, a check was conducted at Zaheerabad. During the check, passenger aged about 13 years was found ticket less. Alleging that petitioner indulged in cash and ticket irregularities, he was placed under suspension by order dated 07.01.2017. On the same day, he was also served with the charge memo. Petitioner challenges his suspension from service in this writ petition.

2. Heard Sri V.Narasimha Goud, learned counsel for petitioner and Sri N.Vasudeva Reddy, learned standing counsel for respondents.

3.1. Learned counsel for petitioner contended that many students going to the school boarded the Bus and when petitioner enquired from the concerned passenger, passenger informed the petitioner that she has Bus pass. In fact, other students also disclosed the availability of bus passes. As petitioner did not doubt the bona fide of the student and since it was a peak school time hour with heavy rush in the bus containing students, petitioner did not verify the

availability of the bus pass with this student. Learned counsel, therefore, contended that it was a bona fide mistake. There was no allegation of collecting the fare and not issuing the ticket and, therefore, it cannot be classified as cash and ticket irregularities as ordinarily perceived by the management.

3.2. He would further submit that even assuming that the allegation is true at the most it would amount to minor lapse and therefore, does not warrant suspension. Learned counsel further contended that having found that the passenger did not purchase ticket, she was penalized by collecting 50/-.

3.3. Learned counsel further contended that on similar allegation, departmental proceedings were initiated against Sri G.Anil Kumar, Conductor, but he was not placed under suspension. He would therefore submit that the suspension of petitioner amounts to selective suspension and amounts to arbitrary exercise of power.

4.1. Learned standing counsel submits that the allegations levelled against petitioner amounts to cash and ticket irregularity. On account of negligence of the petitioner in verifying the availability of bus pass from the student and not collecting the fare, Corporation was subjected to loss. Only because there was timely inspection of the bus, the passenger travelling without ticket was found and appropriate penal amount was levied. Otherwise, the Corporation would have subjected to loss and, therefore, the conduct of the petitioner amounts to negligence in performing the duties. He, therefore, submitted that there is no illegality in placing the petitioner under suspension.

4.2. With reference to the allegation of selective suspension and discriminative treatment, he would submit that G. Anil Kumar was having good record of service and whatever happened was a solitary instance and therefore, competent authority decided not to suspend him. Moreover, in the case of Anil Kumar, the mistake was noticed within three stages from the stage of boarding of bus by the concerned passenger, whereas in the case of the petitioner, petitioner did not notice that student was not having bus pass even after seven stages. Further petitioner did not have fair record of service. He was visited with punishment on five occasions.

4.3. In support of his contention justifying the suspension, counsel placed reliance on the decision of the Supreme Court in the case of V.P. Gidroniya v. The State of Madhya Pradesh and another, 1970 (1) SCC 362 decision of Supreme Court in the case of State of Orissa through its Principal Secretary, Home Department v. Bimal Kumar Mohanty, (1994) 4 SCC 126 and decision of the Division Bench of this Court in Deputy Inspector General of Police, Kurnool Range, Kurnool district and others v. R.S.Madhubabu, RSI, Kurnool District, Kurnool, 2009 (4) ALT 530 (DB).

5. The duties and responsibilities, conduct and discipline of an employee in public service are governed by service rules/ regulations. On allegation of misconduct, employer is entitled to take disciplinary action which may result in dismissal/

removal from service. The power to suspend an employee flows out of power to take disciplinary action on allegation of misconduct. The conduct rules/regulations delineate the power of suspension and competent authority to exercise such power. When an allegation of misconduct comes to the notice of disciplinary authority and in the opinion of disciplinary authority that it is not desirable to entrust duties to the delinquent employee while enquiry/investigation is in progress/ proposed, he may place his service under suspension. Suspension of service results in temporary withdrawal of duties and responsibilities of the delinquent employee. During the period of suspension the relationship of master and servant remains; the employee continues to be on the rolls of employment and is not entitled to take up any other assignment. He is still amenable to disciplinary control of the employer for any other misconduct also. He is only disabled from attending to his work. He is not entitled to draw pay and allowances. For his sustenance during the period of suspension, he is paid allowance which in normal parlance called "subsistence allowance". It is normally fixed at 50 % of last pay drawn, which can be enhanced to 75 %.

6. Ordinarily an employee's services can be placed under suspension in the following contingencies:

- a) Where disciplinary proceedings are contemplated or pending.
- b) Where the disciplinary authority was of the prima facie opinion that the employee is engaged in activities prejudicial to the interest and security of the State;
- c) Where the case against him in respect of criminal offence is under investigation, enquiry or trial;
- d) Pending investigation/ enquire into allegations, it is found not desirable to continue the employee in service in public interest;
- e) Such continuation in service during pending enquiry/ investigation is likely to prejudice the investigation, trial, enquiry; there is a possibility of tampering of documents, influencing the witnesses, etc;
- f) It is also permissible to suspend an employee if his continuation is likely to cause /encourage indiscipline in the organization.

7. 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 the 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.

8. 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. In matters of suspension, each case has to be examined in the factual back ground of given case.

9.1. At this stage, it is necessary to consider briefly the precedent pronouncements of Supreme Court.

9.2. In *O.P. Gupta v. Union of India*, AIR 1987 SC 2257 Supreme Court held that order of suspension should not be lightly passed:

"15. We have set out the facts in sufficient detail to show that there is no presumption that the government always acts in a manner which is just and fair.....The real effect of the order of suspension as explained by this Court in *Khem Chand v. Union of India* is that he continues to be a member of the government service but is not permitted to work and further during the period of suspension he is paid only some allowance - generally called subsistence allowance - which is normally less than the salary instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension, unless the departmental inquiry is concluded within a reasonable time, affects a government servant injuriously. The very expression "subsistence allowance" has an undeniable penal significance. The dictionary meaning of the word "subsist" as given in *Shorter Oxford English Dictionary*, Vol. II at p. 2171 is "to remain alive as on food; to continue to exist". "Subsistence" means - means of supporting life, especially a minimum livelihood. Although suspension is not one of the punishments specified in Rule 11 of the Rules, an order of suspension is not to be lightly passed against the government servant. In the case of *Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni* the court held that the expression "life" does not merely connote animal existence or a continued drudgery through life. The expression "life" has a much wider meaning. Suspension in a case like the present where there was no question of inflicting any departmental punishment prima facie tantamounts to imposition of penalty which is manifestly repugnant to the principles of natural justice and fair play in action....." .

(emphasis supplied)

9.3. In *State of Orissa v. Bimal Kumar Mahanty*, (1994) 4 SCC 126 Supreme Court laid down parameters of suspension and scope of judicial review. Supreme Court held:

"13. It is thus settled law that normally when an appointing authority or the

disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee.

The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge."

(Emphasis supplied)

9.4. In *Union of India V. Ashok Kumar Aggarwal*, (2013) 16 SCC 147 Supreme Court held,

21. The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as vindictive misuse of power. Suspension should be made only in a case where there is a strong prima facie case against the delinquent employee and the allegations involving moral turpitude, grave misconduct or indiscipline or refusal to carry out the orders of superior authority are there, or there is a strong prima facie case against him, if proved, would ordinarily result in reduction in rank, removal or dismissal from service. The authority should also take into account all the available material as to whether in a given case, it is advisable to allow the delinquent to continue to perform his

duties in the office or his retention in office is likely to hamper or frustrate the inquiry.

22. In view of the above, the law on the issue can be summarised to the effect that suspension order can be passed by the competent authority considering the gravity of the alleged misconduct i.e. serious act of omission or commission and the nature of evidence available. It cannot be actuated by mala fide, arbitrariness, or for ulterior purpose. Effect on public interest due to the employee's continuation in office is also a relevant and determining factor. The facts of each case have to be taken into consideration as no formula of universal application can be laid down in this regard. However, suspension order should be passed only where there is a strong prima facie case against the delinquent, and if the charges stand proved, would ordinarily warrant imposition of major punishment i.e. removal or dismissal from service, or reduction in rank, etc

(emphasis supplied).

xxxx

27. Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered. Suspension is an interim measure in the aid of disciplinary proceedings so that the delinquent may not gain custody or control of papers or take any advantage of his position. More so, at this stage, it is not desirable that the court may find out as to which version is true when there are claims and counterclaims on factual issues. The court cannot act as if it is an appellate forum de hors the powers of judicial review.

29. However, as the suspension order constitutes a great hardship to the person concerned as it leads to reduction in emoluments, adversely affects his prospects of promotion and also carried a stigma, an order of suspension should not be made in a perfunctory or in a routine and casual manner but with due care and caution after taking all factors into account."

(emphasis supplied)

9.5. In *Secretary to Government and another v. K. Munniappan*, AIR 1997 SC 2559 Supreme Court held: "order of suspension can be resorted to pending further investigation or contemplate disciplinary action in only grave charges. It is permissible to place an employee under suspension only grave charges in contemplation of the disciplinary action".

9.6.1. In *Gidroniya*, appellant was a probationary Naib Tahasildar. He was temporarily appointed. Initially Commissioner ordered enquiry against him on as many as 13 charges and he was placed under suspension. State Government having found that the enquiry ordered by the Commissioner may not be legal, revoked his orders and placed him under suspension. Simultaneously it ordered departmental enquiry. On 06.06.1964, appellant gave a notice to the Government terminating his services. On 01.08.1964, show cause notice was issued. The show cause notice was challenged by him on the ground that as he

was no more in service by the time show cause notice was issued, show cause notice could not have been issued. High Court dismissed the writ petition filed by him. Before the Supreme Court, on behalf of the appellant, it was contended that the order of suspension merely prohibited the appellant from rendering the service and it did not amount to suspension of the contract of service and, therefore, there was no illegality in notice of termination issued by the petitioner and the same was permissible under Rule 12 of the concerned service rules.

9.6.2. Having regard to the submissions, Supreme Court held as under:

"6. Three kinds of suspension are known to law. A public servant may be suspended as a mode of punishment or he may be suspended during the pendency of an enquiry against him if the order appointing him or statutory provisions governing his service provide for such suspensions. Lastly he may merely be forbidden from discharging his duties during the pendency of an enquiry against him which act is also called suspension. The right to suspend as a measure of punishment as well as the right to suspend the contract of service during the pendency of an enquiry are both regulated by the contract of employment or the provisions regulating the conditions of service. But the last category of suspension referred to earlier is the right of the master to forbid his servant from doing the work which he had to do under the terms of the contract of service or the provisions governing his conditions of service at the same time keeping in force the master's obligations under the contract. In other words the master may ask his servant to refrain from rendering his service but he must fulfil his part of the contract.

xxx

8. It is now well settled that the power to suspend, in the sense of a right to forbid an employee to work, is not an implied term in an ordinary contract between master and servant, and that such a power can only be the creature either of a statute governing the contract or of an express term in the contract itself. Ordinarily, therefore, the absence of such a power either as an express term in the contract or in the rules framed under some statute would mean that an employer would have no power to suspend an employee of his and even if he does so in the sense that he forbids the employee to work, he will have to pay the employee's wages during the period of suspension. Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the order of suspension has the effect of temporarily suspending the relationship of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay. It is equally well-settled that an order of interim suspension can be passed against the employee while an enquiry is pending into his conduct even though there is no such term in the contract of employment or in the rules, but in such a case the employee would be entitled to his remuneration for the period of suspension if there is no statute or rule under which, it could be withheld. The distinction between suspending the contract of a service of a servant and suspending him

from performing the duties of his office on the basis that the contract is subsisting is important. The suspension in the latter case is always an implied term in every contract of service. When an employee is suspended in this sense, it means that the employer merely issues a direction to him that he should not do the service required of him during a particular period. In other words the employer is regarded as issuing an order to the employee which because the contract is subsisting, the employee must obey."

9.6.3. Supreme Court held that rules governing the services of the appellant did not provide suspension during pendency of the enquiry. Therefore, the order of suspension which was relied by the respondent to deprive termination of service by the appellant could not be considered as an order of suspension of contract of service and therefore, when the appellant issued notice terminating his service, the contract of service was in force and it was open to him to put an end to the same.

Accordingly, Supreme Court reversed the decision of the High Court.

10. 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.

11. 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.

12. In *Gidroniya*, the principles laid down by the Supreme Court are general principles applicable to power of suspension as provided in the concerned service rules/regulations governing employment. However, in the facts of that case, Supreme Court held that there was no impediment on the appellant to terminate the service and the order of suspension being illegal, cannot come in the way of such action. Thus, the decision in *Gidroniya*, do not come to the rescue of the learned counsel for respondent.

13. To appreciate the contentions of the learned counsels, having regard to the broad principles noted above, it is necessary to consider the Regulation 18 of the CCA Regulations.

14. Regulation 18 vests power in the competent authority to place an employee under suspension (i) pending investigation or enquiry into grave charges; (ii) such suspension is necessary in the public interest; and (iii) criminal offence is under investigation or trial. This Regulation guides the disciplinary authority when to resort to suspension.

15. It is appropriate to note that order of suspension is on the ground that fare was not collected from a student passenger. It is not a case of collection of fare and not issuing ticket to passenger. In the case of *G. Anil Kumar*, on the same allegation he was not placed under suspension though disciplinary action was initiated against him. Except stating that *G. Anil Kumar* has better past record and that the irregularity was noticed within 3 stages as against 7 stages in the case of petitioner, it is not denied that allegation against both employees is same. Past misconduct cannot be a ground to treat differently two similarly situated persons on the question of suspension on a similar misconduct. If such conduct is not viewed as "grave misconduct" to an employee, it cannot become grave to another employee, merely because he had a past misconduct. Past misconduct may be relevant at the time of imposing punishment. It is appropriate to note that the past misconduct is not the allegation in charge memo. This amounts to arbitrary exercise of power and meeting out discriminatory treatment.

16. In the peculiar facts of this case, I am of the considered opinion that

suspension was wholly unwarranted. There is no scope for employee to tamper the record. In the light of allegation made, prima facie, it cannot be said that by continuing petitioner in service, he could cause mischief or hinder progress of enquiry. It is made more as an administrative routine. There was no application of mind. The power to place an employee under suspension was exercised in arbitrary manner. It is liable to be set aside.

17. It is made clear that the tenability of the allegation and the involvement of petitioner can be gone into during the departmental enquiry and Court has not expressed any opinion on merits at this stage. It is made clear that what is discussed in the above paragraphs is only for the purpose of considering the validity of the order of suspension and shall not prejudice the disciplinary proceedings. It is also made clear that if petitioner does not cooperate in early conclusion of disciplinary proceedings, the competent authority shall take a decision on the desirability of placing the petitioner under suspension on that ground.

18. In the result, the order of suspension is set aside. Accordingly, the writ petition is allowed.

19. Miscellaneous petitions, if any pending, shall stand are closed.

20. There shall be no order as to costs.