

(1996) 07 AP CK 0006

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4316 of 1995

K. Narasimha Reddy

APPELLANT

Vs

A.P. State Road Transport Corporation and Another

RESPONDENT

Date of Decision : 08-07-1996

Acts Referred:

Citation : (1996) 3 ALT 139

Hon'ble Judges : Motilal B. Naik, J

Bench : Single Bench

Advocate : M. Surender Rao, for the Appellant; C.V. Ramulu, for the Respondent

Final Decision : Allowed

Judgement

Motilal B. Naik, J.—Petitioner was appointed as Chargeman on 19-4-1974 in the respondent-Corporation. He was promoted as Assistant Mechanical Foreman (AMF) and Mechanical Foreman (MF) in the year 1978 and 1983 respectively. He was again promoted as Junior Scale Officer on 3-1-1987 and was given posting as Depot Manager of Tandur Depot on 5-6-1992.

2. For certain reasons, the petitioner was kept under suspension on various charges with effect from 2-3-1993. Charge-sheet was also issued on 30-3-1993 framing six charges against the petitioner. Petitioner filed his explanation on 13-4-1994, Not satisfied with the explanation filed by the petitioner, the respondent-Corporation issued notice on 23-12-1993 requiring the petitioner to participate in the enquiry contemplated against the petitioner on 31-12-1993 and 3-1-1994.

3. In order to enable the petitioner to participate in the enquiry, the petitioner through letter dated 28-12-1993 requested the respondents to supply certain documents and also sought further permission to engage the services of an advocate for assisting him in the enquiry proceedings. Neither the respondents have supplied the documents as sought by the petitioner nor the petitioner was permitted to avail the services of an advocate.

4. The petitioner though attended the enquiry on 31-12-1993, the management witness was not present and therefore, the, enquiry was postponed to 3-1-1994 on which date the management examined their witnesses with reference to the fifth charge only. The petitioner was not provided with the documents enabling him to put the documents to the witnesses on the question of fifth charge. The petitioner made efforts on 4-1-1994 seeking documents but however, the respondents did not accede to his request. On 7-1-1994, the management examined one more witness with reference to the 6th charge and closed their evidence. Petitioner adduced his evidence on 11-3-1994, 22-3-1994 and 29-3-1994.

5. Basing on the enquiry, the management issued show-cause notice to the petitioner on 17-5-1995 on the question of imposing punishment. The petitioner submitted a detailed reply on 23-6-1994 requesting the management not to impose any punishment in the wake of his explanation.

6. Notwithstanding the reply, the management rejected the explanation and imposed a penalty of reverting the petitioner from the post of Depot Manager to Mechanical Foreman by an order dated 29-9-1994, which order is assailed in this writ petition.

7. Sri Surender Rao, learned Counsel for the petitioner contended that the respondents have violated the principles of natural justice inasmuch as the petitioner was not furnished with the documents and was not permitted to have the services of an advocate in the enquiry proceedings to defend himself. It is further contended, out of six charges framed against the petitioner four charges were dropped and only on the two charges, evidence was let in. Even the evidence adduced was not of any assistance and yet the management imposed the punishment of reversion from Depot Manager to Mechanical foreman which is unsustainable.

8. Apart from the submission made by the Counsel for the petitioner on merits of the case, a preliminary submission is raised before this Court by contending that when the petitioner is kept under suspension from 2-3-1993 and the same was extended till the reversion order passed on 29-9-1994. During the entire period of nearly one and half years, no subsistence allowance is paid to the petitioner though he is entitled for subsistence allowance. Petitioner has sent several letters on 29-12-1993, 4-1-1994, 29-3-1994, 3-5-1994 and on 22-7-1994 and yet the respondents have denied the petitioner his subsistence allowance. Counsel further states that the writ petition was filed in this Court in the month of March, 1995 and on service of notice to the respondents, this Court by an order dated 23-6-1995 in W.P.M.P. No. 5313 of 1995 directed the respondents to pay the arrears of subsistence allowance within a period of two weeks. Yet, the respondents failed to pay the subsistence allowance. Counsel therefore, contends that non-payment of subsistence allowance during the period of suspension and in this period any enquiry is completed, such denial of the subsistence allowance makes the enquiry vitiated as held by the Supreme Court in Civil Appeal No.

1976 of 1977 in State of Maharashtra v. Chandrabhan; Vithoba v. State of Maharashtra, and State of Maharashtra Vs. Chandrabhan Tale, . The endeavour of the learned Counsel for the petitioner is to say that as held by the Supreme Court in the decision (1) cited supra, when the delinquent officer is denied the subsistence allowance during the period of suspension, any enquiry and the consequential order pursuant to such enquiry get vitiated. Relying on the decision cited (1) supra, counsel stated, the petitioner was kept under suspension from 2-3-1993 onwards till the date of reversion order on 29-9-1994. Despite the petitioner making representations and also the interim order granted by this Court in W.P.M.P. No. 5313 of 1995 on 23-6-1995, respondents have not chosen to pay the subsistence allowance. In view of the decision of the Supreme Court cited (1) supra, the order passed on 29-9-1994 reverting the petitioner from the post of Depot Manager to the post of Mechanical Foreman, is vitiated and cannot be sustained.

9. Counsel appearing on behalf of the respondent-Corporation Sri C.V. Ramulu, on the contrary justifies the order of reversion by contending that the petitioner was paid three months subsistence allowance. Counsel says the fact of payment of three months allowance to the petitioner during the period of his suspension is an indication to show that the respondents have favourably reacted to the situation and paid the subsistence allowance. Counsel made his submission on the merits of the case also and contended the order of reversion dated 29-9-1994 is justified.

10. On hearing both the Counsel, in the light of the order passed by the Respondent-Corporation reverting the petitioner from the post of Depot Manager to the Post of Mechanical Foreman, the primary question which has fallen for consideration before this Court is whether the submission made on behalf of the writ petitioner that non-payment of subsistence allowance during the period of suspension has the effect of vitiating the enquiry and the consequential orders passed thereon as held by the Supreme Court in the decision cited (1) supra?

11. Admittedly, the petitioner was kept under suspension from 2-3-1993 onwards till the date of his reversion dated 29-9-1994. It is not disputed that the petitioner has not made any representation seeking payment of subsistence allowance. It is also not disputed as to the order passed by this Court on 23-6-1995 in W.P.M.P. No. 5313 of 1995 directing the respondents to pay the arrears of subsistence allowance. In the wake of the decision of the Supreme Court and on the representations made by the petitioner and the interim direction granted by this Court, could it be said that the respondents have reacted fairly in favour of the petitioner on the question of releasing the subsistence allowance? Though the learned Counsel for the respondent-Corporation Sri C.V. Ramulu made an effort to convince this Court that the respondents have released three months subsistence allowance for the suspension period, I do not think the release of three months subsistence allowance would be held to be a substantial compliance in the payment of

subsistence allowance to the petitioner. Though Sri C.V. Ramulu, tried to place before this Court the order releasing subsistence allowance to the petitioner 10 days prior to this order being passed, during the course of hearing, indicating that the respondents have now released the entire subsistence allowance, I do not think this Court can accept the belated attempt on the part of the respondents who are desparately trying to cover-up their follies by placing a proceeding before this Court releasing the entire subsistence allowance when the matter has come up for final disposal. As held by the Supreme Court in the decision cited (1) supra, the law is very much clear to indicate that if the delinquent official is denied of subsistence allowance during the suspension period and the employer proceeds with any enquiry and passes any order without paying the subsistence allowance, the entire proceedings gets vitiated. In view of the principle on this aspect, I am inclined to hold that the enquiry held during the period of suspension of the petitioner and the consequential order dated 29-9-1994 reverting the petitioner from the post of Depot Manager to the post of Senior Superintendent (Mechanical) without paying subsistence allowance during this period is vitiated and cannot be sustained. Accordingly, the impugned order dated 29-9-1994 issued by the second respondent is set aside. Consequently, I hold that the petitioner is entitled to all the consequential and attendant benefits. The respondents are directed to restore the post of Depot Manager to the petitioner by issuing necessary posting orders immediately and pay all the consequential and attendant benefits to him within a period of three months from the date of receipt of a copy of this order.

12. The way the respondents have acted in the matter on the question of payment of subsistence allowance during the suspension period and the way the respondents have reacted to the interim orders granted by this Court on 23-6-1995 in W.P.M.P. No. 5313 of 1995 directing the respondents to pay the arrears of subsistence allowance to the petitioner, this Court is convinced to say that the respondents have failed to display fairplay in dealing with the petitioner. This Courts views the attitude of the respondents in not complying with the order of the Court dated 23-6-1995, seriously. For all the reasons, the petitioner is entitled to recover costs from the respondents and accordingly, the respondents are directed to pay costs of Rs. 3,000/- to the petitioner within a period of four weeks from today.

13. The writ petition is allowed with costs in the above terms.