
(2021) 03 TEL CK 0001

In the Telangana High Court

Case No : Writ Petition No. 2369, 2378 Of 2021

K. Sarangam And Ors

APPELLANT

Vs

TSRTC

RESPONDENT

Date of Decision : 01-03-2021

Acts Referred:

Andhra Pradesh Civil Services (Classification Control And Appeal) Rules, 1991 — Rule 8
Constitution Of India, 1950 — Article 226

Citation : (2021) 03 TEL CK 0001

Hon'ble Judges : P. Naveen Rao, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P. Naveen Rao, J

1. Heard learned counsel for the petitioners and Sri B. Mayur Reddy, learned Standing Counsel appearing for the respondent-Telangana State

Road Transport Corporation.

2. In these two writ petitions, petitioners are working in Telangana State Road Transport Corporation (for short "the Corporation") and

are challenging the charge memos and suspension from service dated 16.01.2021. As the issue involved in these two writ petitions is same,

they are disposed of by this common order.

3. Petitioner in W.P.No.2369 of 2021 is working as Assistant Depot Clerk and petitioner in W.P.No.2378 of 2021 is working as Leading Hand

in the respondent-Corporation. On 16.01.2021, charge sheets were drawn against the petitioners and on the same day separate orders are

passed suspending the petitioners from service. The subject matter of the disciplinary proceedings concern alleged creation of duplicate

attendance register of outsourcing persons including the names of five persons as if working as Mechanics, under the control of petitioner in

W.P.No.2378 of 2021 and asking the Garage Supervisors concerned to sign in the duplicate attendance register, in collusion with Smt

A.Radhika working as Assistant Engineer (Mechanical) causing loss to the respondent-Corporation to a tune of Rs.3,03,823/-. As the

misconduct alleged is treated as grave, petitioners were suspended, by separate proceedings dated 16.01.2021.

4. Learned Counsel for the petitioners contend that for no fault of petitioners, they are subjected to disciplinary action and suspended,

whereas, the entire misconduct is attributable to the Assistant Engineer (Mechanical) who was their superior officer and on whose

instructions, petitioners have acted as alleged against them. It is the further case of learned counsel for the petitioners that insofar as

petitioners are concerned, the allegation is colluding with the Assistant Engineer (Mechanical) and there is no allegation of misappropriation of

funds by them. Therefore, there is no justification to place the petitioners under suspension. It is his further case that preliminary enquiry was

conducted, entire material was collected by the disciplinary authority and there is no scope for manipulation of records or influencing the

witnesses at this stage nor there is scope of petitioners coming in the way of conducting enquiry, even if they are continued in service.

Therefore, there is no justification to place the petitioners under suspension.

5. Learned Standing Counsel for the respondent-Corporation submits that the disciplinary action is initiated based on the preliminary report

pointing out grave illegalities committed by the petitioners and the Regional Manager is competent to initiate proceedings and suspend the

petitioners. There is no illegality in the procedure adopted by the respondent authorities. The allegation of misconduct has to be enquired in the

domestic enquiry. If petitioners are aggrieved by suspension from service, they ought to have availed the remedy within the Corporation by

submitting representation to the higher authority against suspension.

6. Two issues fall for consideration in this writ petition:

1. Whether Court can interfere in disciplinary proceedings at the stage of charge memo?

2. Whether suspension from service is justified?

ISSUE NO.1

7. On the scope of judicial review on a challenge to initiation of disciplinary proceedings, the law is well settled. A brief re-capitulation of precedent pronouncements :

7.1 In UNION OF INDIA Vs KUNISETTY SATYANARAYANA (2006) 12 SCC 28 the Honâ??ble Supreme Court held as under :

â??14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that

stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action,

because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no

jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority

concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right

of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order

imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be

wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.â??

(emphasis supplied)

7.2. In SECRETARY, MINISTRY OF DEFENCE AND OTHERS Vs PRABHASH CHANDRA MIRDHA (2012) 11 SCC 565, the

Honâ??ble Supreme Court held as under :

â??10. Ordinarily a writ application does not lie against a charge-sheet or show-

cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the court.

(Vide State of U.P. v. BrahmDatt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , BiharState Housing Board v.

Ramesh Kumar Singh [(1996) 1 SCC 327] , Ulagappa v. Commr. [(2001) 10 SCC 639 : AIR 2000 SC 3603 (2)] , Special Director v. Mohd.

Ghulam Ghouse [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] and Union of India v. Kunisetty Satyanarayana [(2006) 12

SCC 28 : (2007) 2 SCC (L&S) 304] .)

11. In State of Orissa v. Sangram KeshariMisra [(2010) 13 SCC 311 : (2011) 1 SCC (L&S) 380] (SCC pp. 315-16, para 10) this Court held

that normally a charge-sheet is not quashed prior to the conducting of the enquiry on the ground that the facts stated in the charge are

erroneous for the reason that to determine correctness or truth of the charge is the function of the disciplinary authority. (See also Union of

India v. Upendra Singh [(1994) 3 SCC 357 : 1994 SCC (L&S) 768 : (1994) 27 ATC 200] .)

12. Thus, the law on the issue can be summarised to the effect that the charge-sheet cannot generally be a subject-matter of challenge as it

does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to

initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a

premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a

belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of

alleged misconduct is a relevant factor to be taken into consideration while

quashing the proceedings.â??

(emphasis supplied)

7.3 In CHAIRMAN, LIFE INSURANCE CORPORATION OF INDIA AND OTHERS Vs M. MASILAMANI (2013) 6 SCC 530, the

Honâ??ble Supreme Court observed as under :

â??18. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of

disciplinary proceedings, as such a power is dehors the limits of judicial review. In the event that the court/tribunal exercises such power, it

exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show-cause notice, issued in the course of disciplinary

proceedings, cannot ordinarily be quashed by the court. The same principle is applicable in relation to there being a delay in conclusion of

disciplinary proceedings. The facts and circumstances of the case in question have to be examined taking into consideration the

gravity/magnitude of charges involved therein. The essence of the matter is that the court must take into consideration all relevant facts and to

balance and weigh the same, so as to determine if it is in fact in the interest of clean and honest administration, that the judicial proceedings

are allowed to be terminated only on the ground of delay in their conclusion. (Vide State of U.P. v. BrahmDatt Sharma [(1987) 2 SCC 179 :

(1987) 3 ATC 319 : AIR 1987 SC 943] , State of M.P. v. Bani Singh [1990 Supp SCC 738 : 1991 SCC (L&S) 638 : (1991) 16 ATC 514 : AIR

1990 SC 1308], Union of India v. Ashok Kacker [1995 Supp (1) SCC 180 : 1995 SCC (L&S) 374 : (1995) 29 ATC 145] , Prohibition &

Excise Deptt. v. L. Srinivasan [(1996) 3 SCC 157 : 1996 SCC (L&S) 686 : (1996) 33 ATC 745] , State of A.P. v. N. Radhakishan[(1998) 4

SCC 154 : 1998 SCC (L&S) 1044 : AIR 1998 SC 1833] , M.V. Bijlani v. Union of India [(2006) 5 SCC 88 : 2006 SCC (L&S) 919 : AIR 2006

SC 3475] , Union of India v. Kunisetty Satyanarayana [(2006) 12 SCC 28 : (2007) 2 SCC (L&S) 304] and Ministry of Defence v. Prabhash

Chandra Mirdha [(2012) 11 SCC 565 : (2013) 1 SCC (L&S) 121 : AIR 2012 SC 2250] .)â??

7. The principles deducible from the plethora of decisions are:

(i) Ordinarily writ does not lie against show cause notice/charge memo;

(ii) entertaining writ petition against show cause notice/ charge memo is dehorse the limits of judicial review/ exceeds the power of judicial

review at the threshold;

(iii) issuance of show cause notice/charge memo, does not adversely affect/ infringe the rights of the employee; does not amount to an adverse

order;

(iv) normally a charge-sheet is not quashed prior to the conducting of the enquiry on the ground that the facts stated in the charge are

erroneous as determination of correctness or truth of the charge is the function of the disciplinary authority. It would be premature to deal

with the issues;

(v) in only very rare and exceptional cases, if it is found to be wholly without jurisdiction or for some other reason, if it is wholly illegal, Court

can exercise power of judicial review at the stage of show cause notice/ charge memo;

(vi) discretion under Article 226 should not ordinarily be exercised to quash chargesheet/ show cause notice.

9. Keeping in mind above principles, it is necessary to assess the issue. The basic facts are not in dispute. It is also not in dispute that the

charge sheets were drawn by the competent authority.

10. Counsel for petitioner sought to assail correctness of allegations by contending that even the reports placed before the disciplinary

authority and charges levelled against the Assistant Engineer (Mechanical) clearly point out that she was responsible for the entire action

leading to false payment of money to an agency owned by her husband and as subordinates working under her, they were compelled to carry

out her instructions. Thus, it cannot be said that petitioners committed the misconduct. Per force, to test the validity of said contention, this

Court is required to evaluate the evidence available on record and give a finding that the allegations made against the petitioners in the charge

memos are not true and therefore the charges are liable to set aside. In other words, at the threshold of disciplinary action, this Court is asked

to go into the merits of the allegations and record a finding.

11. In exercise of power of judicial review under Article 226 of the Constitution, this Court cannot undertake such an exercise.

Allegation of misappropriation/falsification of registers by the petitioners in collusion with the Assistant Engineer (Mechanical) is matter to be gone into in the domestic enquiry. It is for the petitioners to satisfy the disciplinary authority that what was done by them was under duress by their superior authority. Assessment of evidence lead during the enquiry and delinquency of the employee is the prerogative of disciplinary authority. What is sought now amounts to stepping into the shoes of disciplinary authority and assessing the delinquency of the petitioners even before evidence was lead and considered by the Disciplinary Authority. Even after the conclusion of disciplinary proceedings, scope of judicial review on the decision taken by the employer is limited to test whether there was non compliance of procedural safeguards while conducting disciplinary proceedings; whether punishment imposed is commensurate with charge alleged and proved; whether there was application of mind by the Disciplinary Authority; and competence of the authority taking disciplinary action. In exercise of power of judicial review, writ court can not act as an appellate authority and reassess the evidence and come to a different conclusion. That being so, at the threshold, Court can not undertake the exercise and assess whether petitioners committed misconduct. It is de-horse the limits of judicial review.

12. Thus, the challenge on the first issue fails.

ISSUE NO.2

13. The duties, 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, the competent authority 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 subsists; 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".

14. 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.

15. In matters of suspension, there are two competing aspects. 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 side is the concern of the employee. It is a 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.

16. 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.

17. At this stage, it is necessary to parade briefly the precedent pronouncements of Supreme Court and this Court on the issue of suspension.

17.1. In STATE OF ORISSA Vs 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)

17.2. 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).

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 carries 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)

17.3 In R.S. MADHUBABU, Division Bench of this Court held as under:

18. Having regard to the facts and circumstances of the case, we are of the opinion that the Tribunal ought not to have interfered with the order of suspension passed by competent authority, particularly when the authorities have got the power under Rule 8 of the APCS (CCA)

Rules 1991 to place an employee under suspension pending enquiry. All the aspects have to be gone into by the fact finding authority and the enquiry will disclose the truth and otherwise of the allegations. Further, it is settled proposition of law that suspension pending enquiry cannot

be interfered with and the Courts can direct only to conclude and complete the proceedings. In the circumstances of the case, the Tribunal

instead of directing the authorities to complete and conclude the disciplinary proceedings pending against the respondent within the time frame,

exceeded its limit and over stepped its jurisdiction by directing the authorities that he should be transferred to a far off place, which is

impermissible under law and unwarranted. As the task undertaken by the Tribunal is impermissible under law, the order passed by it suffers

from various serious legal infirmities and therefore, the impugned order is liable to be set aside.â??

17.4. The principles that can be culled out from 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.

18. To appreciate the contentions of the learned counsel, having regard to the broad principles noted above, it is necessary to consider

Regulation 18 of the CCA Regulations. Regulation 18 vests power in the competent authority to place an employee under suspension (i)

pending investigation or enquiry into grave charges and such suspension is necessary in the public interest; and (ii) whether criminal offence is

under investigation or trial. This Regulation also guides the disciplinary authority when to resort to suspension.

19. The Court is required to note whether suspension was resorted, to enforce

discipline; to convey to the employees that dereliction of duty cannot be tolerated; to ensure that employee would not create impediment in smooth conduct of enquiry; and in the larger public interest, it is necessary to suspend the employee. Court is required to see whether such power is exercised not as an administrative routine or an automatic consequence of alleged misconduct; whether there was careful consideration of the issue, in right perspective, on due assessment of misconduct of employee.

20. According to prima-facie assessment of the disciplinary authority, by colluding with the Assistant Engineer (Mechanical), petitioners created false records to show as if five persons worked on outsourcing basis, causing financial loss to the employer and same amounts to fraud and malafide nature. It cannot be said that said allegation if proved, is not a gross misconduct. When the allegation amounts to gross misconduct, as per Regulation 18, the disciplinary authority can place the employee under suspension. Thus, it can not be said that the authority has not validly exercised discretion vested in him. Whether there was falsification of record deliberately by petitioners or under duress by superior authority petitioners resorted to such illegalities is a matter for consideration in the domestic enquiry. Further, reading of the orders of suspension clearly point out that there was preliminary enquiry to look into the aspect and material placed before the disciplinary authority was considered by him before taking the decision to suspend the petitioners. In the facts of these two cases, it cannot be said that the disciplinary authority resorted to suspending the petitioners as an administrative routine.

21. Thus, I do not see any error in placing the petitioners under suspension warranting interference. The issue no.2 is answered accordingly.

22. Accordingly, the Writ Petitions are dismissed. It is made clear that the tenability of the allegations and the involvement of petitioners 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 to appreciate the contentions on behalf of petitioners on the validity of the disciplinary action per se and the orders of suspension and there is no expression of opinion on merits.

Pending miscellaneous petitions stand closed.