
(1999) 07 AP CK 0087

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13824 of 1999

M. Satyanarayana

APPELLANT

Vs

A.P. State Trading Corporation Limited

RESPONDENT

Date of Decision : 16-07-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 4 ALD 385 : (1999) 4 ALT 557

Hon'ble Judges : S.R. Nayak, J

Bench : Single Bench

Advocate : Mr. K. Durga Prasad, for the Appellant; Mr. M. Vijay Kumar, for the Respondent

Judgement

1. Sri M. Vijay Kumar took notice for the respondent-Corporation. The writ petition was heard finally with the consent of the learned Counsel for the parties.
2. Substantially similar contentions are raised in both the writ petitions and Sri P. Gangaiah Naidu, learned Counsel .who appeared for the petitioners in both the cases, put forth common contentions. Hence, both the writ petitions were clubbed and heard together and they are being disposed of by this common order.
3. The petitioner in WP No.13793 of 1999 is the Accounts Officer whereas the petitioner in WP No.13S24 of 1999 is the Assistant Manager and both of them are employees of A.P. State Trading Corporation Limited, the respondent herein, and currently serving at the Nalgonda Branch of the Corporation.
4. The petitioners by the impugned proceedings of the Managing Director of the Corporation dated 30-6-1999 are placed under suspension in contemplation of the departmental enquiry against them.
5. Sri P. Gangaiah Naidu, learned Counsel, assailing the validity of the suspension orders, placed the following contentions for consideration of the Court:

(i) that there is no sufficient and satisfactory materials to satisfy the Managing

Director that the suspension of the petitioners-employees is necessary in contemplation of the departmental enquiry;

(ii) that the Managing Director is guilty of resorting to selective suspension. Elaborating this contention, learned Counsel would highlight that there are six employees at the Nalgonda Branch and according to the proceedings of Anti-Corruption Bureau (ACB), all the employees of the Branch at Nalgonda are guilty of selling Lepakshi Nandi note-books directly from their godown on retail basis to the consumers, and even assuming that the alleged act tantamounts to misconduct, then, the Managing Director ought to have suspended all the employees working at the Nalgonda Branch, and the selective suspension resorted to by the Managing Director against only these two employees is in violation of the law laid down by the Supreme Court in Civil Appeal No.2200 of 1999 by order dated 5-4-1999;

(iii) that it is well settled that no employer can resort to suspension of an employee as a matter of course, and there should be substantive and weighty grounds and materials to place an employee under suspension in contemplation of enquiry or pending departmental enquiry; in the instant case, the impugned orders do not reflect any application of mind on the part of Managing Director; therefore, the impugned orders are liable to be quashed on the ground of non-application of mind also; and

(iv) that the impugned orders are also vitiated on account of mala fides. Elaborating this contention, learned Counsel would maintain that the Managing Director has resorted to selective suspension and that itself indicates the mala fide intention of the Managing Director.

6. Before dealing with these contentions, it is appropriate to note the well established principles governing the power of this Court under Article 226 of Constitution of India while reviewing the validity of the suspension orders. It is time and again held by the Apex Court, in *State of Orissa Vs. Bimal Kumar Mohanty*, *Secretary to Government, Prohibition and Excise Department Vs. L. Srinivasan*, and *Allahabad Bank and Another Vs. Deepak Kumar Bhola*, to cite the few, (that normally the Courts shall not interfere with the suspension orders passed by the employers in contemplation of departmental enquiry or pending departmental enquiry unless for very good reasons like mala fide. Undoubtedly, the Court has power to interfere with the suspension order passed by the employer under certain circumstances. The circumstances are those where the Court finds that the authority or the Officer who has passed the suspension order is incompetent under Service Regulations to suspend the employee or where there is inordinate delay on the part of the employer either in issuing the charge-sheet or conducting and completing the disciplinary proceedings without good reasons and justification or where the suspension order is tainted by mala fide. Otherwise, the Court should be slow to interfere with the suspension orders. It is the inherent power of the employer to place an employee under suspension in contemplation of or pending departmental enquiry even where the Service

Regulations do not arm him with necessary power to suspend the employee pending departmental enquiry, and in such a case, the only restriction imposed on the employer is to perform his part of duties arising out of the contract of employment.

7. In these two cases, the Court is called upon to review the validity of the suspension orders at a stage when they are issued by the employer in contemplation of departmental enquiry. The suspension orders against petitioners were recently passed on 30-6-1999. Therefore, it cannot be said that there is any inordinate delay on the part of the respondent to issue charge memo or to conduct or complete the enquiry. It is also not the case of the petitioners that the Managing Director is incompetent to pass the suspension orders in contemplation of the departmental enquiry.

8. Let me now advert to the specific contentions of Sri P. Gangaiah Naidu, learned Counsel, raised during his arguments. Suffice it to state that undoubtedly, the authority or the officer, who passes the suspension order should be satisfied that there is some prima facie evidence that indicates the involvement of the official concerned in the commission of certain misconduct as defined under the Service Regulations. But, it is held by the Supreme Court in *State of Haryana Vs. Hari Ram Yadav and others*, that the absence of recital in the order of suspension regarding requisite satisfaction will not invalidate the order. Be that as it may, in this case, satisfaction is also recorded in para 3 of the impugned order. It is stated that the Managing Director is satisfied that it is necessary to place petitioners-employees under suspension. It is repeatedly and consistently held by the Supreme Court that when the Court is called upon to review the validity of a suspension order or a charge memo, it cannot go into the merits of the matter. Strictly speaking, when the employer proceeds to place an employee under suspension in contemplation of departmental enquiry, he need not state any reason in support of the suspension order.

9. On facts also, there is no merit in the first contention. Though the panchnama drawn by the ACB runs to as many as four pages, the crux of the allegation is that the officials at the Nalgonda Branch indulged in selling Lepakshi Nandi notebooks directly to the customers and they were pocketing the commission money. At page-5 of the material papers, it is pointed out that petitioner in WP No.13824 of 1999 slated that he, after keeping Rs.20,000/-towards his share, distributed the remaining commission amount to various dealers and to their staff except Senior Assistant Manager, Sri M. Gopalaswamy. It is also pointed out that the ACB personnel found Rs.20,000/- kept by the delinquent employee separately in his table drawer. The question whether the petitioners are guilty of the misconduct under Service Regulations or not has to be determined in the contemplated enquiry. As pointed out supra, it is totally impermissible for the Court to express any opinion on the allegations levelled against the petitioners at this stage because it cannot to into the merits of the allegations.

10. The second contention of the learned Counsel is also not well-founded

particularly having regard to the facts-situation of the case. The judgment of the Supreme Court in CA No.2200 of 1999 is of no help to the petitioners. I say this because, in that case, the Supreme Court after noticing the gap of time between the two stages of the proceedings, opined that when the employer therein did not think it necessary to suspend other employees involved in the commission of misconduct, it should not have placed the concerned employee under suspension for an indefinite period. The Supreme Court was pleased to observe thus :

"The investigation has not been completed although about two and half year has passed. We do not know how long will it take to complete the investigation. That being so, the officer of the rank of the appellant against whom it has now come out that the disciplinary proceedings are not contemplated, cannot be kept under suspension for an indefinite period, particularly in a situation where many more senior officers may ultimately be found involved, but the appellant alone has been placed under suspension. The Government cannot be permitted to resort to selective suspension. It cannot be permitted to place an officer under suspension just to exhibit and feign that action against the officers, irrespective of their high status in the Service hierarchy, would be taken."

11. The facts of that case are distinguishable from the facts of the case on hand. This is a case where even the charge-sheet is not yet issued and suspension orders were passed recently on 30-6-1999. Further, it can be noticed from the proceedings of the ACB that R. Subash Reddy, Manager and Mohd. Obedulla Iqbal, Asst. Commercial Manager, squarely denied of having shared the dealers' commission money. The ACB having noted the denial of the above two officers, has nowhere recorded its finding that the above two officers were also involved in the selling of Lepakshi Nandi note-books directly to the customers and sharing the commission money with the other members of the staff. The learned Counsel further contended that the petitioner in WP No.13793 of 1999 was deputed to go to Hyderabad and he was not in the station on the date of the raid and therefore he cannot be accused of having committed any misconduct. In appreciating this argument, what is stated in the proceedings of ACB on page 4 of the material papers cannot be ignored. The ACB has pointed out many irregularities in the maintenance of the records and the account books. It is trite to state that the petitioner in WP No.13793 of 1999 being the Accounts Officer, it is his duty to maintain proper accounts. In support of the third contention, the learned Counsel sought to draw support from the two decisions of Kerala High Court in *Subramaniam v. State of Kerala*, 1973 (1) SLR 521 and *State of Kerala v. K.C. George*, 1984 (2) SLR 137. The Kerala High Court opined that the satisfaction of the employer should be recorded in the suspension order and there should be some relevant materials before the employer to satisfy himself that suspension of the employee is necessary in contemplation of or pending the departmental enquiry. The view taken by the Division Bench of Kerala High Court that the satisfaction of the employer should be recorded in the suspension order itself is contrary to the view taken by the Supreme Court in *State of Haryana v. Hari Ram Yadav*, (supra). In the instant case, satisfaction is also recorded, as pointed out

supra. Further, there were some relevant materials also before the Managing Director to pass the suspension order. In *Subramaniam v. State of Kerala* (supra), the Kerala High Court opined that suspension order cannot be passed against an employee on the ground of technical irregularities, and in such facts-situation, instead of placing an employee under suspension, the employer may transfer such employee to another place. This decision is of no help to the petitioners for that it cannot be said that the petitioners are placed under suspension on technical irregularities committed by them. In this case, it cannot be said that the Managing Director passed the suspension orders without reasons or rhyme. The suspension order came to be issued after the ACB personnel raided the sale outlet and submitted the report. It is not for the Court at this stage to go into the question whether there was sufficient materials before the Managing Director to form the opinion and record his satisfaction that the petitioners employees should be kept under suspension in contemplation of the departmental enquiry.

12. Since I have held that the second contention is not well-founded, the fourth contention should also fail. Be that as it may, in the affidavit except stating that the action of the Managing Director is mala fide, no factual matrix is laid to bring home the charge of mala fide against the Managing Director. It is well settled that vague allegations of mala fide are not sufficient for the Court to initiate legal action unless the necessary facts pointing to the mala fide exercise of power are specifically set out in the pleadings. Pleading is wanting in that regard in the instant writ petitions. The allegations as reflected in the proceedings of the ACB are that the commission money was shared by the members of the staff including the petitioners. Whether this particular act of the petitioners tantamounts to a misconduct within the meaning of that term as defined under the Conduct Regulations is still under investigation as could be seen from the ACB report. The charges are not yet framed against the petitioners. A clear picture may emerge only when the respondent disciplinary authority proceeds to frame the charges. That stage has not yet reached.

13. In the result and for the foregoing reasons, I do not find any justification for the Court to interfere with the suspension orders at this stage. The writ petitions are dismissed. However, it is made clear that this order shall not come in the way of the petitioners from approaching this Court for judicial intervention at a later stage if there is inordinate delay on the part of the respondent disciplinary authority in framing charges or in conducting and completing the enquiry. No costs.