

(2011) 02 AP CK 0085

In the Andhra Pradesh High Court

Case No : WA No. 785 of 2010 and WP No. 23364 of 2010

P.V.S. Reddy

APPELLANT

Vs

Government of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 02-02-2011

Acts Referred:

Andhra Pradesh State Road Transport Corporation Employees (Classification, Control and Appeal) Regulations, 1967 — Regulation 18
Constitution of India, 1950 — Article 14, 16, 21, 226, 311(2)
Road Transport Corporations Act, 1950 — Section 14(3), 34, 45, 45(1), 46

Citation : (2011) 5 ALD 152 : (2011) 5 ALT 668

Hon'ble Judges : Suri Appa Rao, J;B. Prakash Rao, J

Bench : Division Bench

Advocate : S.A.K. Mynuddin, for the Appellant; K. Srinivasa Rao, for the Respondent Nos. 3 to 5, for the Respondent

Final Decision : Allowed

Judgement

V. Suri Appa Rao, J.—Since the issue involved in both the writ appeal and the writ petition being the same they are clubbed and disposed of by the common judgment.

2. It would, therefore, suffice if the facts in the writ petition are narrated. The Petitioner filed the writ petition under Article 226 of the Constitution of India to issue a Writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the 5th Respondent in issuing suspension order and charge-sheet vide Proceedings No. 02/95(28)/ 10-VGR dated 13.8.2010 as illegal, arbitrary, without jurisdiction and contrary to the law and consequently direct the Respondents to permit the Petitioner to perform his duties as driver.

3. The Petitioner is a driver in the Respondents-Andhra Pradesh State Road Transport Corporation (for short, "the Road Transport Corporation"). On 23.7.2010 he was entrusted with additional duty to perform the duties of

conductor with TIMS Machine No. 80280 on route Hyderabad to Tirupati and when the checking officials exercised check at Stage No. 13/12 near Nagarjunasagar, alleged that he committed irregularities and therefore, issued a charge-memo dated 23.7.2010, for which he submitted his detailed explanation on 8.8.2010 denying the allegations framed against him. The 5th Respondent, without considering the same, has issued a charge-sheet and suspension order dated 13.8.2010. The Petitioner, therefore, contended that the 5th Respondent ought to have waited for his explanation, issued the suspension order hastily and directed him to submit explanation within 7 days. Without receiving the explanation and considering the same, the suspension order passed by the 5th Respondent is illegal and arbitrary.

4. It is further contended that the 5th Respondent is not his appointing authority and he is not competent authority under the APSRTC (Conduct, Classification and Appeal) Regulations as his authority is not notified in the Official Gazette as per Section 45 of the Road Transport Corporations Act, 1950 (for short, "the RTC Act, 1950") by the 1st Respondent. Hence, the action of the 1st Respondent is illegal and without jurisdiction.

5. It is further contended that the Road Transport Corporation has not framed the Regulations in pursuance of the powers conferred by an enactment i.e., the RTC Act, 1950, the Regulations must be in conformity with Section 45 of the RTC Act, 1950, which mandates publication of Rules and Regulations in the Official Gazette.

6. Sri K. Srinivas Rao, learned Standing Counsel for the Road Transport Corporation, filed a counter denying the averments made in the writ petition. He contended that the Petitioner was involved in serious cash and ticket irregularities while performing duty on the route Hyderabad to Tirupati on 23.7.2010. Since a prima facie case was established, a charge memo was issued for the offences committed by him. The Petitioner submitted his explanation to the charge memo on 8.8.2010 and after verifying the material evidence available on record together with the circumstances of the case, the Petitioner was placed under suspension duly issuing charge-sheet for the offences committed by him as per APSRTC (Conduct, Classification and Appeal) Regulations. Therefore, there is no illegality committed by the 5th Respondent in issuing the charge-sheet as well as the suspension order. In the charge-sheet, the Petitioner was directed to submit his explanation within 7 days.

7. It is further contended that as per the delegation of powers u/s 9 of Service Matters vide Item No. 16, Junior Scale Officer (JSO) in the rank of Depot Manager is the appointing authority of the Petitioner and is competent to place the employees up to the cadre of Depot Clerk/ Traffic Inspector-III, including the Petitioner, under suspension as per Regulation 18 of APSRTC (CC&A) Regulations. Hence, the action of the 5th Respondent is in accordance with the Service Regulations and there is no illegality committed by the 5th Respondent.

8. It is further contended that the said Regulations were approved by the Road Transport Corporation in Resolution No. 172/ 1959 dated 29.9.1959. Sanction was also received by the Government of Andhra Pradesh u/s 45(1) of the RTC Act, 1950 vide G.O. Ms. No. 1566 dated 16.9.1967. The Petitioner is governed by the Regulations and not by the Industrial Employment Standing Orders Act, 1946. The writ petition is, therefore, liable to be dismissed.

9. The Petitioner filed reply to the counter-affidavit filed by the Road Transport Corporation, alleging that the 5th Respondent is not a competent authority and that the APSRTC (CC&A) Regulations have no force in the eye of law as the same have not been notified in the Official Gazette as required u/s 45 of the RTC Act, 1950 by the State Government. Section 45 of the RTC Act, 1950 directed the Corporation to obtain sanction of the State Government and the Regulations are to be notified in the Official Gazette and the Regulations cannot be in consistent with the provisions of the RTC Act, 1950 and its Rules. Section 46 of the RTC Act, 1950 has prescribed penalty for its breach.

10. It is further contended that when the Managing Director delegates the powers to the subordinate, the said authority cannot further delegate to any other authority, which is contrary to the principles of the Constitution of India "delegates protest non delegate".

11. It is further contended that as per the law laid down by the Hon"ble Supreme Court in its judgment reported in I.T.C. Bhadrachalam Paperboards and Another Vs. Mandal Revenue Officer, A.P. and Others, it is made clear that the Rules and Regulations are to be published by Gazette Notification, which is mandatory. Therefore, when the Regulations have no force of law as well legal validity, the suspension order passed by the 5th Respondent is illegal. During the period of suspension, the Petitioner is entitled to for full wages instead of subsistence allowance when the Regulations have no validity at all. The interim order passed in WP MP No. 29887 of 2010 in WP No. 23364 of 2010 dated 21.9.2010 that the Petitioner is not entitled to even for subsistence allowance since he has initiated the writ petition questioning the suspension order and such an order is against the protection given under Article 311(2) of the Constitution of India, 1950, and the said order requires modification in the light of the legal contentions raised in respect of the unenforceability of the Regulations.

12. It is further contended that in the absence of Gazette Notification, the G.O., issued approving the Regulations is contrary to Sections 45 and 46 of the RTC Act, 1950. Therefore, the order of suspension passed by the 5th Respondent against the Petitioner is illegal and the Petitioner is entitled for reinstatement with full wages.

13. Admittedly, the Petitioner filed WP MP No. 29887 of 2010 in WP No. 23364 of 2010 seeking to direct the Respondents to permit him to discharge his duties as driver by suspending the suspension order issued by the 5th Respondent in Proceedings No. 02/95(28)/10-VGR, dated 13.8.2010, pending the writ petition.

While directing to issue notice to the Respondents, the learned Single Judge passed the following order:

The Petitioner wants certain extraordinary reliefs in the writ petition. The matter needs to be examined. Until further orders, the disciplinary proceedings shall stand stayed and since the enquiry is being staged at his instance, the Petitioner shall not be entitled to subsistence allowance.

14. Aggrieved by the above order, the Petitioner filed Writ Appeal No. 785 of 2010.

15. Learned Counsel for the Petitioner contended that the order of the learned Single Judge is erroneous, unjust and liable to be modified. It is further contended that denying the subsistence allowance during the suspension period is violation of Fundamental Right to live is a violation of Articles 14, 16 and 21 of the Constitution of India.

16. On the other hand, learned Standing Counsel for the Road Transport Corporation submitted that while issuing the suspension order, the Petitioner was directed to submit his explanation within 7. days since the Petitioner was involved in irregularities with the TMS on 23.7.2010.

Writ Appeal No. 785 of 2010:

17. There is no material whatsoever available on record that the enquiry is being stalled at the instance of the Petitioner. It is open to the Road Transport Corporation to proceed with the enquiry against the Petitioner and pass final orders after giving reasonable opportunity to the Petitioner.

18. As per Sub-rule (1) of F.R. 53 of the Andhra Pradesh Fundamental Rules and Subsidiary Rules, a Government Servant under suspension or deputed to have been placed under suspension by an order of the appointing authority shall be entitled to the subsistence allowance. As per Sub-rule (2) of F.R. 53 of the said Rules, no payment under Sub-rule (1) shall be made unless the Government Servant furnishes a certificate that he is not engaged in any other employment, business, profession or vocation. Unless the Road Transport Corporation satisfies Sub-rule (2) of F.R.53 of the said Rules, the Petitioner is entitled to subsistence allowance during the period of suspension.

19. Therefore, we are of the view that the order dated 21.9.2010 in WP MP No. 29887 of 2010 in WP No. 23364 of 2010 passed by the learned Single Judge is liable to be set aside. Accordingly, the writ appeal is allowed granting subsistence allowance to the Petitioner during the period of suspension.

Writ Petition No. 23364 of 2010:

20. Learned Counsel for the Petitioner contended that the 5th Respondent is not the competent or disciplinary authority under the resolution to suspend the Petitioner. Even assuming that the resolutions of the Road Transport Corporation are applicable, resolution is not the law unless the resolution is approved by the

Government of Andhra Pradesh. Learned Counsel for the Petitioner further contended that the essential prerequisite for making Regulations u/s 45 of the RTC Act, 1950 is previous sanction of the State Government. In this case, the Road Transport Corporation has not obtained sanction from the State Government, the impugned Regulation was ultra vires and is liable to be dismissed.

21. In support of his contention, Learned Counsel for the Petitioner relied on a judgment in *Karnakar Mangesh Desai v. State of Mysore* AIR 1966 Mys. 317 (Vol.53, C.76) (1), wherein it is held as under:

It does not provide for the manner in which the powers enumerated in the Section are to be exercised. The manner of the exercise of the power to make provision laying down conditions of service of the employees of the Corporation is provided for by Section 14(3). That Sub-section says that the conditions of appointment and service and scales of pay of the servants of the Corporation shall be such as may subject to the provisions of Section 34, be determined by Regulations made under the Act. Section 45 says that the Corporation may with the previous sanction of the Government, make Regulations for the purposes of the Act. The essential prerequisite condition for making a Regulation is the previous sanction of the State Government which has not been obtained.

22. On the other hand, learned Standing Counsel for the Road Transport Corporation submitted that the Regulations of the Corporation were approved in Resolution No. 172/1959 dated 29.9.1959. It received the previous sanction of the Government of Andhra Pradesh u/s 45(1) of the RTC Act, 1950 in G.O. Ms. No. 1566, dated 16.9.1967. The Petitioner is, therefore, governed by the Regulations and not by the Industrial Employment Standing Orders. Hence, the 5th Respondent is competent authority to pass the order of suspension since the Petitioner was involved in irregularities.

23. In support of his contention, he relied on a judgment of this Court in *S. Mahipal Reddy Vs. Secretary, Labour Dept., Govt. of A.P., Hyd. and others*, Following the judgment of the Hon"ble Supreme Court in *B.K. Srinivasan and Others Vs. State of Karnataka and Others*, the Division Bench of this Court held that the Regulations framed by the Corporation u/s 45 of the RTC Act have the force of law notwithstanding the fact that they are not published in the Gazette.

24. Having regard to the facts and circumstances of the case and in the context of the proposition of the Hon"ble Supreme Court in *B.K. Srinivasan v. State of Karnataka* (supra) and the Division Bench of this Court in *S. Mahipal Reddy's* case (supra), we are of the view that the contention of the Learned Counsel for the Petitioner that the Regulations having not been published in the Gazette they got no force in law, cannot be accepted. In that view of the matter, the 5th Respondent is competent to issue charge-sheet and pass suspension order against the Petitioner.

25. Further, the Regulations were notified in the year 1959 by resolution dated

29.9.1959 and consequently the G.O., was passed in the year 1967 and they are being followed till now in all cases where irregularities were noticed. The Petitioner being the employee of the Road Transport Corporation must be aware about the same.

26. Therefore, we see no merit in the writ petition and accordingly the same is liable to be dismissed.

27. In the result, the writ appeal is allowed granting subsistence allowance to the Petitioner during the period of suspension and the writ petition is dismissed. The Road Transport Corporation is directed to complete the enquiry against the Petitioner as expeditiously as possible within 6 (six) months from the date of receipt of a copy of this order and pass appropriate orders in accordance with law.