

(2009) 12 AP CK 0014

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2026 of 2007

R. Venkateswarlu

APPELLANT

Vs

Divisional Railway Manager, South Central Railway,
Hyderabad Division and Others

RESPONDENT

Date of Decision : 17-12-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 311, 311(1)
Railway Construction Company Limited Conduct (Discipline and Appeal) Rules, 1981 — Rule 30

Citation : (2010) 3 ALT 28 : (2010) 126 FLR 3

Hon'ble Judges : Vilas V. Afzulpurkar, J;V. Eswaraiiah, J

Bench : Division Bench

Advocate : J.M. Naidu, for the Appellant; Pushpinder Kaur, for the Respondent

Final Decision : Dismissed

Judgement

Vilas V. Afzul Purkar, J.—The applicant in OA. No. 694 of 2006 before the Central Administrative Tribunal questions the final order dated 20.11.2006 passed in the said OA, whereby the Tribunal refused to interfere with the impugned order of termination of the petitioner from service, passed by the third respondent.

2. The writ petitioner/applicant was appointed as Kalasi in Signal & Telecommunications Department of South Central Railway on 3.2.1985. At the time of his appointment he had produced caste certificate showing that he belongs to Schedule Tribe, Sub-caste as Gond (Koya) issued by the then Tahsildar, Narsampet vide No. K1/782/82, dated 16.3.1982. Based on the aforesaid caste certificate, the petitioner was appointed in the reserved post meant for ST community. It is stated that while he was working in the said post, the District Collector, Warangal District on verification found that the said caste certificate produced by the petitioner was bogus and the same was referred to the District Level Committee for enquiry. The competent authority i.e. the District Collector based on the enquiry report cancelled the said caste certificate and a

notification was issued by the Collector to that effect on 21.12.2004. Thereafter, in terms of the Railway Board's letter No. 78.E(SCT) 15/29, dated 28.6.1996, proceedings were initiated by the third respondent for termination of the services of the petitioner by issuing a notice dated 31.7.2006. In the said notice, cancellation of caste certificate by the District Collector was specifically referred to and apart from referring the circular mentioned above the decision of the Supreme Court in R. Vishwanatha Pillai Vs. State of Kerala and Others, was cited. The petitioner was called upon to submit his explanation, if any, against the notice dated 31.7.2006. The petitioner filed his explanation on 19.8.2006 wherein he did not dispute the cancellation of his caste certificate by the Collector, but raised a question as to the competency of the third respondent in issuing notice of termination on the ground that he is not the appointing authority. After considering the explanation of the petitioner, the impugned order of termination dated 6.9.2006 was passed by the third respondent. The said order reads that after the caste certificate produced by the petitioner was cancelled by the competent authority, the petitioner's brother had applied for a post on compassionate ground by producing another caste certificate showing that he belongs to B.C. (Gouda) Community. The third respondent, therefore, came to the conclusion that the protection under Article 311 of the Constitution of India being not available to the case of the petitioner on account of securing the post by producing bogus caste certificate, passed the order of termination. As stated above, the termination order was questioned by the petitioner before the Central Administrative Tribunal in O.A. No. 694 of 2006. By the impugned order dated 6.9.2006, the said OA was dismissed. The Tribunal also referred the decision of the Supreme Court in R. Vishwanatha Pillai's case, stated supra, in its order.

3. We have heard the learned Counsel on either side.

4. The learned Counsel for the petitioner submits that the third respondent is not the appointing authority and in support of his contention, he placed reliance on the Paragraph 4 of the counter affidavit, which reads as under:

It is also submitted that the contention of the petitioner that he has been terminated by the third respondent has no power to terminate him from service is not correct. The third respondent is the Administrative Officer having full powers to appoint the employee in the same grade as of the petitioner and as such the action of the third respondent terminating the petitioner vide proceedings No. VP/676/S&T/Tee/)/Vol.II, dated 06.09.2006 which is legal and strictly as per the rules circulated by the Railway Board Letter No. 78.E(SCT)15/29, dated 28.06.1996 (Serial Circular No. 69/1997). OA. No. 604/06 and the action are legal and there is no violation of Articles 14 and 16 of the Constitution of India. The third respondent is not a Senior Scale Officer as stated by the petitioner, but a Junior Administrative Grade Officer having full powers for appointment and his action in terminating the service of the petitioner is not covered under D&AR Rules as such the Board's circular does not apply to

the petitioner.

5. Based on the above, the learned Counsel submits that the third respondent is not the competent authority and as such neither he can issue notice of termination nor can pass an order of termination, which is impugned herein. He further placed reliance on the un-reported decision of the Division Bench of this Court in Writ Petition No. 19835 of 2006, dated 23.11.2006, in the case of the Divisional Commercial Manager, Secunderabad Division, SC Railway, Secunderabad v. G. Das, to support his contention that the order of termination passed by an authority which is not competent to do so, cannot be sustained. He further placed reliance on the decision of the Allahabad High Court in V.N. Chaubey v. Divisional Commercial Superintendent N.E. Railway (2) 1977 (2) SLR 546 which is also on the same aspect as to the competency envisaged under Article 311 of the Constitution of India. He also placed reliance on the decision of the learned single Judge of the Delhi High Court in Sh. Ajay Kumar Vs. Indian Railway Construction Co. Ltd., to show that under Rule 30 of the Indian Railway Construction Company Limited Conduct, Discipline & Appeal Rules, 1981, dismissal order passed by the Deputy General Manager was held to be invalid on the ground that the delinquent employee was appointed by the General Manager.

6. Per contra, the learned Counsel for the respondent, relying on the decision of the Supreme Court in R. Vishwanatha Pillai v. State of Kerala (1 supra) submits that this decision squarely applies to the facts and circumstances of the present case and that the third respondent as well as the Tribunal have rightly relied on the said decision in the show cause notice and impugned order respectively

7. We have considered the submissions advanced by the learned Counsel on either side. The decisions cited by the learned Counsel for the petitioner relate to the cases of delinquent employees who were otherwise properly appointed and their appointments do not suffer from misrepresentation or, deceit as in the present case. The appointment got by misrepresentation or deceit would be non-est in law and in such a situation, the protection under Article 311(1) of the Constitution of India would not be available to such employees. Therefore, when the very protection under Article 311 of the Constitution of India being not available to the petitioner, the aforesaid contention of the learned Counsel for the petitioner has no substance. The decision of the Supreme Court in R. Vishwanatha Pillai's case referred to above squarely covers the four corners of the issue involved in this Writ Petition. In that view of the matter, We do not find any illegality, perversity or error whatsoever in the order of termination. The Tribunal rightly confirmed the said order of termination in its order dated 6.9.2006 passed in O.A. No. 694 of 2006. The Writ Petition is therefore meritless and the same is liable to be dismissed.

8. The Writ petition is accordingly dismissed. No order as to costs.