
(1999) 06 AP CK 0040
In the Andhra Pradesh High Court
Case No : Writ Petition No. 8995 of 1998

T.R. Vinod Singh

APPELLANT

Vs

A.P. State Electricity Board, Hyderabad and others

RESPONDENT

Date of Decision : 24-06-1999

Acts Referred:

Andhra Pradesh State Electricity Board Employees Discipline and Appeal Regulations,
1970 — Regulation 11

Citation : (1999) 4 ALD 58 : (1999) 4 ALT 82

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

Bench : Single Bench

Advocate : M/s. G. Vidaya Sagar, for the Appellant; Mr. S. Rvindranath for the
A.P. Transco, for the Respondent

Judgement

1. The petitioner joined the service of the respondent-Board as Trainee Assistant Engineer and subsequently he was appointed as Assistant Engineer at Bolaram with effect from 11-8-1991. When he was serving the Board, he was arrested by the Police on 21-12-1996 in Crime No.404 of 1996 on the file of the XXII Metropolitan Magistrate, Hyderabad. The petitioner was released on bail on 26-12-1996. According to the petitioner, immediately after his release on bail, he approached the respondents to resume the duty but he was not permitted to resume duty; the petitioner made several representations including the latest representation dated 17-3-1997 to the 3rd respondent to permit him to resume duty; the 3rd respondent by his letter dated 27-5-1997 directed the petitioner to produce certified copy of the bail order granted in favour of the petitioner; after obtaining the certified copy of the bail order, the petitioner submitted the same to the 3rd respondent on 19-9-1997; even thereafter, nothing was heard from the 3rd respondent. In those circumstances, the petitioner filed this writ petition on 1-4-1998 praying for a writ in the nature of writ of mandamus declaring the action of the respondents in not giving posting order on the ground that the petitioner was under judicial custody for more than 48 hours, as illegal and arbitrary and to declare that Regulation 11(b) of A.P.S.E. Board Employees

Disciplinary and Appeal Regulations (for short "the Regulations") applies only for the period during which the employee is under judicial custody and that Regulation is inapplicable after the employee is released from judicial custody, and for a consequential direction to the respondents to pass appropriate posting order and grant such other reliever reliefs as this Court deems fit in the facts and circumstances of the case.

2. After the writ petition was filed on 1-4-1998, the petitioner was permitted to resume duty with effect from 8-9-1998. Subsequently, the respondent-disciplinary authority issued charge memo dated 30-10-1998 levelling two charges against the petitioner. It is stated that the Inquiring Authority appointed by the disciplinary authority has already completed the enquiry and submitted his report to the disciplinary authority in the month of January, 1999. Pending enquiry, the petitioner was also placed under suspension by the proceedings of the disciplinary authority dated 16-11-1998. Since the petitioner was placed under suspension by the above proceeding, the petitioner has filed WP MP No.41852 of 1998 to amend the writ petition so as to enable him to question the validity of the suspension order also.

3. Sri G. Vidya Sagar, learned Counsel for the petitioner, would contend that the petitioner could not be deemed to have been placed under suspension after his release on bail on 26-12-1996 and Regulation 11(b) of the Regulations is not at all applicable after an employee is released on bail; that in the facts and circumstances of the case and having regard to the nature of the allegations levelled against the petitioner, there was no justification for the disciplinary authority to place the petitioner under suspension with effect from 16-11-1998 after he was permitted to resume duty with effect from 8-9-1998 after the petitioner filed the writ petition. On the other hand, the learned Standing Counsel for A.P. Transco, Sri S. Ravindranath, would support the action.

4. The first contention of the learned Counsel for the petitioner, I am afraid, is well founded. Regulation 11(b) reads thus :

"an employee who is detained in Police custody whether on criminal charge or otherwise for a period longer than 48 hours shall be deemed to have been suspended under these regulations."

5. A legal fiction is introduced in Regulation 11(b). The language employed in the above regulation is plain, clear, precise and unambiguous and it does not admit more than one meaning. The only meaning that can be culled out from the provision is that when an employee is detained in Police custody whether on criminal charge or otherwise for a period longer than 48 hours, he shall be deemed to have been under suspension under Regulation 11 (b). In other words, by virtue of Regulation 11(b), an employee who is in Police custody for a period longer than 48 hours should be deemed to have been kept under suspension. If that is the effect of legal fiction introduced in Regulation 11(b), that legal fiction should subsist even after the release of the employee on bail unless the

employer makes an appropriate order after the release of the employee on bail permitting the employee to resume duty. Therefore, the contention of the learned Counsel for the petitioner that after the release of the petitioner on bail on 26-12-1998, the employer, as a matter of course and legal obligation, ought to have permitted the petitioner to resume duty is untenable.

6. Although I find some force in the second contention of the learned Counsel for the petitioner, but having regard to the subsequent developments, I do not think it appropriate for the Court to interfere with the suspension order at the fag end of the departmental enquiry. Since the enquiry report is already submitted to the disciplinary authority, I think that ends of justice would be met by directing the disciplinary authority to consider the findings recorded by the Inquiring Authority and pass appropriate final order within a time-frame, in accordance with law.

7. Sri G. Vidya Sagar, learned Counsel for the petitioner, also pointed out that the petitioner was not paid the subsistence allowance when he was considered to be under deemed suspension by the Disciplinary Authority. It is needless to state that whether an employee is under deemed suspension or kept under suspension by passing an appropriate order, according to the Service Regulations, he has to be paid subsistence allowance. Since necessary pleadings and facts are not placed before the Court to appreciate this particular grievance of the petitioner, no mandamus can be issued to the respondents.

8. In the result, and taking into totality of the circumstances, I dispose of the writ petition with the following directions ;

(a) the 3rd respondent is directed to conduct, complete and pass appropriate final order in the disciplinary proceedings initiated against the petitioner in pursuance of the charge memo dated 30-10-1998, if not already done, within a period of two months from the date of receipt of a copy of this order;

(b) the 3rd respondent is further directed to consider the request of the petitioner for subsistence allowance for the period during which he was considered to be under deemed suspension and if subsistence allowance is not yet paid, to pay the same to the petitioner within one month from the date of receipt of a copy of this Order.

(c) the parties are directed to bear their own costs in this writ petition.