
(2015) 11 AP CK 0018
In the Andhra Pradesh High Court
Case No : Writ Petition No. 36511 of 2015

V. Vishnu Murthy

APPELLANT

Vs

The State of Telangana and Others

RESPONDENT

Date of Decision : 25-11-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 12(3)

Citation : (2016) 2 ALT 119

Hon'ble Judges : P. Naveen Rao, J.

Bench : Single Bench

Advocate : A.G. Satyanarayana Rao, for the Appellant; S.V. Ramana, Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

P. Naveen Rao, J.—Petitioner is a driver of Respondent Corporation. In this Writ Petition, petitioner assails the order of suspension from service dated 12.10.2015.

2. The facts giving rise to institution of this Writ Petition are as under. On 02.10.2015 petitioner was booked to travel along with another driver on Bus No. AP 30 Z 0019 from Amalapuram to Srisailam and return. The bus did not have conductor. One of the drivers on duty was also required to attend to issuance of tickets to the passengers. On the fateful day, petitioner was in-charge to issue tickets to passengers by collecting appropriate fare as already determined. The bus reached Srisailam on 03.10.2015. For return journey, two persons approached the petitioner for providing seats in the bus. They were asked to sit in seat Nos. 13 and 14. After some time the said passengers have gone for taking tea and came back and informed the petitioner that deluxe bus service is now available and they intend to travel in the said bus. The bus returned to Amalapuram with full capacity on 04.10.2015.

3. It appears that one of the passengers who initially sat in seat Nos. 13 and 14 complained through whatsapp mobile application service on 03.10.2015 alleging

that the driver of the bus demanded Rs. 320/- as against the prescribed fair of Rs. 280/- from Srisailam to Vijayawada and similarly Rs. 310/- was demanded from his uncle and requested to take action. On said allegation, preliminary enquiry was conducted and though no further evidence was available and no statement was recorded from the complainant, enquiry report stated to have been submitted holding the complaint as valid and based on the report of the Assistant Manager (Mechanical), by order dated 12.10.2010 petitioner was placed under suspension. Aggrieved by the said order of suspension, this writ petition is filed.

4. Heard Sri A.G. Satyanarayana Rao counsel for petitioner and learned standing counsel for respondents.

5. Learned counsel for petitioner made extensive submissions against petitioners suspension from service. According to learned counsel petitioner never demanded any extra money from the passengers. The complainant on his own sat in the bus for some time and left the bus to catch another bus of his convenience. False complaint was generated on whatsapp mobile application; the complainant is not traceable and no further statement is recorded from the complainant. Learned counsel further submits that such frivolous and false complaints ought not to have been entertained.

6. Learned counsel further submitted that in matters of trivial nature and which cannot be verified, suspension should not be resorted to. Regulation 18(1) of the APSRTC Employees (CC&A) Regulations, 1967 provides for suspension only when enquiry is ordered into grave charges. The circular instructions dated 09.03.2002 also emphasize that employee be placed under suspension only if the allegation is grave. Same is reiterated in the memorandum of settlement entered by the management with the recognized union under Section 12(3) of the Industrial Disputes Act, 1947. Learned counsel therefore submits that contrary to the guidelines formulated by the Corporation and regulation 18, suspension is made and therefore is ex facie illegal.

7. Learned counsel further submitted that suspension cannot be resorted to as a matter of course. The disciplinary authority should take into consideration the relevant facts and attendant circumstances. In support of his contentions, learned counsel placed reliance on the decision of the Division Bench of this Court in P. Rajender v. Union of India and another.

8. It is not in dispute that the petitioner was co-driver of the bus service between Amalapuram and Srisailam, commencing his journey on 02.10.2015 and returned to the original station on 04.10.2015. The bus did not have conductor service and driver on duty also required to attend to issuance of tickets by collecting requisite fair from the passengers. It appears that two passengers have approached petitioner to provide seats. Passenger, who intended to travel from Srisailam to Vijayawada, sent a complaint on whatsapp mobile application service on the next day i.e., 5.10.2015. Complainant alleged that excess of Rs.

40/- was demanded from him and extra Rs. 30/- from his uncle. The message bears the phone number of the complainant and, therefore, his identity is traceable. Based on the said complaint preliminary enquiry was conducted and based on the report of the Assistant Manager (mechanical) and on due consideration of the gravity of the allegations, the competent authority placed the petitioner under suspension pending enquiry.

9. Prima facie, the nature of the allegation leveled against the petitioner amounts to illegal demand by the employee of the corporation from the passenger and, therefore, it cannot be said that the allegations leveled against the petitioner is trivial.

10. Based on the law laid down in long line of precedents, it is clear that 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 within the above parameters. While taking the decision to place an employee under suspension what all is required is prima facie case of gravity of the charge.

11. In UNION OF INDIA V. ASHOK KUMAR AGGARWAL, Supreme Court held as under:

27. 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.

12. It is appropriate to notice that on the same day charge memo was also drawn and served on the petitioner. The tenability of the allegation and the involvement of petitioner can be gone into during the departmental enquiry. Thus, it cannot be said that order of suspension is made for extraneous consideration or without application of mind and that it is not supported by material on record.

13. The competency of the Depot Manager to place the driver under the suspension is not doubted and, therefore, there is no error in exercise of jurisdiction. Thus, the order is not vitiated on that ground.

14. Learned counsel for petitioner placed reliance on the decision of this Court in P. Rajender (cited supra). The said case pertains to suspension of an employee pending criminal case. The suspension initially made on 15.5.1999 was continued for a long time. The Division Bench noticed that there was no application of mind in considering the issue of continuation of suspension of the petitioner therein. The Court held that non application of mind with regard to relevant facts may

vitiating the order of suspension (paragraph 14). It is appropriate to note the observations of the Court made in paragraph 20. This Court held, 20. There is a lot of difference between a case where the Government servant is charged with allegations of corruption and misuse of official position and where an employee is charged with offences in relation to a private dispute. In the instant case, it cannot be said that there was no application of mind. This Court cannot express any opinion on the merits of the allegation. The allegation if proved is grave and warrants severe action. I therefore see no error in the order of suspension warranting interference by this Court.

15. Accordingly, the writ petition is dismissed. There shall be no order as to costs. However, the disciplinary authority is directed to complete the enquiry and disciplinary action as expeditiously as possible, preferably within six weeks from the date of receipt of the copy of the order. It is made clear that what is discussed in the above paragraphs is for the purpose of considering the validity of the order of suspension and shall not prejudice the defense of the petitioner in the disciplinary proceedings. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.