

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.4057 OF 2021

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking the following relief:

“to issue an appropriate writ, or order or direction more particularly one in the nature of writ of Mandamus declaring the Proceedings No:01/178(01)/2019-RPL dated 05.03.2020 dismissing the petitioner from service is arbitrary, unjust, contrary to law and APSRTC Employees (C.C & A) Regulations, 1967, in violation of principles of natural justice, discriminatory and in violation of Article 14 and Article 21 of Constitution of India and set-aside the same and consequently direct the respondents to reinstate the petitioner into service with all consequential benefits including the salary for the period from 01.03.2019 in the interest of justice.”

The petitioner was initially appointed in the year 2007 as contract conductor and his services were regularised on 01.01.2010. He married one P.V.Sulochana, working as Conductor in Tenali depot, in 2008. After 3 years, she developed differences, started living separately from the year 2011 and claimed maintenance by filing M.C.No.34 of 2014. The II Additional Judicial First Class Magistrate, Tenali by order dated 13.11.2017 while dismissing the claim of his wife, has directed to pay maintenance to two minor children at Rs.1500/- each per month from the date of application i.e., 02.06.2014 along with costs of Rs.500/-. As the arrears for 44 months amounted to Rs.1,32,500/-, petitioner requested to pay in easy instalments and paid Rs.11500/-. But the II Additional Judicial First Class Magistrate, Tenali declined the request of the petitioner and sentenced him to undergo imprisonment for one month vide order dated 31.01.2019. As the petitioner could not make a single payment of Rs.1,32, 500/-, he has undergone imprisonment for one

month from 31.01.2019 to 28.02.2019 in Sub-jail, Tenali. The petitioner informed the fact of his remand on 31.01.2019 to respondent No.2 and submitted a representation dated 01.03.2019 requesting to take him on duty. As no action was taken, the petitioner submitted further representations to respondent No.1 on 04.07.2019 and 01.10.2019. But no action was taken. Again, the petitioner submitted another representation to respondent No.2 on 13.09.2019. Respondent No.2 issued a Charge Sheet dated 21.12.2019 alleging that imprisonment in Sub-jail, Tenali for not paying maintenance ordered amounts to serious misconduct and misconduct as per Regulations. The petitioner submitted his explanation on 25.12.2019 stating that fact of his remand on 31.01.2019 and his release 01.03.2019 was informed and requested to take him on duty as sentence ordered was in the maintenance case, which is civil dispute, not connected to the petitioner's duties/employment in the corporation.

Respondent No.2, without considering the fact that the petitioner suffered imprisonment for his inability to pay arrears of maintenance as single payment, has ordered for an enquiry. The Enquiry Officer has also not considered the facts and held that the charge against the petitioner is proved. Based on the perverse findings, respondent No.2 issued a show-cause notice dated 10.02.2020 proposing to dismiss the petitioner from service stating that the petitioner is convicted which is a serious misconduct as per Regulation 9 (1)(a) of APSRTC Employees (C.C. and A) Regulations, 1967. A detailed reply dated 17.02.2020 was submitted stating that petitioner was not convicted on any criminal charge, but due to inability to make single payment of 44 months arrears and

non-payment of maintenance amount is not a criminal offence and Regulation 9 (1)(a) of C.C & A Regulations is applicable only in case of conviction on a criminal charge. Further non payment of maintenance is a family matter and not connected to the petitioner's duties. Respondent No.2 has neither considered the reply nor considered facts and circumstances for imposing penalty as per Regulations. Even in a case of conviction, disciplinary authority has to impose an appropriate penalty. In support of his contentions, the petitioner relied on the judgments of the Apex Court in "**The Divisional Personnel Officer Southern Railway v. T.R.Chellappan**"¹ and "**Union of India v. Tulsi Ram Patel**"².

Regulation 9 (1)(a) of APSRTC Employees (C.C & A) Regulations, 1967 is applicable only in case of conviction on a criminal charge. The proceedings under Section 125 of Criminal Procedure Code (for short "Cr.P.C." (which corresponds to Section 488 of Old Criminal Procedure Code, 1898) are of civil nature as held by the Apex Court in "**Jagir Kaur v. Jaswanth Singh**"³. The dispute of maintenance is of civil nature and to provide an effective remedy to women and children as per Article 15(3) of the Constitution of India, Section 125 of Cr.P.C. is provided in the Criminal Procedure Code, 1973 as summary remedy. Respondent No.2 without considering these facts has issued the impugned proceedings. Therefore, impugned order dated 05.03.2020 is illegal, arbitrary and liable to be set aside.

Respondent No.2 filed counter denying all the material allegations while admitting about the sentence imposed against the

¹ (1976) 3 SCC 190

² 1985 (2) SLR 576

³ AIR 1963 SC 1521

petitioner for non-payment of maintenance in M.C.No.34 of 2014 on the file of II Additional Judicial First Class Magistrate, Tenali, submission of representation, issue of charge memo on the petitioner calling for explanation, submission of explanation by the petitioner, ordering enquiry against the petitioner, finding him guilty for the charge of misconduct and imposition of penalty of removal. However, it is contended that the petitioner approached this Court without filing an appeal against termination order or industrial dispute before the Labour Court, thereby the petitioner is disentitled to invoke the jurisdiction of this Court without availing departmental remedy of appeal and industrial dispute before the labour Court. It is further contended that sentencing the petitioner to undergo imprisonment would fall within the definition of serious misconduct under Regulation 9 (1) (b) of APSRTC Employees (CC and A) Regulations, 1967, requested to dismiss the writ petition.

Sri A.G.Satyanarayana Rao, learned counsel for the petitioner, while reiterating the contentions urged in the petition, mainly contended that against the termination order, no appeal is permitted and industrial dispute is not maintainable, therefore, mere failure to exhaust other remedies would not debar the petitioner to approach this Court invoking jurisdiction under Article 226 of the Constitution of India, requested to set aside the impugned order.

Sri P.Durga Prasad, learned Standing Counsel for APSRTC supported the order passed by the respondents on the ground that sentencing an employee working in the Corporation would amount to serious misconduct under Regulation 9 (1) (b) of APSRTC Employees (CC and A) Regulations, 1967, thereby the removal of the petitioner

is in accordance with law as the petitioner is guilty of serious misconduct, requested to dismiss the petition.

As the facts are not in dispute, this Court is required to examine the reason mentioned in the impugned order for the removal of the petitioner.

The respondents recorded a finding and passed the order holding that the petitioner is guilty as per Regulation 9 (1) (a) of the APSRTC Employees (CC and A) Regulations, 1967, where it is contemplated that when an employee is convicted by the Court of law, it amounts to misconduct. Thus, the reason for passing the order of termination is conviction of the petitioner for criminal charge under Regulation 9 (1) (a) of the APSRTC Employees (CC and A) Regulations, 1967. Whereas, the contention of Sri P.Durga Prasad, learned Standing Counsel for the APSRTC, is that sentencing the petitioner to undergo imprisonment for non-payment of maintenance amount would fall within the meaning of serious misconduct. Thus, the respondents made an attempt to substitute a different cause for passing an order of termination. The contention of Sri P.Durga Prasad, learned Standing Counsel for APSRTC, urged before this Court both in the counter and argument is nothing but supplementing another reason to support the action of the respondents.

It is a settled proposition of law that, pleading cannot substitute a reason in an administrative order and this view is fortified by the judgment of the Constitutional Bench in “**Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi**”⁴, wherein it was held that when a statutory functionary makes an

⁴ (1978) 1 SCC 405

order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of an affidavit or otherwise; otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, gets validated by additional reasons/grounds later brought in. In the said judgment, the Constitution Bench referred to earlier judgment in “**Commissioner of Police, Bombay v. Gordhandas Bhanji**”⁵, wherein the Apex Court observed as follows:

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant or of what was in his mind, or what he intended to do. As such orders are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed’ they must be construed objectively with reference to the language used in the order itself.”

By applying the above principles to the facts of the present case, a party cannot improve the order by filing a counter affidavit, since it is impermissible, in view of the law declared by the Apex Court in the judgment referred above. Therefore, the contention of the learned counsel for the respondents that the petitioner is guilty of ‘serious misconduct’ as specified in Regulation 9 (1) (b) of the APSRTC Employees (C.C. and A) Regulations, 1967, cannot be accepted.

Regulation 9 (1) (b) of APSRTC Employees (C.C. and A) Regulations, 1967 includes the following acts of misconduct.

- (i) Embezzlement
- (ii) Fraud
- (iii) Forgery
- (iv) Cheating in his capacity as an employee.
- (v) Taking and offering of bribes
- (vi) Improper behaviour towards women passengers
- (vii) Any other act involving moral turpitude which is punishable under the Indian Penal Code, 1860.

⁵ AIR 1952 SC 16

- (viii) Sabotage.
- (ix) Being under the influence of drink while on duty
- (x) Insubordination
- (xi) Misappropriation
- (xii) Theft of Corporation property
- (xiii) Obstructing an employee of other public servant in the discharge of his duties
- (xiv) Assaulting any person inside the premises or vehicles of the Corporation
- (xv) Taking part in subversive or political activities or activities prohibited by any law in force or made punishable by any law in force or other activities prejudicial to the interest of the Corporation.
- (xvi) Making malicious of false allegations.
- (xvii) Unauthorised communication of official documents or information.

Sentencing the petitioner in connection with maintenance case would fall within the definition of 'serious misconduct' as mentioned in "Note (2) under Regulation 9" as per the contention of the learned Standing Counsel for the respondents. Even if, the contention of the learned Standing Counsel for the respondents is accepted, sentence imposed against the petitioner for non-payment of maintenance would not fall within the definition of "serious misconduct". Therefore, termination of the petitioner on the ground of "serious misconduct" as pleaded in the counter for the first time is a serious illegality.

Regulation 9 (2) of the APSRTC Employees (CC and A) Regulations, 1967 deals with removal from service, which is as follows:

- "9 (2) Removal from service: An employee shall be liable to be removed from service in the following circumstances, namely:
- (a) Committing an offence for which he is liable to be dismissed under clause (1) above; or
 - (b) Misconduct; or
 - (c) Inefficiency; or
 - (d) Repeated commission of minor offences; or
 - (e) Irregular attendance; or

- (f) Absenting himself or overstaying sanctioned leave, without sufficient cause; or
- (g) Incivility to members of the public; or
- (h) Becoming subject to any of the disqualifications mentioned in Section 16 of the Road Transport Corporations Act, 1950.

At best, the reason assigned for dismissal or removal as per the impugned proceedings is conviction by a Court of law on criminal charge. The petitioner was undoubtedly sentenced to undergo imprisonment for one month only for non-payment of arrears of maintenance to the children and it is purely quasi civil in nature and not based on any criminal charge, and it cannot be construed as conviction for the purpose of Criminal Procedure Code. Therefore, mere undergoing sentence of imprisonment by the petitioner for non-payment of arrears of maintenance would not fall within Regulation 9 (1) (a) or at least Regulation 9 (2) (a) of the APSRTC Employees (CC and A) Regulations, 1967 either to dismiss or remove the petitioner from service. Hence, imposition of major penalty of dismissal based on Regulation 9 (1) (a) of the APSRTC Employees (CC and A) Regulations, 1967 is without application of mind by the respondents.

The Apex Court in "***The Divisional Personnel Officer Southern Railway v. T.R.Chellappan***" and "***Union of India v. Tulsi Ram Patel***" (referred supra) held that every conviction should not result in dismissal or removal. The authority has to consider the conduct that lead to conviction by the Court, the entire conduct of the employee, the gravity of misconduct and can impose lesser penalty of deferment of increments if the conviction is not connected to the duties/employment of the delinquent.

In the present case, sentence imposed against the petitioner was not in connection with discharge of his duties as a driver or conductor, but in connection with non-payment of maintenance

amount in the proceedings initiated under Section 125 (3) of Cr.P.C. Hence, the misconduct, if any, would not fall within the Regulation 9 (1) (a) or 9 (1) (2) of the APSRTC Employees (C.C. and A) Regulations, 1967 to impose major penalty of dismissal or removal.

In view of the law declared by the Apex Court in the judgments (referred supra), sentence of imprisonment may attract Regulation 9 (3), but not Regulation 9 (1) or (2) of the APSRTC Employees (C.C. and A) Regulations, 1967 and major penalty shall not be imposed for such conduct. In the present case, the respondents imposed major penalty without applying its mind and committed grave error in passing the impugned order. Hence, the impugned order is hereby set aside while permitting the respondents to examine the nature of misconduct and impose appropriate punishment after affording reasonable opportunity to the petitioner.

In the result, the writ petition is allowed setting aside the impugned proceedings No.01/178(01)/2019-RPL dated 05.03.2020 while granting liberty to the respondents to examine the nature of misconduct and impose appropriate punishment taking into consideration of gravity of alleged misconduct, as per clause 9 (3) of Regulations, after affording reasonable opportunity to the petitioner. Consequently, the respondents are directed to reinstate the petitioner into service with immediate effect. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

05.03.2021
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