

**D.V. Swamy Vs. Apsrtc and Others**

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**Court :** Andhra Pradesh

**Decided On :** Dec-07-2000

**Reported in :** 2001(1)ALD266; 2001(1)ALT379

**Judge :** D.S.R. Varma, J.

**Acts :** [General Clauses Act, 1897](#) - Sections 16 and 23; Industrial Disputes Act, 1946 - Sections 2

**Appeal No. :** WP No. 25064 of 1999

**Appellant :** D.V. Swamy

**Respondent :** Apsrtc and Others

**Advocate for Def. :** Mr. Y.V. Swamy, Adv.

**Advocate for Pet/Ap. :** Mr. S.A.K. Mynoddin, Adv.

**Judgement :**

ORDER

1. This writ petition is filed for a writ of mandamus declaring the action of the 3rd respondent-Depot Manager, ARSRTC, Anakapally Depot, Visakhapatnam District in suspending the petitioner and issuing the charge-sheet/ suspension order in proceedings N.Ty/ 95(148)/99 AKP dated 3-6-1999 and proceeding further by applying and invoking the Employees CCCA regulations, 1967 as illegal and

arbitrary.

2. The brief facts of the case are as under :

While the petitioner was working as Conductor under the respondent-Corporation, he was kept under suspension by order dated 3-6-1999, on account of some alleged irregularities. The petitioner has also submitted his explanation on 4-8-1999. An enquiry officer was also appointed to hold a detailed enquiry and till now no action has been taken. Aggrieved by this, he has filed the present writ petition.

3. The learned Counsel for the petitioner assailed the impugned order mainly on two grounds. Firstly he contended that the APSRTC Employees (Classification, Control and Appeal) Regulations (hereinafter referred to as 'the Regulations'), under which the impugned orders were issued, were not published in the gazette as contemplated under Section 23 of the General Clauses Act and hence the said Regulations do not have any statutory force and, therefore the order of suspension passed under the said Regulations is not valid. Secondly he contended that the petitioner does not come within the definition of employee and there being no standing orders of APSRTC governing the workman, he cannot be suspended. According to him, the employees of the Corporation who are governed by the Regulation alone can be suspended, but not the workman and since the petitioner being a 'workman' as defined under Section 2(s) of the Industrial Disputes Act, 1946, the procedure contemplated under the said Act has to be followed for initiating disciplinary proceedings. Therefore, he submits that the respondent-Corporation has no jurisdiction to initiate disciplinary action against the petitioner under the Regulations.

4. The respondent-Corporation filed a counter-affidavit denying all the allegations made by the petitioner and prayed for dismissal of the writ petition.

5. On similar set of facts and contentions, a learned single Judge of this Court in WP No. 14765 of 1999 after careful consideration, rejected the contentions raised by the petitioner therein. Even the appeal in WA No. 1170 of 1999 filed against that order was dismissed, confirming the order of the learned single Judge. The Division Bench of this Court while confirming the order of the learned single Judge,

relied on a judgment of the Supreme Court in B.K. Srinivasan v. State of Karnataka : [1987]1SCR1054 . The Division Bench further held as under :

'It was not the case set up by the petitioner that no publication of the Regulations has been effected in any other mode than the gazette. Otherwise too, it is well known that the Regulations are known to all the employees. It is not the case of the petitioner that he did not know the Regulations. The appointment letter itself contains the conditions that he is appointed subject to the Regulations. He cannot revert back and now say that he does not know any Regulations being in existence.'

6. Therefore, the Division Bench held that the mode adopted by the Corporation with regard to publication of the regulations was reasonable. In the judgment it was further observed as under:

'There is no gain-saying that since the Regulations provided for the employees of the Corporation includes the workmen, the workmen cannot be dealt with as a separate or distinct category. Even otherwise, the benefit claimed by the petitioner in exercise of the writ jurisdiction is that there is no authority to suspend him under the Regulations, which have not come into force. The petitioner cannot revert back to the provisions of industrial law. In case he wants to take the benefit of industrial law he was at liberty to raise the industrial dispute.'

7. Therefore, in the light of the judgment of the Division Bench of this Court, the first contention raised by the petitioner cannot be accepted.

8. The next question that falls for our consideration is whether the petitioner can be suspended by the employer/Corporation pending departmental enquiry. Admittedly the petitioner is an employee of the Corporation and, therefore, the relationship of master and servant is very much in existence. If that were the case, it is implied authority of the employer to keep its employees under suspension under the course of disciplinary action. In the decision reported in R.P. Kapur v. Union of India, : (1966)11LLJ164SC , the Hon'ble Supreme Court held that the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding,

which may eventually result in a department enquiry against him. The general principle is illustrated by the provision in Section 16 of the General Clauses Act, which is in consonance with the general law of master and servant.

9. Therefore, viewed from any angle, 1 hold that the petitioner cannot question the impugned orders of suspension.

10. The petitioner further contends that he sought for the access of certain documents during the course of enquiry and the enquiry officer did not permit the same. Though this plea was taken up, the learned Counsel for the petitioner is not serious about this contention.

11. Therefore, for the foregoing reasons, the writ petition is liable to be dismissed as devoid of merits and is accordingly dismissed. No costs.

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