

APSRTC, Musheerabad, Hyd. and others Vs. A.V.D' Souza

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Court : Andhra Pradesh

Decided On : Dec-26-2000

Reported in : 2001(3)ALD43

Judge : Satya Brata Sinha, CJ. and; B. Subhashan Reddy, J.

Acts : [Constitution of India](#) - Article 226; APSRTC Employees (Classification, Control and Appeal) Regulations, 1967 - Regulation 21(2)

Appeal No. : WA No. 1647 of 2000

Appellant : APSRTC, Musheerabad, Hyd. and others

Respondent : A.V.D' Souza

Advocate for Def. : Mr. M. Surender Rao, Adv.

Advocate for Pet/Ap. : Mrs. Nanda Ramachandra Rao, Adv.

Judgement :

ORDER

Satya Brata Sinha, CJ.

1. Interpretation of Regulation 21(2)(b) of APSRTC Employees (Classification, Control and Appeal) Regulations, 1967 (for short 'the Regulations'), falls for consideration of this Court in this writ appeal. Regulation 21(2)(b) reads as under:

'In all other cases, the employees shall be granted such proportion of such pay and allowances as such competent authority may direct:

Provided that the payment of allowances under this clause shall be subject to all other conditions subject to which such allowances are admissible'.

2. Before advertng to the question involved in this writ appeal, we may briefly notice the factual matrix of the matter. The writ petitioner-respondent herein was an employee of the appellant-Corporation. Pending disciplinary proceedings, he was placed under suspension on 29-4-1986. In the departmental proceedings, he was found guilty, and was imposed with punishment of stoppage of two increments with cumulative effect by order dated 30-11-1992. He was, however, under suspension till 28-11-1987. The writ petitioner in the writ application inter alia raised a question as to whether the appellant acted bona fide in treating him as 'not on duty during' the afore-mentioned period of suspension.

3. The learned single Judge negatived the contention raised by the writ petitioner-respondent herein that he having retired from service in the year 1984, the impugned order dated 28-6-1995, suffered from delay and laches. The learned single Judge also negatived the contention of the writ petitioner-respondent herein that the disciplinary authority cannot treat the period of suspension as 'not on duty' having regard to the provisions of FR 54-B, which were included by G.O. Ms. No.384, Finance and Planning (FW.FR-II) Department, dated 7-12-1984. The learned single Judge further found as under:

'In the absence of any such embargo in the staff regulations, it cannot be said that the action of the respondents in treating the period of suspension as 'not on duty' is not a bona fide exercise of power.'

4. Despite arriving at the aforementioned finding, the learned single Judge opined as follows:

'The petitioner seemed to have retired from service way back in the year 1994 and his service benefits settled long back. At the same time, as the period of suspension cannot be treated as 'dies non' the petitioner has to be treated as on

duty for all other purposes except for classifying monetary benefit and in other words, for computation of service benefits. His notional pay has to be fixed treating the period of suspension as on duty for extending the service benefits.'

5. The learned single Judge having found that the action on the part of the Disciplinary Authority is neither barred under the Doctrine of Laches nor suffers from lack of bona fides, in our considered view, ought not to have been interfered with the discretion exercised by the superior authority.

6. The learned Counsel appearing on behalf of the writ petitioner-respondent submitted that in terms of clause (b) of sub-regulation 2 of Regulation 21 of the Regulations, it was the bounden duty of the employer to direct payment of the entire salary for the period of the writ petitioner was under suspension. We do not agree with this submission. The aforementioned provision confers discretionary power upon the superior authority. It is true that discretionary power must be exercised bona fide and reasonably, but not mala fide and unreasonably. But, having regard to the finding of the learned single Judge, we are of the opinion that the discretionary power exercised by the disciplinary authority does not suffer from any illegality or irrationality, warranting interference by this Court in exercise of its power of judicial review. It is now settled that the power of judicial review of this Court is limited, and it can be exercised only when it is shown that the decision making process suffers from illegality, irrationality or procedural irregularity. However, the merit of the decision itself cannot be gone into.

7. The learned Counsel for the writ petitioner-respondent pleaded for taking a sympathetic view. In exercise of power of judicial review, this Court cannot be carried away by sympathy. Except in rare cases, sympathy cannot be allowed to play an influencing role on the decision, and as is well known, it cannot be a ground for interference, contrary to law. In *Latham v. Johnson and Nephew*, (1911-13) All.ER 117, it was held as follows:

'We must be careful not to allow our sympathy with the infant plaintiff to affect our judgment. Sentiment is a dangerous will of the wisp to take as a guide in the search for legal principles'.

8. For the reasons afore-mentioned, we are of the opinion that the impugned judgement cannot be sustained, and it is accordingly set aside. The writ appeal is allowed and the writ petition dismissed. No costs.

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