

A.P. Transco and Others Vs. P. Vijaya Kumar

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Court : Andhra Pradesh

Decided On : Mar-28-2001

Reported in : 2001(4)ALD133; 2001(4)ALT67

Judge : S.B. Sinha, C.J. and ;S.R. Nayak, J.

Acts : Andhra Pradesh State Electricity Board Employees (Disciplinary Appeal) Regulations - Regulations 41, 56 and 57(6); [Indian Penal Code \(IPC\), 1860](#) - Sections 148, 307 and 324; [Explosive Substances Act, 1908](#) - Sections 3; Oil and Natural Gas Commission Pay and Allowances Regulation, 1972 - Regulation 14(3)

Appeal No. : WA No. 172 of 2001

Appellant : A.P. Transco and Others

Respondent : P. Vijaya Kumar

Advocate for Def. : Mr. A. Giridhar, Adv.

Advocate for Pet/Ap. : Mr. S. Ravindranath, SC for A.P. TRANSCO

Judgement :

ORDER

S.B. Sinha, C.J.

1. Interpretation of Regulation 57(6) of the A.P. State Electricity Board Employees (Discipline and Appeal) Regulations is in question in this appeal filed by the

appellants herein questioning the judgment dated 29-8-2000 passed by a learned single Judge of this Court in Writ Petition No. 11616 of 1999. The respondent herein filed the said writ petition for issuance of a writ of mandamus directing the appellants-respondents therein to treat the period during which he was placed under suspension from 16-12-1992 to 1-3-1999 as on leave and for a further direction to treat the said period as on duty and pay his full salary for the same. The fact of the matter lies in a very narrow compass.

2. A criminal case was initiated against the respondent for alleged commission of an offence under Sections 148, 307 and 324 of the Indian Penal Code and Section 3 of the Explosive Substances Act. The said criminal proceeding - numbered as Sessions Case 211 of 1998 - was tried by the Assistant Sessions Judge. He having not been found guilty was acquitted by a judgment dated 8-2-1999. He was placed under suspension on 16-12-1992. Upon acquittal a representation was made by the respondent whereupon he was reinstated. The said period of suspension was directed to be regularised in terms of memo dated 14-5-1990. The learned single Judge allowed the writ petition filed by the respondent herein inter alia on the ground that in a case of same nature where a criminal case had ended in acquittal the period of suspension was treated to be a period as on duty.

3. Sri S. Ravindranth, the learned Counsel appearing on behalf of the appellants has raised a short question in support of the appeal that as an order of suspension was passed under Regulation 11 of the Regulations, the impugned judgment must be held to be contrary to or inconsistent with Regulation 57(6) thereof. The said Regulation 57(6) reads thus:

'where an employee is prosecuted in respect of a criminal offence or other nature whether arising out of his official duties or not or imprisoned for debt or detained under any law providing for preventive detention, and he is detained in custody for a period of longer than 48 hours he shall be deemed to be under suspension and shall be entitled only to subsistence grant under Regulation 56 till the termination of the departmental proceedings against him. On the termination of such proceedings, if the matter arose from out of official duties, unless the employee is dismissed from service, his pay and allowance shall be adjusted according to the

provisions of the above regulation. In all other cases, if the employee is permitted to rejoin duty he shall not be entitled to any thing more than what he would have received if he had been granted the leave admissible to him for the period of his absence from duty since his detention the amount of subsistence grant already drawn by him being adjusted against his pay and allowance.'

4. The constitutionality of the said regulation is not in question. A bare perusal of the aforementioned regulation clearly shows that in terms thereof in the event of acquittal of an employee in a criminal case, upon being permitted to rejoin duty he will not be entitled anything more than what he has received if he had been granted the leave admissible to him during the period of his absence from duty since his detention and the amount of subsistence grant already drawn by him be adjusted against his pay and allowances. In view of the aforementioned regulation which lays down a condition of service as to how the said period of suspension be treated, the learned single Judge went wrong in passing the impugned order.

5. By reason of the aforementioned regulation a legal fiction is created. If a person for whatever reasons is detained for a period of more than 48 hours he would be deemed to be placed under suspension.

6. When there exists statutory rule, unless the same is declared ultra vires the Court cannot grant any relief which would run contrary thereto or inconsistent therewith. The conditions of service of the employees relating to different matters shall depend on the extant rules and regulations governing the same. Even as otherwise the concerned employees may not be entitled to the entire backwages. When a legislative policy is taken, the same cannot be interfered with. Reference in this connection may be made to R.C. Thakore v. Supdtg. Engineer, Gujarat Electricity Board, : (1997)IILLJ683SC .

7. In R.R. Naidu v. Chairman, ONGC, New Delhi, : 1997(4)ALD447 , Ansari, J., while considering the provisions of Regulation 14(3)(b) and (c) of the Oil and Natural Gas Commission Pay and Allowances Regulation, 1972 held:

'15. I cannot accede to the said contention. There is no specific regulation dealing with cases respecting suspension and dismissal of an employee, consequent on

conviction based on a criminal charge and as to how the period of absence in such case is to be treated. Clause (b) of sub-regulation (3) has no application to cases of conviction of criminal charges. The said clause is applicable in cases of reinstatement in relation to disciplinary enquiries. Clue to the same is to be found in the terminology used viz., formation of opinion by the competent authority that the 'employee has been fully exonerated' and in the case of suspension 'that was wholly unsustainable'. Such a situation for formation of opinion can be postulated only for misconduct in respect of which disciplinary proceedings have been initiated and the employee is exonerated and not in respect of a case where a Court convicts an employee on criminal charge. Under Regulation 41 of the Conduct, Discipline and Appeal Regulations, the Disciplinary Authority is empowered to pass appropriate orders where an employee is convicted on a criminal charge. In the instant case, the petitioner was in the first instance suspended and later his services were terminated in exercise of the power under the said Regulation 41 based on the conviction by Criminal Court. The petitioner's case being one relating to termination after conviction of criminal charge, it could fall under the residuary clause (c) which deals with 'other cases'. Under Clause (e) the period of petitioner's absence from duty is not to be treated as period spent on duty unless so directed by the competent authority.

8. The learned Counsel appearing on behalf of the respondent on the other hand, however has drawn our attention to the judgment of the learned Judge for showing that persons similarly situated were treated otherwise. Keeping in view the fact that Regulation 57(6) is absolutely clear and unambiguous we are of the opinion that the respondent does not have a legal right to claim backwages only because in case of some other persons such backwages had been paid and the period of suspension was treated to be a period on duty. If by mistake or otherwise an order contrary to law has been passed in favour of an employee, such illegality cannot be allowed to be perpetuated nor by reason of commission of such illegality in favour of one person no legal right is derived by another person.

9. For the reasons afore mentioned the impugned judgment cannot be sustained which is set aside. The writ appeal is allowed. There shall be no order as to costs.

