ANDHRA PRADESH HIGH COURT

A.P.S.R.T. Corpn

Vs.

Labour Court

Writ Petn. No. 5225 of 1978

(C. Kondiah, C.J., P.A. Choudary and Seetharama Reddy, JJ.)

04.12.1979

JUDGMENT

P.A. Choudary, J.

1. The contesting second respondent in this writ petition is an Assistant Mechanical Supervisor, working in the Andhra Pradesh State Road Transport Corporation (hereinafter referred to as 'the Corporation') Bhimavaram Depot. On 22-10-1974, the second respondent-Supervisor was suspended under Regulation 18(1)(b) of the Andhra Pradesh State Road Transport Employees' (CC and A) Regulations (hereinafter referred to as 'the Regulations) by the District Manager of the Andhra Pradesh State Road Transport Corporation, Bhimvaram Depot, on the basis of an allegation that he was found stealing on 18-10-1974 certain articles belonging to the Corporation. The matter was handed over by the employerCorporation to the police authorities and the police charged the second respondent before a criminal Court with the commission of offence of theft. But the criminal case ended on 17-3-1976 in acquittal of the second respondent.

2. At the time when the criminal proceedings were still in progress, the employer-Corporation conducted a departmental enquiry and found the second respondent guilty of stealing Corporation's property and on that basis removed him by way of punishment from its service on 12-5-1975. Against that order of removal passed by the Corporation, the second respondent complained to the Labour Court, Guntur, alleging that the punishment of removal from the service of the Corporation was excessive. The Labour Court, agreeing with that complaint, directed by its Order dated 9-7-1977 reinstatement of the second respondent-Supervisor in the Corporation's services but without however back wages. The second respondent was, accordingly reinstated by the Corporation. We need say nothing on that part of the story as that order of reinstatement deals with a period subsequent to 12-5-1975 with which (we) are not concerned in this writ petition.

3. The dispute which gives rise to this writ petition is an application under Section 33-C(2) of the Industrial disputes Act which the second respondent filed subsequent to his reinstatement against the Corporation claiming from the Corporation subsistence allowances for the period of his suspension from 22-10-1974 to 12-5-1975. The Labour Court, in its adjudication of the claim of

the second respondent under Section 33-C(2) of the Industrial Disputes Act held by its Order dated 11-7-1977 that the second respondent was entitled to the payment of subsistence allowance for the period of his suspension from 22-10-1974 to the date of his removal on 12-5-1975 and accordingly, directed the Corporation to pay a sum of Rs. 1,201.21 to the second respondent-Supervisor. In this writ petition the Corporation assails the correctness of this order of the Labour Court.

4. The case of the second respondent Supervisor is that his conduct which gave rise to his suspension on 22-10-1974 ended not in his conviction but in his acquittal. The Supervisor, therefore, contends that judged from the point of view of the acquittal, his order of suspension must be deemed to be unjustified and held unlawful. Therefore, for the period for which he was unjustifiably prevented from working for his employer, the employer must bear the responsibility and pay him his remuneration. In this view, the second respondent contends the order of the Labour Court must be held to be right.

5. On the other hand, the Corporation's case is that the second respondent was suspended on 22-10-1974 pending investigation into a criminal case and therefore, the order of suspension falls under Regulation 18(1)(b). The Corporation therefore argues that as Regulation 20(3)(a) specifically denies the right of an employee suspended under Regulation 18(1)(b) to claim subsistence allowance the Labour Court's decision must be held to be wrong as being clearly contrary to Regulation 20(3)(a) by which the second respondent is bound.

6. When this Writ Petition first came up before a Division Bench for hearing, it was argued for the Corporation that this aforesaid submission of the Corporation based as it is upon the language of Regulations 18(1)(b) and 20(3)(a) is in accordance with the principle laid down in a judgment of a Division Bench of this Court in Writ Petition No. 2097 of 1976 (1978) 1 APLJ (SN) 27, while it was contended for the second respondent-Supervisor that another judgment of another Division Bench of this Court in Writ Petition No. 730 of 1977 (1979) 1 APLJ (SN) 13 negatived such a contention of the Corporation. That is how this matter has come to be placed for the consideration of this Full Bench. As the entire matter is referred to the Full Bench, we are not merely disposing of the limited question of conflict between those two judgments of the two Division Benches but we are dealing with and disposing of the whole case.

7. It may be mentioned that the "Andhra Pradesh State Road Transport Corporation" is a public utility concern. It is a Statutory Corporation sharing in same measure, however minimal it may be, the sovereignty of the State. Its Regulations have therefore not merely statuary flavor but also statutory force. The rights of the second respondent, are therefore governed both by the original contract as well as by the supervening law.

8. The origin of the employment of the second respondent has to be traced without doubt to an initial contract mutually entered into between the Corporation and the second respondent Supervisor. But law takes over from that point of contract and imposes itself upon the contractually constituted relationship of employer-employee. In the modern industrial world the complex employer-employee relations and their rights and obligations *inter se*, are no longer allowed by the law to be governed exclusively by the terms of the contract. For one thing, the society's prosperity, nay, even its survival depends upon prolonged periods of industrial peace. A modern State can willingly suffer anything but not the breakdown in the system of its production.

Such a vital social interest therefore, cannot but be the prime concern of the State's Regulation and for that reason cannot be left to be governed by the private bargain of the parties. For another, the basic assumption on which the doctrine of contract was raised in the days gone by those once revolutionary theoreticians of Laissez-faire., Laisez-aller to a sport of divine ordinance, is today found to be false and fallacious. Notwithstanding the notorious majority judgment of the American Supreme Court in *Lochner v. New York*[1], no one today believes that the terms of employment of a workman should entirely be left to be determined by the contracting parties. Today, there are not many who would accept the underlying assumption of that decision which is the bargaining equality between the employer and his workmen. It is no wonder therefore, that today even a private employer does not enjoy his one-third liberty to hire and fire his employee at his pleasure. We have reached a stage when the industrial laws of the State are making and enforcing contracts for employer and employee without much reference to the will of the individual parties. Our basic law forbids the employment of children below the age of fourteen years in any hazardous employment. The wheel of history has taken a full turn rendering Maine's celebrated dictum that 'the movement of progressive societies had hitherto been from status to contract" obsolete, unreal and inapplicable to the contemporary conditions. Lord Simon of Claisdale recently wrote in ***Johson v. Moreton, (1978) 3 All England Reporter 37.***

> "Since Maine the movement of many progressive societies has been reversed... ......the movement from status to contract is largely a creature of the common law. The reverse movement has been largely a creature of the Legislation ......"

The intervention of the law in the matters of public employment is even more direct and intense. Even the small area of free contract that may still be open to a private employer is closed and sealed to the State by such provisions of our Constitution as Articles 14, 15 and 16 and even by Article 21. Contract or no contract, State within the meaning of Article 12 of our Constitution can neither deny nor discriminate on any of the constitutionally forbidden grounds a citizen's right to employment. Law is today prepared to recognise and protect the right to public employment as a sort of a "New Property", the enjoyment of which is necessary for the exercise of the creative faculties of man (see "The New Property" by Reich Vol. 73 Yale Law Journal p. 733).

9. Our Supreme Court in *Roshanlal v. Union of India*[2], wrote reflecting those transformations in the outlook of law.

> "It is true that the origin of the Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by Statute or statutory rules which may be framed and altered unilaterally by the Government......"

10. Under the terms of the contract, the second respondent has the right to go on working for the Corporation and receive remuneration till he is duly superannuated. Unless the contract provides for the right of the employer, the employee cannot lawfully be prevented from working for the

employer. If the Corporation therefore prevents the

[1](1904) 198 US 45: 49 L Ed. 937

[2] AIR 1967 SC 1889 at 1894

second respondent by way of interim suspension from working for it that order of suspension in the absence of contractual authority amounts to merely, preventing the employee from attending to his duties. In other words, in the absence of contractual power the prevention of the employee from working would entail the employer in liability to pay the employee for the period of interim suspension according to the terms of the contract. (See *generally Hotel Imperial v. Hotel Workers' Union*[3] *Balwantrai Patel v. State of Maharashtra*[4]*, V.P. Gindroiniya v. State of M. P*[2]*.,).* In order to find out the extent to which the above contractual position is altered or modified by law, it is necessary to read, in our case, that two relevant Regulations viz., Regulation 18 and Regulation 20 made by the Corporation.

"18 : Suspension :

(1) The appointing authority or any authority to which it is subordinate or any other authority authorized by the Corporation in that behalf by a resolution may, subject to such conditions and limitations, if any, as may be specified, place an employee under suspension from service.

(a) Pending investigation or enquiry into grave charges, where such suspension is necessary in the public interest.

(b) Where any criminal offence is under investigation or trial.

(2) An employee who is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty eight hours shall be deemed to have been suspended with effect from the date of detention, by an order of the appointing authority, and shall remain under suspension, until further Orders.

(3) deleted.

(4) Where an order of penalty of dismissal or removal from service imposed upon an employee under suspension is set aside in appeal or in review under these Regulations and the case is remitted back for further enquiry or action or with any other direction, the order of his suspension shall be deemed to have been continued in farce on and from the date of the original order of dismissal or removal and shall remain in force until further orders.

(5) Where an order of penalty of dismissal or removal from service imposed upon an employee is set aside or declared or rendered void in consequence of or by a decision of a court of law and the appointing authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal or removal was originally imposed, the employee shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal or removal and shall continue to remain under suspension until further orders.

(6) An order of suspension made or deemed to have been made under this Regulation may at any time be revoked by the authority which made or is deemed to be made the order or by any authority to which the authority is subordinate.

(7) The suspending authority, may, in its discretion, direct that the suspended employee who has been suspended shall not leave his headquarters, and may likewise direct that he shall report to it or to any other authority at such times and places as may be specified, during the period of suspension.

[3] AIR 1959 SC 1342
[4] AIR 1968 SC 800
[5] AIR 1970 SC 1494

20. Subsistence allowance during suspension :

(1) An employee under suspension shall be entitled during the first year thereof to a subsistance allowance at an amount equal to the pay which he would have drawn under the leave rules applicable to him if he had been on leave on half-substantive pay or as half-average pay or on half-pay, as the case may be, and for any period subsequent thereto at three-quarters of such pay; Provided that where the period of suspension exceeds six months, it shall be within the competence of the suspending authority to reduce the amount of subsistence allowance for any period subsequent to the period of the first six months by an amount not exceeding fifty percent of the subsistence allowance so admissible, if in the opinion of such authority, the prolongation of the suspension has been due to reasons directly attributable to the employee.
(2) The suspending authority may, from time to time, also direct that in addition to the subsistence allowance, the employee may be granted to such extent and subject to such conditions as it thinks fit,
(a) dearness allowance not exceeding the amount admissible as such, had he been on leave, on leave salary as provided in clause (1) equal to the rate of subsistence allowance payable from time to time; and
(b) any other compensatory allowance of which the employee was in receipt on the date of suspension.
(3) Notwithstanding anything contained in this regulation, no subsistence or compensatory allowances shall be payable to an employee in the following circumstances :
(a) It he has been suspended under the provisions of sub-clause (b) of Clause (1) of Regulation 18 : or
(b) If he is deemed to be under suspension under the provisions of clause (2) of Regulation 18 if the criminal charges against him or the circumstances leading to his detention in custody, are not in any way connected with his duties as an employee; or
(c) If he is deemed to be under suspension under the provisions of clause (3) of Regulation 18".

Broadly speaking, Regulation 18 supplies the legal authority to the Corporation to suspend its employees while Regulation 20 obliges the Corporation to pay the suspended employee what is called "subsistence allowance" during the period of suspension. But these two Regulations make several distinctions between different orders of suspension brought about by different

circumstances. For example, Regulation 18(1) deals with suspension pending investigation into grave charges (a) or any criminal offence (b) whereas, Regulation 18(2) provides for a deemed suspension where an employee is detained in custody for a period exceeding forty eight hours. Correspondingly, Regulation 20(1) provides for the payment of subsistence allowance to a suspended employee. However, Regulation 20(3) denies the right to subsistence or compensatory allowance to an employee where he had been suspended under Regulation 18(1)(b). The legal effect of these Regulations may be stated in general terms as follows :- While the normal rule is that the Corporation should pay subsistence allowance to an employee suspended, in specially enumerated classes of cases a suspended employee loses his right to subsistence allowance.

11. The second respondent has been suspended pending enquiry into a criminal offence and therefore, his suspension squarely falls under Regulation 18(1)(b). The refusal to pay subsistence allowance to the second respondent during his period of suspension is therefore clearly sanctioned by Regulation 20, clause (3) of the Corporation. But the question still remains and that is what the Labour Court decided - whether the second respondent on his acquittal would be entitled for full remuneration for the period of suspension. It is necessary to emphasise that the order of suspension passed by the Corporation is only pending enquiry into criminal offence and it merges with the order of acquittal or discharge. In other words, it is merely an administrative measure and is not an order of punishment passed by the Corporation against the second respondent on the basis of any evidence or trial. In fact, we cannot treat the order of suspension as an order of punishment as such a characterization of the order of suspension would render that order invalid and *ultra vires* of the powers of the Corporation, for an order of punishment cannot be passed against the second respondent except by following the principles of natural justice. In law such an interim suspension can never be a punishment imposed for proved misconduct. It is only proper that such an order is not allowed to operate as a punishment. It follows therefore, that consistently with this inalienable legal character of interim suspension we must hold that the second respondent is entitled to be compensated for the period of his suspension. This conclusion becomes unavoidable and inescapable so long as we hold the interim suspension to be not a measure of punishment and it is not *ultra vires* of the powers of the Corporation. The next question is, to what extent if any this legal position is altered by the statutory regulations ? This right of the second respondent to get his full remuneration for the period of his suspension cannot, in our opinion, be affected in anywise by Regulation 20. Regulation 20 only deals with the Corporation's duty to pay subsistence allowance and its right to refuse to pay subsistence allowance during the period of suspension, Regulation 20 does not govern the post-acquittal period, when once the order of suspension comes to an end with the order of acquittal or conviction into which the order of suspension merges (see *Om Prakash v. State of U.P*[5]*.,* and *Narayan v. State of Orissa*[6]*,)* Regulation 20 ceases to operate and govern the rights of the parties. Where an employee has been found in a regular trial, not to be guilty of any misconduct or commission of any crime or other misconduct, it will be wholly unreasonable to hold that the employee should still suffer the toss of remuneration and other benefits for the period of his suspension which now merges in his order of acquittal. It amounts to sanctioning and awarding punishment to an innocent party. Our Constitution cannot be the source of this gross injustice. Regulation 18, Clause (7) clearly shows that during the period of suspension the second respondent continues to be servant of the Corporation. He cannot leave the headquarters and employ himself under any other master. Would it not then be wholly unjust to deny the employee his remuneration for that period ? "The Government may only act fairly and reasonably" (see Justice Marshall in *Board, of Regents v. Roth*[7]*,* The right to public employment is undoubtedly, as

noted above, a new form of property. It is not only a vast source of patronage for the Government but is also a great source of living and happiness to our unemployed millions. It is, as Justice Marshall stated in the above mentioned Roth's case the "very

[5](1955) 2 SCR 391 [7] (1972) 33 L Ed 548 at p. 587
[6] AIR 1957 Oris 51 at p. 55

essence of the personal freedom and opportunity", secured by the 14th Amendment of the Constitution". It is therefore clear to us that making of such a law denying the acquitted employee his remuneration for the period of suspension would be beyond the legislative competence since such a law would be in violation of Articles 14, 16 and 21 of our Constitution. Our liberal and democratic Constitution cannot be construed, without defeating its proclaimed objectives, to be a source of conferment of such an arbitrary power on the Government.

12. It is no doubt true that in *V.P. Gindroiniya v. State of M. P.,* the Supreme Court observed :

> "It is equally well settled that an order of interim suspension can be passed against the employee while an enquiry is pending into his conduct even though there is no such term in the contract of employment or in the rules, but in such a case the employee would be entitled to his remuneration for the period of suspension if there is no statute or rule under which it could be withheld"

(emphasis supplied.)

In our view, the above judgment of the Supreme Court did not lay down any rule conferring an absolute power on the Legislature to deny remuneration to an employee for the period of his unlawful suspension. We understand the judgment as dealing only with a situation of withholding of payment during suspension and not at all with a situation arising on acquittal. The word "withheld" used by the Supreme Court is in our view significant. They do not mean 'deny'. Further, the judgment of the Supreme Court in *Om Prakash v. State of U.P.,* is a clear authority for the proposition that the order of suspension merges in and automatically ceases to be operative upon the passing of the final order in criminal proceedings. The effect of such a merger would clearly revive the temporarily suspended rights of the employee to get his full remuneration for the period of his suspension. Above all, as we have already shown, any other reasoning would involve, itself in a insoluble legal illogicality and constitutional monstrosity of sanctioning the imposition of a punishment on the second respondent except in the due process of law. "It is procedure that spells much of the difference between rule by law and rule by whim or caprice" (see Douglas, J. in *Joint Anti Fascist Refugee Com. v. M.C. Garth*[8]*,* The heart at the matter is that we cannot turn the order of interim suspension into an order of punishment. The judgment of the Supreme Court in *Gindroiniya v. State of M. P.* which was not concerned with any question of constitutional validity of any law denying the employee the right to get his full remuneration for the period of his suspension after the order of suspension is merged in the order of his acquittal is thus not opposed to anything we are laying down here. Voltaire praised work as a saviour of humanity from the triple evils of boredom, poverty and vice. The liberty to work is guaranteed under our Constitution under Articles 14, 16 and 21 (see *the Manager, Govt. Branch Press v. D.B. Bellappa*[9]*,).* To quote Justice Marshall once again, "every citizen who applies for a Government job is entitled to it unless the Government can establish same reason for denying the

employment". The utility and the efficacy of such a basic

[8](1950) 95 L Ed 817, 858

[9](1979) 1 SCC 477

and fundamental right cannot be permitted to be whittled down or destroyed by any arbitrary or unjust laws, no matter made either by the multitude or the Monarch. An unbridled Governmental power to deny a job to a citizen or withhold a ration-card to the house-wife could easily put an end to our open society. As Shakespeare said :-

> "You take my house when you do take the prop. That both sustain my house; You take my life when you do take the means whereby I live".

("The Merchant of Venice")

13. We therefore think that *Gindroniya v. State of M. P.,* does not govern the present situation.

14. The above discussion may be summarised thus :- The creation of the master-and-servant relationship is initially the function of a contract. But the continuance of that contractual relationship together with the incidents there comes to be governed by law. Regulation 18 provides for the power to Pass interim suspension. But interim suspension is not a punishment. Regulation 20(3) which denies under certain circumstances the right to subsistence allowance is operative only during the pendency of the suspension order. The suspension order gets terminated with the order of acquittal. In the order of acquittal merges the order of suspension. From the reason of the fact that interim suspension cannot legally be a measure of punishment flows the right of the employee to full remuneration for the period of his suspension. This is part of the right to work which is protected by Articles 14, 16 and 21 of our Constitution. The Legislature is therefore not competent to make any law abridging this basic right.

15. Applying the above, we hold that the decision of the Labor Court in awarding full remuneration for the period of the second respondent's suspension is right and correct. We accordingly uphold the decision of the Labour Court in this case.

16. The decision of the Division Bench of this Court in the *Dt. Manager : APSRTC Nizamabad v. Labour Court*[10], upheld the right of an employee of the Corporation to be fully compensated for the period of his interim suspension which ended in his acquittal. There, the employee - Conductor of the Corporation was arrested on 10-9-1972, on a complaint of the Corporation that he was forging the tickets and cheating the Corporation and thus committing acts punishable under Sections 467, 472 475 and 420, of the Indian Penal Code. On that basis, the Conductor was kept under detention for more than forty eight hours. In these circumstances, the employee of the Corporation was deemed to have been placed under suspension under Regulation 18(2). That was a case of deemed suspension. The Conductor was subsequently prosecuted for those offences but was acquitted on 27-2-1974. Thereafter, the Conductor filed an application under Section 33-C(2) of the Industrial Disputes Act, claiming arrears of pay and allowances for the period of his suspension. This application of the Conductor has been allowed by the Labour Court. The Corporation filed a writ petition challenging the validity of that award of the Labour Court on the ground that the Labour Court had acted contrary to Regulation 20(3). The Division Bench considered the matter from two angles. The Division Bench on the

[10](1979) 2 An WR 234

construction of Regulation Clause (3) held that the right to subsistence allowance of an employee of the Corporation deemed to be suspended stood denied to him under Regulation 20 Clause 3(b) only in a case where the employee was deemed to be under suspension under circumstances which are not in any way connected with his duties as an employee of the Corporation. Inasmuch as the issuance of the tickets to the passengers is connected with the employee's duties, the Division Bench held that Regulation 20(3)(b) was not applicable and was out of the way of employee's claim. Accordingly, the Division Bench held that Regulation 20 obliged the Corporation to pay the subsistence allowance. The Division Bench, relied upon the aforesaid judgment of the Supreme Court in *V.P. Gindroiniya v. State of M. P.,* only to hold that the applicable part of Regulation 20 provided for the payment of subsistence allowance. The judgment no doubt did not deal with the broader question as to the constitutional validity of a law denying remuneration altogether to an acquitted employee for the period of his suspension. The Division Bench however presumed and held that on acquittal the employee would be entitled to get full remuneration for the period of his suspension. The Division Bench accordingly upheld the award of the Labour Court. We entirely approve both the reasoning and the conclusion of the Division Bench in this case. The entire decision of the Division Bench based as it is on the non-punitive legal character of the interim suspension is, in our view, clearly right.

17. In *Dt. Manager : APSRTC : Hanumakonda v. The Labour Court*[11]*,* an employee of the Corporation was suspended under Regulation 18(1)(b) on 26-2-1972 on the basis of a Criminal complaint. But the employee was ultimately acquitted in the criminal Court on 14-10-74. On the ground that he had been acquitted in the criminal Court, the employee in that case, filed an application under Section 33-C(2) of the Industrial Disputes Act claiming subsistence allowance for the period from 26-2-72, onwards. The Labour Court reasoning that the employee was ultimately acquitted, ordered the payment of the subsistence allowance. Against that order the Corporation filed Writ Petition No. 2097/76. A Division Bench of this Court had allowed the writ petition and quashed the order of the Labour Court on the ground that the order of the Labour Court in contrary to Regulation 20, clause 3(a). But the questions which we have considered in this judgment were not raised and therefore not considered in the above judgment of the Division Bench. It was neither asked nor answered whether a suspension gets terminated with the order of an acquittal. Nor was it considered whether the operation of Regulation 20 clause (3) would not be conterminous with the duration of the order of suspension. Above all, the constitutional issue relating to the validity of a law denying remuneration to a suspended employee who was ultimately acquitted was not dealt with. The judgment denied the relief to the employee "on the simple ground that there is no provision in the Regulations to pap subsistence allowance during the pendency of the criminal cage when an employee is acquitted." We have already recorded our findings in favour of the employee on all these questions. We cannot but hold that the conclusion of the Division Bench to be wrong. We accordingly overrule the judgment of the Division Bench in *Dt. Manager, APSRTC, Hanumakonda v. The Labour Court*[12]

18. In the result, we dismiss this writ petition but without casts. Advocate's fee Rs. 250/-.
Petition dismissed.

[11] W.P. No 2097/76 D/-27-12-1977

[12](Writ Petition No. 2097/76)