

(2013) 11 AP CK 0028

Andhra Pradesh High Court

Case No: Writ Petition No. 10533 of 2008

G. Mallaiah

APPELLANT

Vs

A.P.S.R.T.C. and Others

RESPONDENT

Date of Decision: Nov. 7, 2013**Citation:** (2014) 1 ALT 223**Hon'ble Judges:** Dama Seshadri Naidu, J**Bench:** Single Bench**Advocate:** Subhan, for the Appellant; Venugopal, S.C. for A.P.S.R.T.C., for the Respondent**Final Decision:** Allowed

Judgement

@JUDGMENTTAG-ORDER

Dama Seshadri Naidu, J.

The present Writ Petition is filed seeking to declare the action of the respondent Corporation as arbitrary and illegal in dismissing the petitioner from service, through Proceedings No. P2/248(1)/06, Sangareddy Depot, dated 29.04.2008, on the premise that he contested as sarpanch in the Gram Panchayat Elections held during the month of July/August, 2006, without tendering resignation, especially after continuing the petitioner in service after the elections for a period of 14 months. The facts in brief are that the petitioner is working as Mechanic in the respondent Corporation, having joined the service in 1980. In course of time, he contested in the Gram Panchayat elections held on 10.08.2006 staking a claim to the post of Sarpanch, but he has lost the contest. Since he did not tender his resignation, nor did he take any prior leave from the employer/Corporation, treating it as misconduct, the respondent Corporation charge sheeted the petitioner on 09.10.2006. Eventually, having not been satisfied with the explanation offered by the petitioner, the Respondent Corporation removed the petitioner from service by way of imposing major punishment through its Order dated 29.04.2008. Aggrieved thereby, the petitioner filed the present Writ Petition.

2. The Respondent Corporation filed its Counter contending that no public servant could be permitted to take part in any political process. Further, even otherwise, the petitioner has not sought any leave from the Corporation to contest the election for the post of Sarpanch of Chintakunta Village in Gram Panchayat Election held on 02.08.2006. The Respondent Corporation has taken aid of Regulation 23 of the A.P. State Road Transport Corporation Employees (Conduct) Regulations, 1963, ("Regulations, 1963" for short) and pleaded that no employee shall canvass or otherwise interfere or use influence in connection with, or take part in, an election to any legislature or local authority, or a trade union of which he is not a member or office bearer.

3. The respondent corporation has thus pleaded its justification that since there was a clear infraction of the Regulation 23(3) of the Regulations, 1963 on the part of the petitioner, and since it amounted to a major misconduct, the petitioner was rightly charge sheeted and was eventually removed from service, his explanation not having been found satisfactory.

4. The learned counsel appearing for the petitioner has submitted that in the first place he submitted an application to the Corporation authorities seeking permission to contest as Sarpanch, but as no orders were passed either way, he was constrained to contest the election due to the pressure in the village. The learned counsel for the petitioner has stressed the fact that the panchayat elections are at the grass-roots level of the democratic process, without any political affiliations. As such, it is not correct on the part of the respondent Corporation to contend that the petitioner has participated in any political activity. The learned counsel has further submitted that the petitioner did not have any information at his disposal that he should resign his job before filing the nomination for the elections. Not even did the election officers inform him, while scrutinising the nomination papers, in which he had informed about his occupation.

5. It is further contended that the Notification of the State Election Commission issued in the context of gram panchayat elections was rather misleading. The State Election Commission issued a Letter to the Executive Director of A.P.S.R.T.C. on 14.06.2006 stating that under the Provisions of A.P. Panchayat Act, the employees of Singareni Collieries Company and respondent Corporation, except those working in the capacity of Manager, are eligible to contest the elections. Accordingly, it is contended by the learned counsel for the petitioner that the petitioner has bona fide contested the election without any political affiliation or affinity.

6. The learned counsel for the petitioner has further contended that the petitioner was allowed by the Corporation to continue in service for 14 months after his contesting the elections, thus giving a scope to the petitioner to believe that whatever the supposed lapse occurred in participating the election process, that was waived by the respondent Corporation. After the lapse of considerable time, though the petitioner has genuinely misconstrued the circular issued by the State

Election Commission declaring that there was no bar to contest the elections for those employees, whose cadre was not found mentioned therein, the Corporation ought not to have initiated disciplinary proceedings against the petitioner, much less imposing the highest punishment of removal.

7. Eventually, the learned counsel has submitted that after the submission of explanation, no principles of natural justice were followed and the departmental enquiry was conducted ex parte, without ensuring service of notice to the petitioner, thus causing immense prejudice to him.

8. Per contra, the learned Standing Counsel for the respondent Corporation has submitted that mere ignorance of law on the part of the petitioner could not come to his rescue. He has also stated that the petitioner cannot take shelter under the alleged letter dated 14.06.2006 said to have been issued by the State Election Commission to the Executive Director of A.P.S.R.T.C. or any other authority, since the very State Election Commission has clarified that insofar as the disciplinary proceedings are concerned, if there is any violation of statutory provision or the regulation that governs its employees, the Corporation is at liberty to initiate and take appropriate action. In sum and substance, the learned Standing Counsel has submitted that participating in election process without resigning to the post as a pre-condition is in clear violation of Article 23(3) of the Regulations, 1963, and as such, it is a major misconduct. The punishment imposed against the petitioner is not disproportionate. The learned Standing Counsel has also contended that, apart from vague allegation that the petitioner was put to prejudice on account of the ex parte departmental enquiry, he has not stated in specific terms as to the nature of prejudice.

9. Heard learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the Corporation, apart from perusing the record.

10. On factual front there is not much dispute. The petitioner is a mechanic working in the respondent Corporation since 1980; he has contested elections, which are apolitical, having no party affiliations. There is every scope to interpret the Letter addressed to the Executive Director of A.P.S.R.T.C. by the State Election Commission that only a specified class of employees working in the Corporation was barred from contesting the elections, thus leaving it open to the rest of the employees to contest. In any event, the fact remains that the petitioner has lost the elections and soon thereafter re-joined the service. It is indisputable that the petitioner was allowed to work 14 continuous months after the elections.

11. As a matter of subsequent development, it is evident from the record that this Court through an interim direction dated 06.09.2008 allowed the petitioner to continue in service, and even the Vacate Petition filed by the Corporation was dismissed making the interim orders absolute.

12. It may be noticed that the petitioner continued to be in service for 14 months after the elections. Added to it, the notification of the State Election Commission is highly confusing, if not misleading, to say nothing more. In the light of the subsequent clarification issued by the State Election Commission, the conduct of the petitioner in contesting elections cannot be found fault with retroactively. There is also force in the submission of the learned counsel for the petitioner that after the submission of his explanation in February, 2007, he was allowed to continue in service for 14 months, and in April, 2008 orders of termination were passed. Now the petitioner has reached mid 50s, not having much service left.

13. Incidentally, during the course of making submissions, the learned counsel for the petitioner has brought to my notice that earlier this Court under similar circumstances allowed through its Common Order, dt. 7.10.2013 in WP Nos. 10531 and 21366 of 2008 filed by two other employees of the Corporation, who too faced similar charges for having taken part in the same elections for Gram Panchayat.

14. In view of these circumstances, I consider that the violation of the Regulation 23(3) of the Regulations, 1963, if any, deserves to be condoned and is accordingly condoned. Consequently, the Proceedings No. P2/248(1)/06, Sangareddy Depot, dated 29.04.2008, through which the petitioner was sought to be removed from service, are set aside. Accordingly, the Writ Petition is allowed. No order as to costs. Miscellaneous Petitions, if any, pending in these Writ Petitions shall stand closed.