
**B. Subbarayudu and Another Vs General Manager, Sri Satyanarayana
Spinning Mills Ltd. and Others**

Writ Petition No. 11768 of 2005

Court: Andhra Pradesh High Court

Date of Decision: Oct. 13, 2006

Citation: (2007) 2 ALD 319 : (2007) 1 ALT 309 : (2007) 113 FLR 264

Hon'ble Judges: P. Swaroop Reddy, J; D.S.R. Varma, J

Bench: Division Bench

Advocate: V. Srinivas, for Respondent No. 1, General and G.P. for Industries for Respondent Nos. 2 and 3, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

D.S.R. Varma, J.

Heard the learned counsel appearing for the Respondent No. 1, the learned Advocate General and the learned

Government Pleader for Industries & Commerce Department, appearing for the Respondent Nos. 2 and 3.

2. This writ petition is taken up on the basis of a representation, dated 6-5-2006, addressed to the Hon"ble the Chief Justice, High Court of

Andhra Pradesh, Hyderabad, by one B. Subbarayudu, s/o. Meeradasu and one V. Kanaka Raju, s/o. Butchaiah, Residents of Tanuku, West

Godavari District, who are workers of Sri Satyanarayana Spinning Mills Limited, Tanuku.

3. The grievance ventilated in the said representation is that the Management of the first respondent has issued a show cause notice to them on 7-

3-2005 as to why their names should not be removed from the service rolls of its Attendance Register, as they could not discharge their duties due

to their suffering from AIDS; that the same amounts to inhuman treatment being meted out to them and that further, the Management of the first

respondent has issued notice, dated 25-3-2005, to them stating that since the replies submitted by them to the earlier notice, dated 7-3-2005,

were not satisfactory, they should submit their resignation within three days or else their names would be removed from the rolls of the Attendance

Register of the Management.

4. Sri Vedula Srinivas, the learned counsel appearing for the first respondent, submits that the petitioners were sought to be terminated not on the

ground that they have been suffering from AIDS but only on account of their continued absence from duties on the ground of ill-health. He further

submits that, in fact, the petitioners have submitted certificates issued by the Doctors of ESI Hospital for grant of leave, which would reveal that the

petitioners have been suffering from HIV positive.

5. The alleged notice, dated 25-3-2005, issued by the first respondent, would reveal that the explanation offered by the petitioners to the earlier

notice, dated 7-3-2005, was not satisfactory. It was stated in the said notice that in the certificates submitted by the petitioners, which were issued

by the Doctors of ESI Hospital, it was categorically stated that the petitioners have been suffering from HIV positive and denial of this fact by the

petitioners is not proper. Further, it could be seen from the said notice that the said disease was incurable and, therefore, there is no possibility for

the petitioners to attend the duties and it is also not possible for the Management to continue them on the Muster Rolls of establishment. Eventually,

resignation was sought from the petitioners within three days from the date of said notice and in the event of failure, it was indicated that their

names would be removed from the Muster Rolls of first respondent.

6. The said notice, dated 25-3-2005, in fact, is the source of provocation to the petitioners in making the representation to this Court.

7. It is represented by the learned counsel appearing for the Management of the first respondent that out of the two petitioners, the second

petitioner by name V. Kanaka Raju, s/o. Butchaiah, has been attending the duties, of course, only for about three weeks a month and the first

petitioner by name B. Subbarayudu has not been attending the duties at all.

8. On the above said submissions, initially, this Court, by order, dated 21-8-2006, directed the petitioners to subject themselves to medical test at

the General Hospital, Kakinada, East Godavari District, within fifteen days from the date of intimation from the first respondent. The

Superintendent of General Hospital, Kakinada, also was informed about the said order of this Court. The petitioners were also served with notice,

as directed by this Court, through the first respondent. There is no dispute with regard to service of said notice on the petitioners and hence we

deem that the notice was validly and sufficiently served on the petitioners and the consequences of said notice have been within the knowledge of

the petitioners.

9. But, so far, there is no report whatsoever from the General Hospital, Kakinada. Therefore, we are forced to presume that the petitioners did not

subject themselves to medical test at General Hospital, Kakinada. This Court, in fact, was inclined to know the gravity of ailment of the petitioners

only in order to assess the extent of fitness of the petitioners to perform their duties.

10. It is to be further noted that if an employee is persistently irregular in attending the duties, necessary disciplinary action can be initiated against

him and basing on the gravity of the irregularity, including the continued unauthorized absence, service of the employee can be terminated, provided

that the procedure contemplated under the Industrial Disputes Act is followed.

11. But, in the present case, new dimension relating to the sociological issue is involved. Therefore, it is our endeavour to look into such other

aspects instead of strict application of the provisions of law.

12. It is common knowledge that the individuals who have been suffering from HIV positive shall be given confidence to lead their life devoid of

any feel of diffidence in the society and the society, as a whole, is at an obligation to see that the persons who have been suffering from HIV

positive shall not be attached with any social stigma on that score because they might have fallen prey to the said disease involuntarily, owing to the

innate human weaknesses.

13. If, in strict sense, that ailment though, prima facie, could be seen as per the certificates issued by the Doctors of ESI Hospital, for the

continuous absence, atleast one of the petitioners i.e., the first petitioner by name B. Subbarayudu may have to be disengaged from service. But,

this Court is testing the petitioners from the standpoint of social malady instead of strict application of law.

14. In the above circumstances, we only direct that the second petitioner by name B. Kanaka Raju, who has been attending the duties, be

continued in service of the first respondent and payment of salary be made to him subject to the service conditions.

15. However, insofar as the first petitioner by name B. Subbarayudu is concerned, we are of the view that since he neither subjected himself to the

medical examination as suggested/directed by this Court at General Hospital, Kakinada, nor is he attending the duties, the first respondent is at

liberty to proceed against him in accordance with law, for his continuous absence, but not on the ground that he has been suffering from HIV.

16. In other words, we are of the view that insofar as the first petitioner is concerned, he is neither assisting himself nor is in a position to assist this

Court to grant any kind of relief to him, in any manner.

17. With the above observations and directions, the writ petition is closed, at the stage of admission. However, there shall be no order as to costs.

18. However, it is made clear that the relief that has been granted by this Court, insofar as the second petitioner is concerned, shall not be

understood as a permanent feature. In other words, subject to the fitness and other exigencies, the Management of the first respondent shall be at

liberty to proceed against him in accordance with law.