

## B. Veera Reddy Vs A.P. State Warehousing Corporation and Others

**Court:** Andhra Pradesh High Court

**Date of Decision:** April 30, 2003

**Acts Referred:** Andhra Pradesh State Warehousing Corporation Employees Regulations, 1965 "Regulation 12(3)

**Citation:** (2003) 4 ALD 81

**Hon'ble Judges:** L. Narasimha Reddy, J

**Bench:** Single Bench

**Advocate:** P. Venugopal, for the Appellant; V. Meenakshi, for the Respondent

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.

The petitioner is employed as Technical Assistant, Grade-III in the A.P. State Warehousing Corporation, the 1st

respondent herein. His services were terminated through proceedings dated 15.6.2002. The reasons stated therein were that in spite of notice

having been published in local Daily dated 25.5.2002, requiring him to report duty on or before 28.5.2002, the petitioner did not turn up. The

impugned order was issued in exercise of power under Regulation 12 (3) of A.P, Warehousing Corporation Employees Regulations (for short "the

Regulations") and three months salary in lieu of three months notice was paid to the petitioner.

2. The petitioner initially challenged the order of termination by filing W.P. No. 12441 of 2002. The writ petition was disposed of through orders

dated 11.7.2002 directing the petitioner to avail the remedy of appeal, provided for under the Regulations. The petitioner had preferred an appeal

to the Board of Directors. Through orders dated 9.1.2003, the appellate authority had modified the order of termination to the one of appointment

as Technical Assistant, Grade-III afresh, in the lowest of the pay-scale. In this writ petition, the petitioner challenges the order of termination as

modified by the appellate authority.

3. Sri P. Venugopal, learned Counsel for the petitioner, submits that the termination of services of the petitioner under Regulation 12(3) was

impermissible. He asserts that the very provision was set aside by this Court in W.P. No. 2446 of 1978 following the judgment of the Supreme

Court in West Bengal State Electricity Board and Others Vs. Desh Bandhu Ghosh and Others, , and that the same was affirmed by a Division

Bench in W.A. No. 343 of 1979.

4. Smt. V. Meenakshi, learned Standing Counsel for the respondents, submits that though the Regulation 12(3) was quashed by this Court, the

Board of Directors, in their meeting, held on 19.5.1986 has resolved to retain the same; by providing an appeal against any order passed under

Regulation 12(3) and since the petitioner had availed the remedy of appeal, the impugned proceedings do not suffer any infirmity.

5. The respondents have published a notice in a newspaper, dated 25.5.2002 directing the petitioner herein to report the duty at Adilabad on

28.5.2002. In that notice, it was stated that in case the petitioner does not respond as directed, the same would entail initiation of disciplinary

action, including the action under Regulation 12(3).

6. On the ground that he did not turn up, the Corporation has terminated the services of the petitioner in exercise of its power under Regulation 12.

The relevant portion of the order reads as under:

The office has issued a Notice to Sri B, Veera Reddy, T.A. Grade-III in "Eenadu" Telugu Daily on 25-5-2002 directing him to report for duty at

Adilabad by 28-5-2002 for the reasons stated authorized leave and found to be absent without taking authorized leave and without furnishing his

leave address. It was also informed to him in the same Notice that failure to report will entail in taking disciplinary action against him including

action under Regulation 12(3) of APSWC Employees Regulations. He did not report for duty till today.

Now, in exercise of the powers conferred on me under Regulation 12 of APSWC Employees Regulations, I hereby order the termination of the

services of Sri B. Veera Reddy, T.A. Grade-III with effect from 15-6-2002. As stipulated in the regulation, it is hereby ordered to pay him 3

months pay in lieu of 3 months notice. As letters addressed to him are bouncing from his last known address, he is informed to collect the amount

from the Head Office. He is also, entitled to file an appeal under clause 3 of Regulation 12 against the orders terminating his services to the Board

of Directors.

7. It is not a case where respondents have initiated any disciplinary proceedings. Having required the petitioner to attend the office on a particular

day with a threat of disciplinary action, they have invoked their powers under Regulation 12.

8. Had it been a case of termination of services of the petitioner on the ground of any misconduct, the respondents were under obligation to

conduct domestic enquiry and to take further action, on the basis of the findings recorded in such enquiry. That procedure was not resorted to. The

termination of service of the petitioner was ordered, by invoking Regulation 12. Therefore, it needs to be seen as to whether it was permissible to

the respondents to resort such a course of action.

9. Regulation 12(3) enables the Corporation to terminate the service of a regular employee, by issuing three months notice or by paying salary of

three months, in lieu of such notice. An identical provision viz., Regulation 30(4) of the West Bengal Electricity Board Regulations was set aside by

the Supreme Court in West Bengal State Electricity Board case (supra). After extracting the relevant provision and after discussing the matter, the

Supreme Court held as under:

On the face of it, the regulation is totally arbitrary and confers on the Board a power, which is capable of vicious discrimination. It is a naked "hire

and fire" rule, the time for banishing which altogether from employer-employee relationship is fast approaching. Its only parallel is to be found in the

Henry VIII class so familiar to administrative lawyers. In Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc., ,

Rules 148 (3) and 149(3) of the Indian Railway Establishment Code were challenged on the ground that they were contrary to Article 31(2) of the

Constitution. The Challenge was upheld though no opinion was expressed on the question whether the rule offended Article 14 of the Constitution.

Since then Article 14 has been interpreted in several decisions of this Court and conferment and exercise of arbitrary power on and by the State or

its instrumentalities have been frowned upon and struck down by this Court as offending Article 14. In S.S. Muley v. J.R.D. Tata (1979) 2 SLR

438; (1980) Lab.IC 11, P.B. Sawant, J, of the Bombay High Court considered at great length Regulation 48(a) of the Air India Employee's

Service Regulations which conferred similar power on the, Corporation as Regulation 34 confers on the Board in the present case. The learned

Judge struck down Regulation 48(a) and we agree with his reasoning and conclusion. In Workmen of Hindustan Steel Ltd. and Another Vs.

Hindustan Steel Ltd. and Others, this Court had occasion, to hold that a Standing Order which conferred such arbitrary, uncanalised and drastic

power to enable the employer to dispense with an inquiry and to dismiss an employee, without assigning any reason, by merely stating that it was

expedient and against the interest of the security to continue to employ the workman was violative of the basic requirement of natural justice.

10. Regulation 12(3) of the Corporation fell for consideration before this Court in W.P. No. 2446 of 1978. The writ petition was allowed.

Regulation 12(3) was set aside, following the judgment of the Supreme Court referred to above. The respondents challenged the order in the writ

petition, by filing W.A. No. 343 of 1979. Writ Appeal was dismissed.

11. Once Regulation 12(3) was set aside, for all practical purposes, it stood deleted from the Statute Book. However, the Board of Directors of

the respondent-Corporation has undertaken a discussion about the matter at its meetings held on 14-8-1985 and 19-5-1986. It is rather

astonishing and surprising that the Board of Directors passed the following resolution on 19-5-1986.

The Board of Directors in their 95th Meeting held on 14th August, 1985, have considered the proposals for deletion of Regulation 12(iii) of

APSWC Employees Regulations, 1965, pertaining to termination of services in view of High Court's decision and have resolved the following.

After detailed consideration, it is resolved that the existing clause 3 of Regulation 12 should be retained. However, the affected employee can

prefer an appeal, within a period of 3 months from the date of receipt of orders, and the Managing Director, shall convene the meeting of the

Board of Directors within a period of one month from the date of receipt of appeal in the office. Suitable amendment should be made in the A.P.

State Warehousing Corporation Employees Regulations.

12. On the face of it, the step taken by the Board of Directors in passing this resolution was a blatant and clear-cut case of contempt of Court.

That, however, is not the subject-matter herein. Irrespective of the futile exercise undertaken by the Board in passing the said resolution,

Regulation 12(3), for all practical purposes, is a dead letter. The said provision was not at all available to be invoked by the respondents. The

impugned order of termination is based on the said provision and nothing else. Hence, it cannot be sustained.

13. In that view of the matter, the writ petition is allowed and the impugned order dated 15-6-2002, is set aside. This order, however does not

preclude the respondents from initiating the disciplinary proceedings against the petitioner, if they are so advised. No costs.