(2015) 03 AP CK 0013

Andhra Pradesh High Court

Case No: Writ Petition No. 2241 of 2015

I.G. Ramana Kumari		APPELLANT
	Vs	
Eastern Power Distribution Company of A.P. Limited. and Others		RESPONDENT

Date of Decision: March 6, 2015

Acts Referred:

- Constitution of India, 1950 - Article 20
- Penal Code, 1860 (IPC) - Section 34, 409, 420, 468

Hon'ble Judges: Nooty. Ramamohana Rao, J.

Bench: Single Bench

Advocate: Vedula Srinivas, for the Appellant; P. Anand Seshu and Krishna Rachakatla, Advocates for the Respondent

Final Decision: Disposed off

Judgement

@JUDGMENTTAG-ORDER

Nooty. Ramamohana Rao, J.
The petitioner who was serving the first respondent Corporation as a Junior Assistant mounted a challenge in this writ petition to the order passed on 05.01.2015 by the Superintendent Engineer (Operations), Visakhapatnam of the first respondent Corporation inflicting on her the punishment of dismissal from service.

2. Heard Sri Vedula Srinivas, learned counsel for the petitioner and Sri Krishna Rachakatla for the respondents.

3. Sri Vedula Srinivas, learned counsel for the petitioner would urge that the writ petitioner was initially recruited as a Junior Assistant by the erstwhile Andhra Pradesh State Electricity Board which was subsequently bifurcated into Andhra Pradesh Transmission Corporation and Andhra Pradesh Generation Corporation.

Further, after distribution companies have been established as part of electricity reforms, the first respondent company has been formed and the petitioner came to be allotted to the service of the first respondent corporation. It is urged that, on the ground that the petitioner has committed certain serious irregularities in the matter of properly accounting for, the funds of the first respondent corporation the petitioner was subjected to disciplinary proceedings which culminated in an order passed on 06.10.2010 imposing punishment of stoppage of two increments with cumulative effect, besides treating the period of suspension as Extraordinary Leave (EOL) which punishment was also confirmed by the Appellate Authority by rejecting the appeal preferred by the petitioner on 28.07.2010. However, the very same allegations against the petitioner and another person who was working as a UDC with the first respondent corporation were the subject matter of criminal case in C.C. No. 1687 of 2008 on the file of the Additional Judicial First Class Magistrate's Court at Narsipatnam. Of the three accused, the petitioner herein was shown as Accused No. 2 in the said criminal case.

4. The learned Additional Judicial First Class Magistrate, Narsipatnam by his judgment dated 31.07.2012 convicted the accused of the offences under Section 420and 468 I.P.C. and sentenced the accused to undergo simple imprisonment for a period of six months besides imposing a fine of Rs. 5,000/-. The writ petitioner has preferred Criminal Appeal No. 62 of 2012 and the learned IV Additional District and Sessions Judge, Visakhapatnam by his order dated 24.08.2012 suspended the sentence imposed on the petitioner and the criminal appeal is still pending.

5. However, by the impugned order dated 05.01.2015, the second respondent-Superintending Engineer has imposed the punishment of dismissal from service on account of the conviction handed down to the petitioner by the criminal court. It is this order which gave rise to this writ petition. Sri Vedula Srinivas, learned counsel for the petitioner would urge that the very same conduct of the writ petitioner is not faithfully accounting for the revenues of the corporation was viewed and considered as misconduct and consequently disciplinary proceedings were initiated for the alleged misconduct. The said disciplinary proceedings have ended in an order passed on 06.01.2010 imposing the punishment of withholding two increments with cumulative effect, besides treating the period of suspension as extraordinary leave. Therefore, the second respondent has already exhausted the power of disciplinary control for the same acts of misconduct allegedly committed by the writ petitioner and hence, he cannot penalize the writ petitioner by imposing the punishment of dismissal from service, a second time all over. It is urged by the learned counsel for the petitioner that for the same set of misconduct, the petitioner cannot be subjected to disciplinary action twice and by two separate proceedings two different punishments cannot be imposed. Any such action of imposing two different punishments by two different sets of proceedings amounts to double jeopardy, which is opposed to the basic principles of fair play and justice, as enshrined in Article 20 of our Constitution. The learned counsel for the petitioner

would also urge that the writ petitioner has not been provided with any opportunity whatsoever before imposing the punishment of dismissal from service. Learned counsel would further urge that when once the conduct rules treat conviction of an offence involving moral turpitude by the employees of the first respondent corporation as a major misconduct, then, it is incumbent that the procedure prescribed for imposing punishment of dismissal from service has got to be faithfully followed. In the instant case, no such procedure has been followed and not even an opportunity of hearing is provided to the writ petitioner before imposing the punishment of dismissal from service.

6. Sri Rachakatla Krishna, learned counsel for the respondents would submit that after full-fledged trial, whereat the petitioner had been provided every opportunity to defend, the competent criminal court has convicted her and sentenced her to undergo imprisonment for a period of six months besides imposing fine of Rs. 5,000/-. Since the writ petitioner has been convicted for the offences under Section 420 and 468 of the I.P.C., which carry moral turpitude, there is no way that the petitioner can be expected to be retained in service, for, a person who has been convicted of an offence involving moral turpitude there could not have been any other punishment than dismissal from service that could be imposed. He, therefore, urges that no exception need be drawn to the order passed by the Superintending Engineer.

7. Dealing with the objection that no notice or opportunity of hearing has been provided to the writ petitioner before imposing the punishment of dismissal from service, learned counsel for the respondents would urge that it is the conviction imposed by the criminal court, suffered by the petitioner which fetched the punishment and so long as the conviction remains, the petitioner has nothing to offer for consideration of the second respondent and hence, it is not required for the second respondent to put the petitioner on notice or provide her an opportunity of hearing.

8. Dealing with the contention advanced by Sri Vedula Srinivas, learned counsel for the petitioner, that the power of disciplinary power is exhausted, it would be appropriate to notice the contents of the charge memo dated 28.06.2007 and the one bearing No. 775/2008 dated 15.09.2008 by which disciplinary proceedings have been formulated by the second respondent against the petitioner. Two specific charges have been framed against the petitioner. It is alleged in Charge No. 1 that the petitioner has transferred the closing balances of certain disconnected services and bill stopped services to other bill stopped service initially. It was further alleged against the petitioner that she has processed clearance certificates upon collecting meager amounts without prior approval or permission from the higher officers. Thus, the serious irregularities committed by the petitioner reflected her failure to maintain integrity and devotion to duty, exhibiting misconduct enumerated in Regulation 4(XXX), (XXVI), (XLI) of APSEB Conduct Regulations as adopted by the first

respondent Corporation. In Charge 2, it was also alleged against the petitioner that the petitioner has not collected the actual amounts due to the first respondent company intentionally. As a result, her conduct has resulted in the loss to the company. It is the specific case in the charge memo, that the petitioner has raised debits in a sum of Rs. 99,850/- in non-operative accounts of consumers when the billing of the service was stopped. It was also the case of the first respondent corporation that credits for Rs. 66,322/- were given to certain non-operative accounts of consumers. It was alleged that dues relating to certain local bodies were written off by the petitioner. This apart, a sum of Rs. 2,69,436/- was withdrawn by raising fictitious demands. Thus, the charge-sheet specifically adverted to the misconduct exhibited by the petitioner while performing duties in the service of the Corporation.

9. In juxtaposition thereto, the charge laid in C.C. No. 1687 of 2008 against the petitioner herein who was arrayed as A-2 was that she made forged entries in the rectification register, while issuing clearance certificates. It was also the case that A-3, the husband of the petitioner herein abetted A-2 and A-1, the UDC of the Corporation to misappropriate a sum of Rs. 5,16,525/- of the Corporation. On behalf of the prosecution PWs 1 to 12 were examined and Exs. P-1 to P-13 were marked, while portions of 161 Cr.P.C. statements of PWs 3 and 4 were marked as Exs. D-1 and D-2. After considering the entire evidence and placing reliance upon the evidence of PWs 1 and 3 and P.W. 12, the Trial Court had come to the conclusion that the prosecution has proved the guilt of the accused for the offences under Section 420 and 468 read with 34 I.P.C. against A-1 and A-2 and also for the offence under Section 409 I.P.C. against A-1 and A-2 beyond all reasonable doubt. P.W. 3 has spoken about the factum of verification of the registers and records which revealed that fraudulent entries with regard to 434 service connections running to an amount of Rs. 1,70,000/- and odd has come to be detected. The Trial Court convicted the writ petitioner for the offence of Section 420 I.P.C. and sentenced her to undergo six months imprisonment and imposed a fine of Rs. 5,000/- and similarly for the offence under Section 468 I.P.C. imprisonment for six months and fine of Rs. 5,000/- was imposed. A-1 and A-2 were sentenced to undergo simple imprisonment for six months for the offence punishable under Section 409 I.P.C. and also to pay fine of Rs. 2,500/- each. All the sentences were ordered to run concurrently. It is no doubt true that entertaining criminal appeal No. 62/2012, the learned special Judge for ACB cases-cum-III Additional District Judge, Visakhapatnam and Full Additional Charge IV Additional District and Sessions Judge by his order dated 24.08.2012 suspended the sentences of imprisonment till disposal of the appeal and the writ petitioner has paid the fine amount of Rs. 5,000/- already.

10. From the above, it becomes clear that the disciplinary proceedings have been initiated against the petitioner for the irregularities committed by her and for her failure to maintain integrity and devotion to duty, apart from causing loss of revenue to the first respondent corporation. It may be noted that the said conduct

may have also amounted to dishonesty, cheating and forgery which are recognized as offences under the Indian Penal code. It is for this reason that the writ petitioner was also simultaneously subjected to prosecution before the competent criminal court. I am therefore, of the opinion that the contention canvassed by Sri Vedula Srinivas that the petitioner is sought to be penalized for the same set of misconduct twice all over is without any merit. It is the conduct of the writ petitioner which has attracted proceedings of two divergent nature, one visiting civil consequences and the other penal consequences. Unless a particular human conduct is recognized by law as "offence", no person can be subjected to prosecution lawfully. A particular conduct, if it attracts both civil consequences and penal consequences, there is no bar to proceed simultaneously or one after the other.

11. It will be appropriate to notice that the Andhra Pradesh Transmission Corporation Limited made revised conduct regulations and published the same through BPMs No. 647 Management Service dated 10.07.1978. These revised conduct regulations have been adopted by the first respondent corporation and applied them to the employees. There is no dispute raised on this account with regard to the applicability of these revised conduct regulations. Regulation (4) of these conduct regulations listed out various acts/deeds which are liable to be treated as misconduct on the part of the employees of the enumerated list,

Item (xxxvii) of the enumeration thereof reads as under:

"Conviction in any Court of Law for any criminal offence involving moral turpitude"

12. It is not in dispute, therefore, that conviction of a criminal offence involving moral turpitude is treated as a misconduct by the Corporation. It will also be appropriate to notice that Item (xxx) of this enumeration reads as under:

"to neglect work"

Item (xxvi) reads as under:

"to commit theft, fraud or act dishonestly in regard to the Transcos business or property"

Item (xLi) of this enumeration reads as under:

"Breach of rules and regulations of the Transco"

It will be significant to note that the charge-sheet dated 15.09.2008 proceeded to deal with the petitioner with regard to the misconduct enumerated at Regulation 4, Serial No. xxvi, xxx and xLi of Regulation 4 of the Conduct Regulations. Whereas, the petitioner is now sought to be proceeded against for the misconduct enumerated at Serial No. xxxvii of Regulation 4. A careful analysis of the conduct regulation No. 4 makes it very clear that the conviction of an offence involving moral turpitude without anything more on the part of an employee of the corporation itself is considered as a misconduct by the Corporation. It is not difficult to realize why

conviction of an offence involving moral turpitude is treated as a different component and separately enumerated misconduct by the corporation. All employees of the corporation are required to maintain good and decent conduct even when they are not physically performing duties at that hour or even when they are granted leave of absence from duty. Therefore, the employees of the respondent corporation are required to maintain an absolute integrity and devotion to duty while they perform duties and when they are off duty they are required maintain decent conduct and to stay clear of committing any offence involving moral turpitude. As is too well known, all offences may not carry moral turpitude. There can be host of offences, described as such not only in the Indian Penal Code, but also by various other enactments such as Motor Vehicles Act, Prevention of Cruelty to Animals Act and also various local enactments concerning local bodies such as gram panchayat or municipalities, recognizing therein certain conduct as an offence. But, such offences may not carry with them the moral turpitude. Not all offences described under the Indian Penal Code also carry moral turpitude. In this view of the matter, since the offences for which the petitioner herein has been sentenced to undergo imprisonment are involving moral turpitude, the petitioner has rendered herself liable to be proceeded independently for the misconduct enumerated under Regulation (4)(xxxvii) of the Conduct Regulations. In this view of the matter, I have no hesitation to reject the contention of Sri Vedula Srinivas that the respondents have exhausted the power of disciplinary control over the petitioner, since she was already penalized once before by imposing the punishment of stoppage of increments with cumulative effect. The petitioner is sought to be proceeded now for an altogether different misconduct than the one which fetched her the punishment of stoppage of two annual grade increments with cumulative effect. The present one arose out of conviction suffered by her involving offences carrying moral turpitude.

13. The principle enunciated under Article 20 of our Constitution is a very salutary one. No person shall be penalized twice for the same offence. But, if a person has committed various acts of misconduct either jointly or severally and each of them constitute a separate offence or misconduct by itself, such a person renders liable to be proceeded against for each such count and hence, the contention canvassed by Sri Vedula Srinivas in that respect lacks any merit.

14. However, Sri Vedula Srinivas has urged that no notice or opportunity of hearing has been accorded by the Superintending Engineer (Operations), the second respondent herein before he has imposed the punishment of dismissal from service through the impugned order dated 05.01.2015. It is, therefore, urged that principles of natural justice have been violated in the process by the second respondent.

15. Sri Rachakatla Krishna could not neutralize this plea of the petitioner. Though the second respondent has entered caveat by filing a detailed affidavit, he has not adverted as to whether any notice or opportunity of hearing has been provided to

the writ petitioner before he passed the impugned order. Further, the impugned order makes a reference to four earlier proceedings dated 15.02.2006, 26.07.2006, 15.09.2008 and 30.12.2013. From the order of punishment imposed on the petitioner dated 15.09.2008, I could gather that by proceedings dated 15.02.2006, the first of the references in the impugned order, the General Manager (Internal Audit) of the Corporation has been appointed as an Enquiry Officer to enquire into the allegations leveled against the writ petitioner. Charges have been framed against the petitioner through proceedings dated 28.06.2007 and ultimately by proceedings dated 15.09.2008 a show cause notice was issued proposing to reduce the pay of the petitioner to the minimum of the time scale besides treating the period of suspension as Extraordinary Leave limiting it to the subsisting allowance already received by her. There is no reference in the impugned order to any prior notice issued. It is therefore clear that the second respondent has not provided any notice or opportunity of hearing to the writ petitioner before he imposed the punishment of dismissal from service.

16. When once conviction suffered by an employee of an offence involving moral turpitude is treated as a misconduct by the Corporation, which will fetch the punishment of dismissal of service from the Corporation, it is incumbent upon the competent authority to provide an opportunity of hearing by issuing a notice to the individual concerned. That would be in accord with the fundamental principles of natural justice which required that no man should be condemned unheard. It is not for the disciplinary authority to assume that the delinquent has no manner of any defense to offer for the proposed action. As is often times recalled, even God has not condemned Adam for having eaten the forbidden fruit without providing him an opportunity to explain his conduct. Therefore, it is a fundamental requirement of every valid exercise which is likely to impact any other person with grave consequences to provide him before hand an opportunity of hearing. The failure to afford an opportunity of hearing to the petitioner herein before inflicting on her the punishment of dismissal from service, therefore, cannot but be described as the one which is passed in derogation of the principles of natural justice.

17. In this context, it would be appropriate to deal with another facet of the argument of Sri Vedula Srinivas that the dismissal from service being a major punishment, provided for under Regulation (5)(viii) of A.P. Transco Employees Discipline and Appeal Regulations, which are adopted by the first respondent Corporation, which also incidentally enumerate conviction in a Court of Law for any criminal offence involving moral turpitude as a misconduct, it is incumbent for the Corporation to follow the procedure prescribed under those regulations before imposing the punishment of dismissal from service. If, for a misconduct committed by an employee of the Corporation, if the punishment of dismissal from service is likely to be imposed, then, the Corporation cannot but follow the procedure prescribed under the aforementioned regulations. But however, if an employee of the Corporation has already been proceeded against by a competent criminal court

which has convicted him of an offence involving moral turpitude duly providing every opportunity for establishing his defense, what is being viewed subsequently by the Corporation is only the conduct of the employee concerned which fetched him the conviction. The conduct which fell foul of law having already been established in a competent Criminal Court of law, after a full-fledged trial in her presence, the question of requiring it to establish the same conduct all over would not simply arise. Therefore, for purposes of reckoning or taking into account the conduct of the employee of the Corporation which led to the conviction of an offence involving moral turpitude, the Corporation was not required to follow the procedure prescribed under the regulations all over again. Any such attempt or requirement would tend to dilute the effect of conviction imposed by a competent criminal Court. Further, any such conviction can only be modified or altered either by an Appellate or Revisional Court but not by another institution. Therefore, I have no hesitation to reject the contention of Sri Vedula Srinivas that since the discipline and control regulations also enumerate the conviction in any Court of Law for any criminal offence involving moral turpitude as a misconduct, the Corporation is required to conduct an elaborate and detailed enquiry all over again for establishing the very same foul conduct on the part of the employee. Hence, the impugned order is not vitiated on that score.

18. However, since I have come to the conclusion that the impugned order dated 05.01.2015 is vitiated for sheer failure to comply with the principles of natural justice, I consider it appropriate to direct the respondents to treat the order dated 05.01.2015 as purely provisional in nature and content and provide the writ petitioner thirty (30) days time from today for drawing an appropriate representation bringing out as to why the punishment of dismissal from service cannot still be imposed on her. It is for the second respondent, thereafter to take the same into account and pass appropriate order either confirming the punishment or withdrawing the same. Till such time, further order is passed by the second respondent, the order dated 05.01.2015 shall be treated as not visiting the petitioner with any evil consequences which is otherwise intended. In other words, the writ petitioner be continued to be treated as a member of the service of the first respondent Corporation and is entitled to all benefits that normally flow there from.

19. With this, the writ petition stands disposed of.

20. Consequently, miscellaneous applications pending if any shall stand closed. No costs.