HIGH COURT OF ANDHRA PRADESH AT AMARAVATHI

WRIT PETITION No.1652 OF 2022

PROCEEDING SHEET

Sl. No.	DATE	ORDER	OFFICE NOTE
01.	24.01.2022	**AHSANUDDIN AMANULLAH,J** **and** **B. S. BHANUMATHI,J** ***(Per Hon'ble Mr. Justice Ahsanuddin Amanullah)*** Heard Mr. Ravi Teja Padiri, learned counsel for the Petitioner and Mr. Subrahmanyam Sriram, learned Advocate General along with Mr. N. Aswartha Narayana, learned Government Pleader, Services-I, for the Respondents No.1 to 3. 2. The petitioner has moved the Court for the following relief: *"It is therefore prayed that this Hon'ble Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the G.O.Ms. No.1 of Government of Andhra Pradesh dated 17.01.2022, published in Notifications by Government vide No.51, Amaravati, Monday, 17 January, 2022 as illegal, arbitrary and against the principles of natural justice being contrary to the provisions of the Andhra Pradesh Re-Organisation Act, 2014 and Constitution of India and consequently direct the respondents to notify fresh revised scales of Pay, 2022 by taking into consideration of our representation and by providing salary protection by continuing the payment of existing emoluments such as HRA and etc and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."*	

		3. The matter was heard for some time and due to paucity of time it was directed to be taken up again after the lunch recess. Further, in view of certain developments brought to our notice by the learned Advocate General, relating to grievance towards pay-scales, under challenge in the instant proceedings, the employees' union had also sought, and was granted, an appointment with the Chief Secretary, Government of Andhra Pradesh at 3pm today, for serving the agitation schedule including notice of strike, the Court had requested the employees' representatives concerned to join the proceedings virtually. 4. The learned Advocate General submitted that when this Court had already been called upon, by way of this writ petition, albeit by a government employee in his individual capacity, as the *lis* was before this Court, it was not proper for the employees to give a call for, or proceed on strike, which could bring the State's administrative machinery to a grinding halt. Trite it is that Article 19(1)(a) of the Constitution of India guarantees to all citizens the right to freedom of speech and expression. Equally well-settled it is that such right is not absolute. 5. In ***T K Rangarajan v Government of Tamil Nadu,* (2003) 6 SCC 581**, cited by the learned Advocate General, the Hon'ble Supreme Court held thus: '*11. Now coming to the question of right to strike — whether fundamental, statutory or equitable/moral right — in our view, no such right exists with the government employees.*	

		(A) There is no fundamental right to go on strike *12. Law on this subject is well settled and it has been repeatedly held by this Court that the employees have no fundamental right to resort to strike. In Kameshwar Prasad v. State of Bihar [AIR 1962 SC 1166 : 1962 Supp (3) SCR 369] this Court (Constitution Bench) held that the rule insofar as it prohibited strikes was valid since there is no fundamental right to resort to strike.* *13. In Radhey Shyam Sharma v. Post Master General [AIR 1965 SC 311 : (1964) 7 SCR 403] the employees of Post and Telegraph Department of the Government went on strike from the midnight of 11-7-1960 throughout India and the petitioner was on duty on that day. As he went on strike, in the departmental enquiry, penalty was imposed upon him. That was challenged before this Court. In that context, it was contended that Sections 3, 4 and 5 of the Essential Services Maintenance Ordinance 1 of 1960 were violative of fundamental rights guaranteed by clauses (a) and (b) of Article 19(1) of the Constitution. The Court (Constitution Bench) considered the Ordinance and held that Sections 3, 4 and 5 of the said Ordinance did not violate the fundamental rights enshrined in Articles 19(1)(a) and (b) of the Constitution. The Court further held that a perusal of Article 19(1)(a) shows that there is no fundamental right to strike and all that the Ordinance provided was with respect to any illegal strike. For this purpose, the Court relied upon the earlier decision in All India Bank Employees' Assn. v. National Industrial Tribunal [AIR 1962 SC 171 : (1962) 3 SCR 269] wherein the Court (Constitution Bench) specifically held that even a very liberal interpretation of sub-clause (c) of clause (1) of Article 19 cannot lead to the conclusion that trade unions have a guaranteed right to an effective collective bargaining or to strike either as part of collective bargaining or otherwise.*	

		14. In Ex-Capt. Harish Uppal v. Union of India [(2003) 2 SCC 45] the Court (Constitution Bench) held that lawyers have no right to go on strike or give a call for boycott and they cannot even go on a token strike. The Court has specifically observed that for just or unjust cause, strike cannot be justified in the present-day situation. Take strike in any field, it can be easily realised that the weapon does more harm than any justice. Sufferer is the society — the public at large. *15. In Communist Party of India (M) v. Bharat Kumar [(1998) 1 SCC 201] a three-Judge Bench of this Court approved the Full Bench decision of the Kerala High Court [Bharat Kumar K. Palicha v. State of Kerala, AIR 1997 Ker 291 : (1997) 2 KLT 287 : (1997) 2 KLJ 1 (FB) [full judgment reproduced in SCC at (1998) 1 SCC p. 202]] by holding thus: (SCC p. 202, para 3)* *"There cannot be any doubt that the fundamental rights of the people as a whole cannot be subservient to the claim of fundamental right of an individual or only a section of the people. It is on the basis of this distinction that the High Court has rightly concluded that there cannot be any right to call or enforce a 'bandh' which interferes with the exercise of the fundamental freedoms of other citizens, in addition to causing national loss in many ways. We may also add that the reasoning given by the High Court, particularly those in paragraphs 12, 13 and 17 for the ultimate conclusion and directions in paragraph 18 is correct with which we are in agreement."* *16. The relevant paragraph 17 of the Kerala High Court judgment reads as under [Id. in SCC at p. 207] :* *"17. No political party or organisation can claim that it is entitled to paralyse the industry and commerce in the entire State or nation and is entitled to prevent the citizens not in sympathy with its viewpoint, from exercising their fundamental rights or from performing their duties for their own benefit or for the benefit of the State or the nation. Such a claim would be unreasonable and could not be accepted as a*	

		legitimate exercise of a fundamental right by a political party or those comprising it." *18. Further, there is prohibition to go on strike under the Tamil Nadu Government Servants Conduct Rules, 1973 (hereinafter referred to as "the Conduct Rules"). Rule 22 provides that "no government servant shall engage himself in strike or in incitements thereto or in similar activities". Explanation to the said provision explains the term "similar activities". It states that "for the purpose of this rule the expression 'similar activities' shall be deemed to include the absence from work or neglect of duties without permission and with the object of compelling something to be done by his superior officers or the Government or any demonstrative fast usually called 'hunger strike' for similar purposes". Rule 22-A provides that* *"no government servant shall conduct any procession or hold or address any meeting in any part of any open ground adjoining any government office or inside any office premises — (a) during office hours on any working day; and (b) outside office hours or on holidays, save with the prior permission of the head of the department or head of office, as the case may be".* *(B) There is no moral or equitable justification to go on strike* *19. Apart from statutory rights, government employees cannot claim that they can take the society at ransom by going on strike. Even if there is injustice to some extent, as presumed by such employees, in a democratic welfare State, they have to resort to the machinery provided under different statutory provisions for redressal of their grievances. Strike as a weapon is mostly misused which results in chaos and total maladministration. Strike affects the society as a whole and particularly when two lakh employees go on strike en masse, the entire administration comes to a grinding halt. In the case of strike by a teacher, the entire educational system suffers; many students are prevented from appearing in their exams which*	

		ultimately affects their whole career. In case of strike by doctors, innocent patients suffer; in case of strike by employees of transport services, entire movement of the society comes to a standstill: business is adversely affected and number of persons find it difficult to attend to their work, to move from one place to another or one city to another. On occasions, public properties are destroyed or damaged and finally this creates bitterness among the public against those who are on strike. *20. Further, Mr K.K. Venugopal, learned Senior Counsel appearing for the State of Tamil Nadu also submitted that there are about 12 lakh government employees in the State. Out of the total income from direct tax, approximately 90% of the amount is spent on the salary of the employees. Therefore, he rightly submits that in a society where there is large scale unemployment and number of qualified persons are eagerly waiting for employment in government departments or in public sector undertakings, strikes cannot be justified on any equitable ground.* *21. We agree with the said submission. In the prevailing situation, apart from being conscious of rights, we have to be fully aware of our duties, responsibilities and effective methods for discharging the same. For redressing their grievances, instead of going on strike, if employees do some more work honestly, diligently and efficiently, such gesture would not only be appreciated by the authority but also by people at large. The reason being, in a democracy even though they are government employees, they are part and parcel of the governing body and owe duty to the society.*' 6. However, in regard to protests, ***Ramlila Maidan Incident, In Re*, (2012) 5 SCC 1**, it was noted, *inter alia*, that '*As difficult as it is to anticipate the right to any freedom or liberty without any reasonable restriction, equally difficult it is to imagine the existence of a right not coupled with a duty.*	

		The duty may be a direct or an indirect consequence of a fair assertion of the right. Part III of the Constitution, although confers rights, duties, regulations and restrictions are inherent thereunder. It can be stated with certainty that the freedom of speech is the bulwark of democratic Government. This freedom is essential for the appropriate functioning of the democratic process. The freedom of speech and expression is regarded as the first condition of liberty in the hierarchy of liberties granted under our constitutional mandate.' 7. In ***Mazdoor Kisan Shakti Sangathan v Union of India*, (2018) 17 SCC 324**, it was exposited as below: '*48. We may state at the outset that none of the parties have joined issue insofar as law on the subject is concerned. Undoubtedly, holding peaceful demonstrations by the citizenry in order to air its grievances and to ensure that these grievances are heard in the relevant quarters, is its fundamental right. This right is specifically enshrined under Articles 19(1)(a) and 19(1)(b) of the Constitution of India. Article 19(1)(a) confers a very valuable right on the citizens, namely, right of free speech. Likewise, Article 19(1)(b) gives the right to assemble peacefully and without arms. Together, both these rights ensure that the people of this country have the right to assemble peacefully and protest against any of the actions or the decisions taken by the Government or other governmental authorities which are not to the liking. Legitimate dissent is a distinguishable feature of any democracy. Question is not as to whether the issue raised by the protestors is right or wrong or it is justified or unjustified. The fundamental aspect is the right which is conferred upon the affected people in a democracy to voice their grievances. Dissenters may be in minority. They*	

		have a right to express their views. A particular cause which, in the first instance, may appear to be insignificant or irrelevant may gain momentum and acceptability when it is duly voiced and debated. That is the reason that this Court has always protected the valuable right of peaceful and orderly demonstrations and protests. *xxx* *54. The right to protest is, thus, recognised as a fundamental right under the Constitution. This right is crucial in a democracy which rests on participation of an informed citizenry in governance. This right is also crucial since it strengthens representative democracy by enabling direct participation in public affairs where individuals and groups are able to express dissent and grievances, expose the flaws in governance and demand accountability from the State authorities as well as powerful entities. This right is crucial in a vibrant democracy like India but more so in the Indian context to aid in the assertion of the rights of the marginalised and poorly represented minorities.*' 8. Pertinently, in ***Amit Sahni v Commissioner of Police*, 2020 SCC OnLine SC 853**, the Hon'ble Supreme Court observed: '*…We have put to her that law has been enacted by the Parliament and the law is facing constitutional challenge before this Court but that by itself will not take away the right to protest of the persons who feel aggrieved by the legislation. …*' 9. The same has also been noted in the eventual judgement of the Hon'ble Supreme Court *viz.* ***Amit Sahni v Commissioner of Police*, (2020) 10 SCC 439**. 10. Thus, approaching a constitutional court for redressal of grievances *ipso facto* would not disentitle a citizen from protesting	

		in relation to the same subject-matter. We say so for the reason that when the Court would be looking at the dispute, it would examine the matter only from a legal lens, based upon settled parameters of adjudication; whereas, the purpose of protest is to draw attention of the government to an issue. Of course, the government is at liberty to examine factors, which, in the usual course, the Court could not look at, given the scope of permissible judicial review. We also indicate that while ***Rangarajan*** (*supra*) pertained to protest/strike *vis-à-vis* government employees, the other cases mentioned hereinabove relate to protests by citizens. 11. In the afore-referred matrix, in our opinion, if any rule akin to Rule 22 of the Tamil Nadu Government Servants Conduct Rules, 1973, as referred to in ***Rangarajan*** (*supra*) is applicable to the employees of the Government of Andhra Pradesh, the situation would we different. However, we cannot be at one with the general proposition that approaching a Court would prohibit the person in question from protesting in a legally permissible manner, subject to the caveat being the extant rules and regulations guiding the person concerned, inclusive of his status, if so, as a government employee. 12. The learned Advocate General submitted that, in fact, such a rule did exist, referring to Rule 4 of the Andhra Pradesh Civil Services (Conduct) Rules, 1964, which reads as follows: *'4. No Government employee shall participate in any strike or similar activities or incitement thereto.*	

Explanation:- The expression "Similar activities" shall be deemed to include-
(i) absence from duty or work without permission.
(ii) neglect of duty with the object of compelling any superior officer or Government to take or omit to take any official action;
(iii) any demonstrative fast, like Hunger Strike with the object mentioned in item (ii); or
(iv) concerted or organized refusal on the part of Government employees to receive their pay.'

13. Be that as it may, with a view to engage in a dialogic conversation with all concerned stake-holders, to see if a mutually acceptable way ahead could be found, we had requested, as recorded hereinabove, the government employees' representatives to join the hearing *via* virtual mode at 2.15pm.

14. However, after the Court had risen for lunch recess, there was a doubt in our mind with regard to the matter having been placed before this Bench, in the background of learned counsel for the petitioner on the one hand taking a categorical stand that he was espousing the cause of only one person *i.e.*, the petitioner, whereas, on the other hand the relief sought being in general terms against the pay-scales notified by the Government which, if ultimately interfered with by this Court, would translate into all the government employees being affected and thus the petition, for all practical purposes, would become a class action litigation, or in Indian jurisprudential terms, be akin possibly to a Public Interest Litigation. Either way, in terms of the present roster notified under orders of Hon'ble the Chief Justice, the same would not come under the roster of

		this Bench. 15. Though the Court is informed by the State that the request for joining the proceedings was conveyed to the concerned employees/employees' representatives, but it appears that on account of short notice, they have been unable to join this virtual proceeding. 16. The Registry has informed us that due to a misconception as there was a reference to the Andhra Pradesh Reorganisation Act, 2014 (hereinafter referred to as the 'Act') in this writ petition, as disputes relating to the same were part of the subject-matters allocated to this Bench, the matter has been listed before us. However, the Registry has further confirmed that in view of there being no dispute(s) under the Act, the matter was erroneously posted before this Bench. 17. The discussions made hereinabove are for the reason that detailed arguments were advanced by both the sides in the pre-lunch session which, in our considered opinion, were required to be dealt with. However, we would hasten to clarify that the same are only in the nature of *obiter*, in view of the order we propose to pass. 18. Accordingly, let the instant petition be listed before the appropriate Bench, after obtaining permission of Hon'ble the Chief Justice. The Registry will take follow-up action forthwith. 19. We grant liberty to the parties to mention the matter before Hon'ble the Chief	

		Justice/concerned Bench, as nominated by Hon'ble the Chief Justice, for out-of-turn listing and priority hearing, given the urgency claimed. **(AHSANUDDIN AMANULLAH, J)** **(B. S. BHANUMATHI, J)** Dsh	