
(2009) 02 RAJ CK 0094
In the Rajasthan High Court

Ashique Ali

APPELLANT

Vs

R.S.R.T.C. and Another

RESPONDENT

Date of Decision : 24-02-2009

Acts Referred:

Constitution of India, 1950 — Article 136, 14
Penal Code, 1860 (IPC) — Section 279, 333, 334

Citation : (2009) 2 RLW 1162 : (2009) 1 WLN 386

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Govind Mathur, J.—By an order dated 28.10.1983 the Divisional Mechanical Engineer, Rajasthan State Road Transport Corporation, Bikaner, terminated the petitioner from service who was working as a Driver on probation. The challenge to order aforesaid is based on the ground that the petitioner was terminated from service as a consequent to disciplinary action and, therefore, an inquiry as prescribed under the Rajasthan State Road Transport Workers & Workshop Employees Standing Orders, 1965 (hereinafter referred to as "the Standing Orders of 1965") should have been conducted by the respondents.

2. On the other hand, an effort is made to defend the order impugned dated 28.10.1983 on the Count that discontinuation of the petitioner from service was not stigmatic but as per the provisions of Order 13(ii) of the Standing Orders of 1965, thus, there was no need to hold any inquiry. A preliminary objection is also raised on behalf of the respondents no reject the petition for writ being suffered with delay and latches.

3. The facts necessary to be noticed for adjudication of the issues involved are as follows:

The petitioner was employed with the respondent corporation as Driver under and order dated 18.4.1983 as a consequent to regular selection. The

appointment so made was on probation for a period of two years. While on way to Sriganganagar from Bikaner on 26.5.1983, the bus driven by the petitioner met with an accident, consequent thereto a case was lodged against him for the offences punishable under Sections 279, 333 and 334 IPC. On 6.8.1983 a notice to show cause was served upon the petitioner to explain as to why he be not discontinued from service as due to his rash and negligent driving accident occurred on 26.5.1983, that resulted into death of a person and also that the accident occurred caused some damages to the bus. The petitioner, by way of submitting an explanation denied the charge regarding rash and negligent driving and stated that as a matter of fact the jeep that collided with the bus was coming from wrong side and the driver was under intoxication. As per the petitioner he was driving the bus at a moderate speed, he also stopped the bus on looking rash with incoming jeep and after accident he at his own took the injured persons in the corporation's bus to the hospital. The Divisional Mechanical Engineer, Bikaner under the order impugned dated 28.10.1983, terminated the petitioner from service. The order dated 28.10.1983 reads as follows:

Jh vkf"kd vyh iq= Jh tekynhu pkyd guqekux< vkxkj dks ge dk;kZy; ds i= la[k;k 1798 fnukad 6-8-83 }kjk dkj.k crkvks uksfVI tkjh fd;k Fkk A

pkyd }kjk izLrqr dkj.k crkvks uksfVI dk tckc o vU; IEcfU/kr vfHkys[kks dk esjs } kjk Hkyh Hkkafr voyksdu fd;k x;k A pkyd fd O;fDrxr lquokbZ Hkh dh xbZ A pkyd vkjksfir vfHk;ksxh dk nks"kh gS A

vr% Jh vkf"kd vyh iq= Jh tekynhu pkyd guqekux< vkxkj dk ifjoh{kkdky rqjar izHkko ls lekIr djrs gq, fuxe lsok ls Ik`Fkd fd;k tkrk gSA

4. As per the petitioner the criminal case lodged against him came to be decided by the Judicial Magistrate, First Class, Anupgarh on 28.8.1995 by acquitting him from all the charges with a specific finding that the driver i.e. the petitioner was not driving the bus with rash and negligence. After getting acquitted, the petitioner made a request to the respondent employer for reinstatement in service but of no consequence, hence this petition for writ is preferred.

5. In reply to the writ petition the respondents, while admitting the fact regarding acquittal of the petitioner from criminal charges, have stated in reply that "the petitioner was only a probationer and before terminating his services no inquiry was necessary. Since his services were not satisfactory, therefore, the competent authority was well within its jurisdiction to bring the probation period to an end. However, in the interest of justice, the petitioner was afforded a reasonable opportunity of hearing, as explained in the preceding para." An objection regarding delay of about 13 years in challenging the order dated 28.10.1983 is also taken by the respondent employer.

6. During course of hearing I examined the original record relating to the entire process that resulted into termination of the petitioner from service. From perusal of record it reveals that immediately after accident Shri Balkrishna

Sachdeva, an officer of the respondent corporation alongwith an Assistant Depot Manager, inspected the site and also made a preliminary inquiry. During preliminary inquiry statements of the petitioner were recorded in which he specifically stated that the accident met as the jeep driver and all other persons riding in the jeep were under intoxication. He also stated that immediately after accident, he alongwith conductor and other passengers of the bus took the injured persons to hospital and also brought medicines for injured persons as per instructions of the doctors treating them. He further stated that he also went to the police station for making necessary report regarding accident. Shri Balkrishna Sachdeva in his report of preliminary inquiry referred certain minor damages to the corporation's bus, but has not said anything about rash and negligence on part of the petitioner. It is only the Assistant Mechanical Engineer, Bikaner who by giving reference of the preliminary report submitted by Shri Balkrishna Sachdeva informed Divisional Mechanical Engineer of the corporation under a communication dated 16.6.1983 that the accident took place due to rash and negligence of the bus driver. On basis of the communication dated 16.6.1983 the Divisional Mechanical Engineer issued a notice to show cause dated 6.8.1983 with specific averment regarding termination from service, if the petitioner fails to explain the circumstances and his conduct regarding accident that occurred on 26.5.1983. The petitioner, after receiving the notice aforesaid, denied the charges and tried to explain that the accident occurred due to wrong on part of the jeep driver. The petitioner also made a request to hold regular inquiry and to permit him to produce defence, accordingly, statements of the petitioner were recorded by the disciplinary authority on 27.10.1983 wherein he reiterated whatever he stated before Shri Balkrishna Sachdeva during the course of preliminary inquiry. Shri Nathukhan and Shri Ganpat Ram were examined by the disciplinary authority as defence witnesses. Shri Nathukhan stated that on 26.5.1983 he was travelling in the bus that met with the accident. As per him, there was no negligence on part of the bus driver, the jeep that collided with the bus was carrying certain "baraatis" and those persons including the jeep driver were under intoxication. Shri Ganpat Ram, an another traveler of the bus that met with accident on 26.5.1983, also stated that the accident occurred due to rash and negligence on part of jeep driver who was under intoxication. In most unambiguous terms he stated that there was no negligence on part of bus driver Shri Ashique Ali. Both the passengers also produced the tickets issued to them to travel in the bus concerned on 26.5.1983.

7. The disciplinary authority, after conducting inquiry in the manner stated above, issued order impugned dated 28.10.1983, terminating the petitioner from service. The petitioner also preferred an appeal to the General Manager, Rajasthan State Road Transport Corporation, Jaipur but that also came to be rejected on 4.2.1984 and the order passed by the appellate authority reads as under:

Jh vkf"kd vyh] Hkw-iw- pkyd] guqekux< vkxkj }kjk laHkkx ;kaf=d vfHk;ark] chdkusj ds vkns"k dzekad 2661 fnukad 28-10-83 ds fo:) bl dk;kZy; ds viuh vihy

izLrq dh xBZ A

fuEu gLrk{kjdrkZ }kjk Jh vkf"kd vyh }kjk izLrq vihy] tkap ls lEcU/kr leLr nLrkostks dk Hkyh Hkakfr v/;;u djus ds i"pkr bl fu"d"kZ ij igqapk gwWa ds laHkkx ;kaf=d vfHk;ark] chdkusj }kjk izlkfjr vkns"k mfpr gS A

vr% Jh vkf"kd vyh }kjk izLrq vihy fujL dh tkrh gS A

8. While questioning validity of the orders passed by the disciplinary authority as well as the appellate authority, contention of counsel for the petitioner is that the order dated 28.10.1983 is founded on a misconduct, therefore, an inquiry as per applicable standing orders was must. It is also stated by counsel for the petitioner that the instant one is a case of no evidence and, therefore, the petitioner has been erroneously held guilty for rash and negligent driving of a corporation bus. According to counsel for the petitioner gross violation of principles of natural justice is further apparent as the orders passed by the disciplinary authority as well as the appellate authority are not containing reasons.

9. Per contra, as per counsel for the respondents the order dated 28.10.1983 was passed by the Divisional Mechanical Engineer not in the capacity of the disciplinary authority examining any misconduct on part of the petitioner but in the capacity of the appointing authority being dissatisfied with the services rendered by the petitioner during the period of probation.

10. Heard counsel for the parties.

11. To examine validity of an order discharging/terminating a probationer from service, the requirement is to examine that whether such order of discontinuation from service is founded on any misconduct or the act taken into consideration while effecting such discontinuation is merely a motive.

12. Hon"ble Supreme Court in the case of Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others, , dealt with this issue at length. Their Lordships in the case of Dipti Prakash Banerjee (supra) held as under:

If findings were arrived at in Inquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad. But if the inquiry was not held, no finding were arrived at and the employer was not inclined to conduct an inquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad Similar is the position if the employer did not want to inquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegation would be a motive and not the foundation and the simple order of termination would be valid.

13. In the case of Chandra Prakash Shahi v. State of U.P. and Ors. reported in AIR 2000 SC 1706, Hon"ble Supreme Court in quite detail considered this issue and interpreted the terms "foundation" and "motive" as under:

28-The important principles which are deducible on the concept of "motive" and "foundation", concerning a probationer, are that a probationer has no right to hold the post and his services can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post in question. If for the determination of suitability of the probationer for the post in question or for his further retention in service or for confirmation, an enquiry is held and it is on the basis of that enquiry that a decision is taken to terminate his service, the order will not be punitive in nature. But, if there are allegations of misconduct and an enquiry is held to find out the truth of that misconduct and an order terminating the service is passed on the basis of that enquiry, the order would be punitive in nature as the enquiry was held not for assessing the general suitability of the employee for the post in question, but to find out the truth of allegations of misconduct against that employee. In this situation, the order would be founded on misconduct and it will not be a mere matter of "motive".

29. "Motive" is the moving power which implies action for a definite result, or to put it differently, "motive" is that which incites or stimulates a person to do an act. An order terminating the services of an employee is an act done by the employer. What is that factor which implied the employer to take this action. If it was the factor of general unsuitability of the employee for the post held by him, the action would be upheld in law. If, however, there were allegations of serious misconduct against the employee and a preliminary enquiry is held behind his back to ascertain the truth of those allegations and a termination order is passed thereafter, the order, having regard to other circumstances, would be founded on the allegations of misconduct which were found to-be true in the preliminary enquiry.

14. In the instant matter from the facts stated, it is apparent that the Divisional Mechanical Engineer, Bikaner issued a notice to show cause to the petitioner to explain his conduct relating to the accident occurred on 26.5.1983. The Divisional Mechanical Engineer, after considering explanation submitted by the petitioner, proceeded with a regular inquiry and recorded statements of the petitioner as well as of Nathukhan and Ganpat Ram. A definite finding was given by the Divisional Mechanical Engineer that accident on 26.5.1983 occurred due to rash and negligence on part of the petitioner. All these facts clearly establish that efforts were made to ascertain truth regarding misconduct and the petitioner was ultimately terminated from service on basis of that inquiry. The termination of the petitioner, therefore, certainly founded on misconduct and the factum of the accident is not a mere "motive" to discontinue the petitioner from probation. The respondents, therefore, should have conducted a regular inquiry as per Order 35 of the Standing Orders of 1965. A charge sheet should have been given to the petitioner by framing definite charges, the corporation should

have made efforts to prove the charges and then an opportunity should have been given to the petitioner to defend himself. No such procedure at all was adhered in the present case and as such discontinuation of the petitioner from service is apparently bad.

15. The orders passed by the disciplinary authority as well as the appellate authority are also unsustainable in eye of law being founded on no evidence. The disciplinary authority without having any material held the petitioner guilty for rash and negligent driving resulting in an accident causing loss of life and also loss to corporation property. The appellate authority accepted the finding aforesaid without examining the record concern.

16. Now the question requires consideration is that whether the court should refrain itself from interfering in cause raised at belated stage even in a case of termination of service perse illegal.

17. As per counsel for the respondents the Court, as a matter of fact, in any event should not look into merits of an order of termination or any other cause agitated at a belated stage. Hon''ble Supreme Court in Karnataka Power Corporation Limited through its Chairman and Managing Director and Another Vs. K. Thangappan and Another, , held that "the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic, If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction."

18. Counsel for the respondents also supported his case by placing reliance upon judgment delivered by Hon''ble Supreme Court in Srinivasa Rao and others Vs. State of Karnataka and others, , wherein it was held that a petition for writ to challenge denial of appointment must be filed within a reasonable time.

19. While placing reliance upon the law laid down by Hon''ble Supreme Court in Life Insurance Corporation of India and Others Vs. Jyotish Chandra Biswas, , it is urged by counsel for the respondents that when there was no explanation whatsoever given by the writ petitioner, then the Court should not have entertained a writ petition at belated stage.

20. To meet the preliminary objection relating to delay in approaching this Court, it is stated by counsel for the petitioner that the petitioner has given adequate

reasons for the delay occurred in filing the writ petition. According to the petitioner he was waiting for decision of a criminal case and immediately after acquittal from criminal charges he approached the respondents for his reinstatement in service. The petition for writ was also filed as early as possible on receiving no response to the cause agitated before the respondents. He has also placed reliance upon a Division Bench judgment of this Court in *Firdosh Khan v. State of Rajasthan and Ors.* reported in RLR 2000(ii) 859 : RLW 2000(3) Raj. 1544. In the case aforesaid a Division Bench of this Court, while examining the issue regarding delay in raising cause while alleging breach of fundamental rights, held as follows:

11. A Division Bench of the Kerala High Court in *Thressiamma v. Union of India* 1999 (2) K.L.T. 683 held that after the writ petition is admitted, it has to be disposed of on merits and the dismissal of the writ petition after the lapse of some years on the ground of alternative remedy or on the ground of delay will not ordinarily be justified. In the instant case, the writ petition was entertained by the learned single Judge and the respondents were given an opportunity to file a reply to the same and in the reply, no objection with regard to the delay had been taken. Further in the writ petition, the petitioner has specifically raised violation of his fundamental rights and has alleged that the findings recorded by the Enquiry Officer are based on sound consideration of evidence and, therefore, the appellate authority has erred in disagreeing with the findings recorded by the Enquiry Officer. The petitioner has further alleged that there is no reason to disagree with the findings recorded by the Enquiry Officer. It is also alleged in para (ii) of the Grounds of the writ petition that there was no evidence available on record to prove the allegations levied against the appellant and that the findings given by the disciplinary authority are fully supported by the evidence recorded and available on record. Therefore, it was prayed that the order passed by the State Govt. should be declared illegal and is liable to be set aside.

12. The Supreme Court has deprecated the practice of dismissing the writ petition on the ground of laches and availability of alternate remedy in a case where violation of fundamental rights and principles of natural justice are alleged in the writ petition. In *State of Uttar Pradesh Vs. Abdul Samad and Another*, , the Supreme Court has held that if there is allegation of violation of principles of natural justice or violation of any provision of the Act or the Rules, the dismissal of the writ petition on the ground of delay or laches or alternate remedy is not proper.

21. I have considered the rival contentions" relating to delay in filing the present petition for writ. True it is, that the writ petition was filed by the petitioner on 14.2.1996 to assail validity of an order dated 28.10.1983, but at the same time it is also a position admitted that the petitioner was acquitted from criminal charges on 28.8.1995 only.

22. In *Srinivasa Rao and Ors.* (supra), Hon"ble Supreme Court was considering validity of an order passed by a Division Bench of Karnataka High Court affirming

an order passed by learned single Judge dismissing a writ petition on the count of delay and that matter was relating to appointment. The cause relating to appointment and a cause relating to termination from service in violation of fundamental rights stands on totally different pedestals. Beside that, consideration for non-interference by the Supreme Court in a discretionary order passed by a writ Court are absolutely different then to exercise of discretion by the original Court. In the case of Srinivasa Rao and Ors. (supra) Hon''ble Supreme Court found no ground to interfere with the conclusion reached by the Division Bench and as such the order aforesaid is in the nature of noninterference while exercising powers under Article 136 of the Constitution of India.

23. In the case of Life Insurance Corporation of India and Ors. (supra), Hon''ble Supreme Court in quite unambiguous terms held that no explanation was advanced for causing delay of six years while challenging an order arising out of disciplinary action and that is not a position in the case in hand.

24. Similarly, in the case of Karnataka Power Corporation Ltd. and Anr. (supra) Hon''ble Supreme Court emphasised that if any delay is caused then that is required to be satisfactorily explained otherwise the Court may decline to intervene and grant relief in exercise of writ jurisdiction.

25. The concept of non-interference by writ Court at belated stage is well explained and settled. In normal course Courts are not require to come forward to rescue a person who is not vigilant to protect his rights. The Courts are also not require to intervene with the matters wherein a right is accrued to third party because of delay on part of the aggrieved person as that third party may suffer injury because of interference desired, however, if the person approaching the Court extends justifiable reasons for causing delay, then the Court may interfere with the case and if on examination of cause it is found that a gross injustice is done and fundamental rights of a citizen are damaged, then the Court may intervene with the matter to repair the rights affected. The Court while doing so reshape, mould or redesign the relief as per existing circumstances.

26. In the present case, the petitioner while driving a bus met with an accident. There is no evidence available on record on basis of that an inference could have been drawn regarding rash and negligence on part of the petitioner, whereas, sufficient evidence is available to prove that the jeep that collided with the bus was carrying ten persons and all including the driver of the jeep were under intoxication. The evidence is also available on record that the petitioner was driving the bus with moderate speed and looking to the fact that the jeep was coming quite rashly, he stopped the bus. Not only this, the petitioner after ill-happening carried injured persons to the hospital, brought medicines for the victims and also made a report regarding accident at a police station. The disciplinary authority while discontinuing the petitioner from service has not taken into consideration all these facts. An employee, though may not be a civil servant, have a fundamental right as per Article 14 of the Constitution of India to

be treated fairly and in just manner. In the present case unfairness and arbitrary action on part of the respondents is apparent and, therefore, breach of fundamental right of the petitioner is also on face.

27. The petitioner from very beginning was not satisfied with the order passed by the Divisional Mechanical Engineer, therefore, he challenged the same by way of filing an appeal and that came to be rejected in quite mechanical manner. A poor workman in these circumstances considered it appropriate to wait for getting his innocence established by a judicial fora examining his conduct in a criminal trial, thus, on getting acquitted by a competent court he immediately raised his cause before the respondents and on being failed to get any appropriate response he approached this Court by way of filing the present petition for writ. As such, I am satisfied that a Justifiable reason was available with the petitioner to assail validity of the order passed by the disciplinary authority as well as the appellate authority even after a lapse of 13 years from the day he was discontinued from service. For the reasons stated above, I am not inclined to reject this petition for writ on the ground of delay.

28. On merits, I have already held that termination of the petitioner is unsustainable, therefore, I am having no hesitation in declaring the order dated 28.10.1983 illegal. While considering the issue of relief required to be extended to the petitioner, I am certainly of the view that despite termination being declared illegal, no back wages for the period the petitioner remained out of employment should be given to him as he raised the cause with delay and during all this period he did not work with corporation but survived himself with some source of income.

29. Accordingly, this petition for writ is allowed. The order dated 28.10.1983 passed by the Divisional Mechanical Engineer, Rajasthan State Road Transport Corporation, Bikaner, terminating the petitioner from service during the period of probation, is declared illegal and the same is hereby quashed. The order passed by the appellate authority on 4.2.1984, affirming the order dated 28.10.1983, is also declared illegal and, therefore, the same is also quashed. The petitioner is declared entitled to be reinstated in service with all consequential benefits except back wages for the period he remained out of employment in pursuant to the order dated 28.10.1983.

30. Cost of the case is made easy.