

(1996) 10 AHC CK 0048

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 33685 of 1990

Babu Ram Jayant

APPELLANT

Vs

Regional Manager,Agra,U.P.State Road Transport
Corporation,Agra & Ors.

RESPONDENT

Date of Decision : 10-10-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 10 AHC CK 0048

Hon'ble Judges : D.K.Seth, J

Final Decision : Dismissed

Judgement

D.K. Seth, J.—On the ground that the petitioner, a Conductor working in the U.P. State Road Transport Corporation (here in after referred to as U.P.S.R.T.C.) had issued tickets for shorter distance to "12" passengers and there by embezzelled a sum of 0.45 paise each aggregating to Rs. 5.40 paise on 1841986 while on duty a chargesheet was issued on 2341987 (Annexure1 to the petition). Despite petitioner"s request to supply documents containing the report no copy of those documents were supplied to him. On the other hand second chargesheet was issued on 2341987 (Annexure3 to the petition) to the petitioner in connection with an incidence dated 18101986 alleging that the petitioner was travelling in the bus while sitting on bonnet of the bus and the petitioner again booked passengers for shorter distance on the basis of the report of Sri B.S. Agarwal. Despite the petitioner"s request the report of Sri Agarwal was also not supplied to him. Even before the Inquiry Officer despite the petitioner"s demand neither copy of those documents were supplied nor inspection there of. was allowed to him. However the petitioner submitted his reply (Annexure5 to the petition). Pursuant to the said inquiry by an order dated 121990 (Annexure7 to the petition) the petitioner was removed from his service. The said order dated 121990 having been challenged by means of a Writ Petition before this Court. The said writ petition was dismissed by an order dated 821990 (Annexure8 to the writ petition) passed in Writ Petition No. "NIL" of 1990 on the ground of

alternative remedy by way of appeal. The petitioner's appeal was, however, rejected by order dated 1991990 (Annexure10 to the petition). It is these two orders dated 121990 and 1991990 being Annexures7 and "10" to the petition, respectively, have Been challenged by means of present writ petition.

2. The U.P.S.R.T.C. in its counteraffidavit had alleged that after the incident dated 1841986 when the petitioner was found to have short booked "12" passengers the petitioner was again caught redhanded on 18101986 for carrying "12" passengers again booked for a shorter distance and for misbehaviour with the checking authorities. In the process of inquiry the petitioner was given full opportunity of being heard. After having considered the material produced before the Inquiry Officer the petitioner was found guilty in the report submitted by the Inquiry Officer. A copy where of was supplied to the petitioner requiring him to show cause against the proposed punishment of termination of his services. After considering the said reply the petitioner was removed from service by an order dated 121990. It was further alleged that the petitioner's services were once terminated earlier on account of embezzlement and misappropriation but on appeal he was allowed fresh opportunity by retaining him in service. Therefore in the year 1968 the services of the petitioner was again terminated on the charges of corruption proved against him. The petitioner was again given opportunity in the year 1969 by means of his reemployment in service. Subsequently, there after the petitioner's service was again terminated in the year 1973 on the charges of corruption. But then there having been strike the petitioner was inducted in service once again on 2021973. Thus it appears that he was a man of doubtful integrity. Two chargesheets dated 1841986 And 18101986 were issued to him and in the inquiry he was found guilty after the petitioner was furnished all the relevant documents and the petitioner was afforded full opportunity to show cause to the said inquiry. After considering his reply the petitioner's service was terminated. The said order has been affirmed in the appeal. It is further contended that the petitioner being a workman within meaning of Industrial Disputes Act, 1947, he had an alternative remedy before the forum under Industrial Disputes Act. Therefore the writ petition is not maintainable.

3. The petitioner in the rejoinderaffidavit has reiterated the case made out in the writ petition and has contended that the petitioner was reinstated in service by virtue of an order of the Labour Court, being AnnexureRAI to the rejoinderaffidavit, dated 1981983.

4. Sri H.M Srivastava, learned Counsel appearing on behalf of the petitioner assails the impugned order contained in Annexure7 to the writ petition on the ground that though the incident had taken place on 1841986 but the same was reported only on 2341987. Therefore, the first chargesheet can not be sustained. Secondly, he contends that since the document required by the petitioner was not supplied and inspection thereof having been denied, the inquiry proceeding is vitiated. The third contention of the learned Counsel for the petitioner was that the persons short booked have not been examined. The last contention of Sri

Srivastava was that even if the finding of the inquiry is proved even then on the face of material on record the punishment appears to be disproportionate. On these grounds he assails the order dated 121990 as well as the order dated 1991990 by which his appeal was dismissed.

5. Learned counsel appearing on behalf of U.P.S.R.TC. on the other hand contends that the authority while terminating the services of the petitioner had considered all extenuating circumstances. The appraisal of the situation by the authority is an administrative decision having quasijudicial texture on the basis of facts and circumstances of the case depending on the assessment of the materials available on record, which is purely a question of finding of fact, with which this Court, in normal circumstances, does not interfere in exercise of writ jurisdiction. The relationship of master and servants between the employer and employee is dependent on faith and confidence. Even if the amount embezzled is insignificant even then the loss of confidence and faith in the employee would be sufficient to discontinue his service by the employer. Further more the finding of fact having been confirmed in appeal after concurrent finding of fact this Court should not interfere with the same. Lastly, he contends vehemently that this is the case which can be decided only by scanning of the evidence relating to the finding of fact and the appropriate remedy is before the forum established under the Industrial Disputes Act which is efficacious alternative remedy. In view of existence of such alternative remedy the writ petition is not maintainable.

6. Before deciding the question raised by the learned Counsel for the petitioner it is desirable to decide the preliminary objection raised by the learned Counsel for the Corporation at the outset. Admittedly, the petitioner is a workman subject to the Industrial Disputes Act. His services having been terminated pursuant to the inquiry, the remedy open to him is before the forum established under the Industrial Disputes Act, the subjectmatter in issue can be better decided in the said forum which can go into facts and the parties might have better opportunity to espouse their respective causes. The said remedy is an efficacious alternative remedy, in the facts and circumstances of the case, this Court can not go into the question of fact which would be necessitated for the purposes of deciding this case. Therefore, ordinarily this Court would refuse to exercise its discretion under Article 226 of the Constitution, to entertain the writ petition when alternative remedy by way of dispute before the Industrial Tribunal is available to the petitioner. There can not be any two opinion about the same. Admittedly the present case is a fit case to be decided by the tribunal. But because of the facts that a very long time has lapsed namely over six years, it is not desirable that the matter should go back to the Tribunal for decision particularly, in view of the fact that the petitioner would have superannuated in 1992. At the initial stage this Court having not been declined to entertain the petition and the same having been directed to be listed for admission and counter and rejoinder affidavits having been exchanged it would be oppressive on the part of the workman to again pursue a long stretched way to his remedy. Only in consideration of the above facts and circumstances of the case and the situation arising there of. ut

despite my finding that discretion of this Court should not have been exercised in view of existence of alternative remedy the preliminary objection raised by the U.P.S.R.T.C. is overruled.

7. After having heard Sri H.M. Srivastava learned Counsel appearing on behalf of the petitioner and the learned Counsel appearing on behalf of U.P.S.R.T.C. It appears that the chargesheets contained in Annexure1 and Annexure3 to the petitioner are dated 2341987. But nowhere it appears that the report of the respective incident dated 1841986 and 18101986 were given on 2341987 though Sri Srivastava learned Counsel for the petitioner contended that the report of the incident dated 1841986 was reported only on 2341987. But from the pleadings contained in the writ petition he has not spelt out the same, neither he had taken any such ground in the writ petition. No material has been produced before this Court to show that the report was submitted only on 2341987. If no pleading is made out in that event the respondent is not called upon either to deny the same or prove the allegations which has not been made at all. Therefore, in absence of any material on the first ground Sri Srivastava, learned Counsel for the petitioner that because of late report the charges were State, can not be accepted. The issue of chargesheet on 2341987 on the basis of incident dated 1841986 and 18101986 can not be said to be belated or State.

8. With regard to the second point that the relevant documents particularly the report, as mentioned in the writ petition, were neither supplied nor were given for inspection as made out in the writ petition, has been denied in the counteraffidavit in para 14 of the counteraffidavit. Where it has been pointed out that though the petitioner was not permitted to inspect those documents but the relevant papers were made available to the petitioner. The said para was dealt with in para 13 of the rejoinderaffidavit where the same has been denied in the following manner:

"It is submitted that the petitioner was neither made available report of B.S. Agarwal, L.P. Snarma and Sunhari Lal Yadav."

The same having been caused in the form of submission is not a statement. Similar statement is made in para 26 of the counteraffidavit where it has been stated that the petitioner has been given full opportunity in the inquiry. In para 20 of the rejoinderaffidavit the same has been denied in the following manner:

"It is submitted that the petitioner was not afforded opportunity to defend himself in absence of the documentary evidence relied upon by the respondents."

It is again a submission and not the statement. Therefore, it is very difficult to rely on the same. The question as to whether the report of the Inquiry Officer appears to be detailed one as it appears from Annexure5 to the writ petition; After discussing the evidence produced which has recorded the number of tickets and other materials does not appear to be perverse. The witnesses were examined and the reports were produced, the petitioner had opportunity to crossexamine those witnesses, therefore, it can not be said that the petitioner

did not have proper and sufficient opportunity so as to vitiated the enquiry proceeding.

9. With regard to the third point raised by the petitioner that the persons who were shortbooked have not been examined, can not be accepted on the ground that it is not necessary to examine those persons because of the report prepared on the spot by the Inspector, in which very number of the tickets issued were mentioned and having been seized and produced in the inquiry. However the finding of guilt on the basis of report is a finding of fact on the basis of certain material placed before the authority concerned. Even if on the basis of material produced this Court is of different view even then this Court can not interfere with the finding of the disciplinary authority unless it shows that the finding arrived at is based on no material or is perverse. The learned counsel for the petitioner did not point out anything either from the inquiry report or from any material to show that the findings are based on no material or that the same are perverse.

10. So far as the last question that the punishment is disproportionate is concerned, it appears that the guilt of the petitioner has been proved that he had embezzled certain amount, may be very insignificant but the fact remains that he was caught twice, once in April and again in October. Despite having been caught in April he did not corrected himself and had committed the same offence again in October. So far as the statement made in para 4 of the counteraffidavit relating to the past conduct of the petitioner the same has been dealt with in para 6 of the rejoinderaffidavit. In para 4 of the counteraffidavit detailed statement has been given about the misconduct of the petitioner, due to which his services were terminated and he was given fresh opportunity in 1968 and again his services was terminated on the charges of corruption and was given fresh opportunity in 1969 and again his services was terminated in 1973 and was again given opportunity in 1973 itself because of the strike in U.P.S.R.T.C. The said detailed facts has not been specifically denied in para 6 of the rejoinderaffidavit while dealing with the said statement in the following manner:

"6. That the contents of paragraph 4 of the counteraffidavit are denied and the contents of paragraphs 2 and 3 of the writ petition are reiterated. It is submitted that the allegation with regard to the embezzlement and misappropriation of money by the petitioner is concerned and his termination and then appointment again and then termination were all wholly illegal and petitioner challenged the same in the Labour Court as Claim petition No. 91 of 1979 and the petitioner was ordered to be reinstated. For the ready reference a photostat copy of the certified copy of order dated 1981/1993 is filed herewith and marked as AnnexureT."

11. On the other hand it appears that the petitioner had taken a stand that all these terminations were illegal and that the petitioner had challenged one such termination in the Claim Petition No. 91/1979 which stood allowed by award dated 1981/1983 passed by the Labour Court, being AnnexureRA1 to the

rejoinder affidavit. A perusal of Annexure RA1 to the rejoinder affidavit indicates that the said Claim Petition No. 91 of 1979 relates to his dismissal from service by order dated 18/1/1975. Therefore the said contention does not answer the submission of the earlier termination of his services on the charge of corruption and giving of fresh opportunity every time successively.

12. Admittedly while considering the question of punishment the disciplinary authority is entitled to look into the past record in order to find out some extenuating circumstances due to which lesser punishment could be inflicted on the delinquent. In the present case the past record of the petitioner is as such that no extenuating circumstances could be made out of the same. On the other hand embezzlement or misappropriation however insignificant it may be when occurred successively is sure to demolish the faith and confidence in between the employer and employee. It is the employer from whose angle question of loss of faith and confidence is to be looked into. The court can not substitute its view to that of the employer so far such question is concerned. If it is decided by the employer that the embezzlement or misappropriation is such when having been caught twice and when the petitioner once having so caught did not correct himself it is very difficult for this Court to express its view contrary to that of the employer. Admittedly, the misconduct proved is serious in nature and nothing has been shown to the Court by the learned Counsel of the petitioner that on account of these charges of misconduct under the rules the order of termination can not be inflicted. On the other hand admittedly misconduct proved under the rules may result in termination of services or removal or dismissal as the case may be.

13. Then again the disciplinary authority after considering the show cause notice of the petitioner and examining the inquiry report and considering the past record had decided to terminate the services of the petitioner. The appellate authority had also concurred with the same. Both the orders contained in Annexures 7 and 10 respectively appear to be well reasoned and does not suffer from infirmity of nonapplication of mind. Learned counsel for the petitioner has not been able to point out anything from these two orders that any part of it is perverse. Neither any mala fide has been alleged. Therefore, it can not be said that the punishment is disproportionate, as contended by the learned counsel for the petitioner.

14. The decision in the case of Sardar Singh v. Union of India and others, AIR 1992 SC 417, relied on by the learned Counsel for the petitioner, can not be attracted, in the facts and circumstances of the case, as indicated above and is distinguishable on facts. In as much as in the said case the delinquent who was Army jawan was found to have extra 7 bottles of rum with in area under prohibition while going to home town, having valid permit to carry 5 bottles. It was pleaded by him that extra bottles were purchased from Army Canteen on chit given by higher authority. On account of such possession he was awarded three years R.I. and dismissal from service in the court martial. On the facts and

circumstances of the said case the court was of the opinion that it can be seen that Section 63 of the Act provides for awarding of any lesser punishment enumerated in Section 71 of the Act keeping in mind while awarding punishment the spirit behind Section 72 of the Act. Having appraised themselves of the situation the Apex Court was of the view that having regard to the nature and degree of the offence, punishment awarded was severe and violative of Section 72 which provided that punishment can be awarded for the offences provided in Sections 34 to 68 or in lieu thereof any one of the punishment lower in scale, set out in Section 71.

15. So far as the present case is concerned the nature of offence is very serious namely embezzlement, however, the amount is. At the same time the decree is also grave since the petitioner appears to have been found repeating the same offences successively despite having been caught on several occasions as enumerated, hereinbefore. There were sufficient grounds for losing confidence and faith by the employer on the petitioner because of the peculiar facts and circumstances of the case, which in my view, can not be taken lightly and overlooked.

16. For the reasons given above the writ petition has no merit and it is accordingly dismissed. There will, however, be no order as to costs.