
(1981) 09 RAJ CK 0027
In the Rajasthan High Court
Case No : Civil Second Appeal No. 232 of 1981

Balvir Kumar Arya

APPELLANT

Vs

Rajasthan State Road Transport Corporation Jaipur and
Another

RESPONDENT

Date of Decision : 07-09-1981

Acts Referred:

Rajasthan State Road Transport Workers and Workshop Employees Standing Orders,
1965 — Standing Order 34

Citation : (1981) RLW 505 : (1981) WLN 413

Hon'ble Judges : K.S. Sidhu, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.S. Sidhu, J.—After hearing learned counsel for the appellant in this second appeal and perusing the record, I am opinion that it raises no question of law much less a substantial question of law to justify its admission and, therefore, it must be dismissed in limine. It will be seen that the appellant Balivir Kumar Arya was employed at the material time a Conductor with the Rajasthan State Road Transport Corporation, Jaipur, respondent I herein and that as a result of domestic inquiry; he was dismissed from service vide order, dated, April 5, 1976. The appellant filed a Civil suit against respondent I and its Regional Manager, respondent 2 challenging his dismissal on the ground, inter alia, that the domestic inquiry was not held in accordance with the provisions of the Rajasthan State Road Transport Workers and Workshop Employees Standing Orders and that, therefore, he was entitled to be reinstated in service. He further pleaded that even assuming that the inquiry was held in accordance with the provisions of Standing Order No. 34 and, therefore, he could not be lawfully dismissed from service.

2. The defence contested the suit and pleaded that the misconduct committed by the plaintiff was serious in as much as on September 20, 1975, while he was on

duty as Conductor of Bus No. 6341 on Jaipur-Chandigarh route, he was found to be carrying 23 ticketless passengers out of whom three had already paid fare. This act on the part of the plaintiff clearly amounted to misconduct. The defendants further pleaded that the domestic inquiry had been held according to law.

3. The trial court framed the following issues:

- (i) whether the dismissal of the plaintiff from service is illegal ?
- (ii) Whether the domestic inquiry was held against the plaintiff without complying with law relevant to Standing Orders ? If so, what is its effect?
- (iii) Whether the court fee paid is proper?
- (iv) Whether the plaintiff was dismissed from service by an authority not competent to do so?
- (v) Whether the court has no jurisdiction to entertain the suit?

4. By its judgment, dated, August 18, 1979, the trial court recorded the following findings:

- (i) According to Standing Order No. 35 a duty is cast on the competent authority to give atleast a week's time to make his reply to the charge-sheet. A further duty is cast on the competent authority to consider the said explanation personally before making over the case to the Inquiring Authority for holding domestic inquiry.
- (ii) The Competent Authority did not give the workman a week's time to make his reply to the charge-sheet. Further, it did not apply its mind to the explanation submitted by the workman before the Inquiring Authority commenced the domestic inquiry into the charges framed against the workman.
- (iii) The fact that the workman was carrying 23 passengers in the bus without issuing tickets to them is an act of omission which does not amount to misconduct as defined in the Standing Order No. 34.
- (iv) There is no evidence on record to prove that three of passengers had already paid the fare to the workman before the checking.
- (v) The domestic inquiry was held in contravention of the Standing Orders.
- (vi) The court fee paid is proper.
- (vii) The workman was dismissed from service by the competent authority.
- (viii) The Civil court has jurisdiction to entertain the suit.

5. It was on the basis of these findings that the trial court decreed the plaintiff's suit with costs and consequently declared that the order of dismissal passed against him by the defendants as illegal and that he still continues to be in the

defendants" service and as such entitled to pay and allowances admissible to him

6. The defendants appealed from the aforementioned decree. By its judgment dated, March 10, 1981, the lower appellate court allowed the appeal set aside judgment and decree passed by the trial court and instead dismissed the plaintiff's suit with costs. The appellate court has recorded the following findings:

(i) There is evidence on record to prove that plaintiff had not issued tickets to three of the passengers who had already paid the fare before to the checking. The finding of the Inquiring Authority in that behalf could not, therefore, be legally interfered with by the trial court in this suit.

(ii) The domestic inquiry was held according to law and the Standing Orders applicable to the case.

(iii) The act of not issuing the tickets to as many as 23 passengers included these three who had already paid the fare before the checking amounts to misconduct within the ambit of Standing Order No. 34.

It was on the basis of these findings that the learned lower appellate court reversed the decree of the trial court and dismissed the plaintiff's suit with costs.

7. Aggrieved by the decree of dismissal passed by the lower appellate court, the plaintiff has preferred this second appeal.

8. Mr. P.K. Sharma, learned counsel for the appellant, canvassed for admission of this appeal on two grounds. First, he contended that the act charged as misconduct against the appellant is not "misconduct" as covered by Standing Order No. 34 of the Rajasthan State Road Transport Workers and Workshop Employees Standing Orders, in as much as it does not fall within the ambit of any of the twenty two clauses of the said Standing Order. After going through these twenty two clauses, i.e. clause (a) to clause (v) of the definition of "misconduct" as given in the Standing order No 34, I am of opinion that the allegations made against the appellant in the charge-sheet served upon him, if proved, would clearly constitute misconduct as covered by clause (i) which lays down that "dishonesty, fraud, theft malpractices or misappropriation of cash or property" shall be treated as misconduct. The act of carrying 23 passengers in the roadways bus without ticket certainly amounts to a "malpractice" within the purview of this clause. The further act of charging fare from three passengers without giving any ticket to them amounts to "dishonesty" and "misappropriation of cash" within the ambit of that clause.

9. Mr. Sharma further argued in the context of his first contention that there is no evidence on record of domestic enquiry to support the finding that the appellant had realised fare from three passengers without issuing tickets to them. This argument is also not convincing. The lower appellate court has pointed out that there is both oral and documentary evidence to prove that the appellant had realised the fare from three passengers without issuing tickets to them. It may be right away pointed out that technical rules of evidence like the best evidence

rule, enacted in the Evidence Act are not applicable to domestic enquiries. It was permissible to the Enquiry Officer to rely on the statement of the checking staff that the passengers had told them that they had paid the fare to the appellant and that he had not issued any ticket to them. Of course, it would have been much better if the inquiry Officer had insisted on the production of at least one of such passengers who had paid the fare as a witness in the inquiry. That does not, however, mean that if in the facts and circumstances of this case, he felt satisfied on the statement of a member of the checking staff that the appellant had committed the dishonesty of charging fare from three passengers without issuing is necessarily vitiated merely because none of the passengers concerned was examined as a witness in the enquiry.

10. The second ground on which Mr. Sharma seeks the admission of this appeal is the alleged violation by the Inquiry Officer of the requirements of standing order No. 35 which deals, inter alia, with the procedure of enquiry. The relevant clauses on which Mr. Sharma relies may be reproduced here:

35. (i) Competent authority may suspend a worker for any act or omission of misconduct as described in standing order No. 34 by an order in writing and serve the worker with a charge sheet containing specific charges on which each charge is based and asking him to state whether he desires to be heard in person

(ii) A worker shall be required to submit his explanation in writing not exceeding a week from the date of service of charge sheet and if he desires to be heard in person a summary enquiry shall be held.

Mr. Sharma argued that these two clauses, construed properly and fairly lay down that the competent disciplinary authority shall first obtain the explanation of the delinquent workman in reply to the charge-sheet served upon him and consider the explanation at his own level before taking any further action in the matter. According to Mr. Sharma, it is only after the disciplinary authority forms an opinion that the explanation is unsatisfactory that he can order the holding of domestic enquiry, and then either enquires into the charge himself or make over the enquiry to some other officer. In other words, Mr. Sharma's contention is that there are two separate and distinct stages as to the suspension or dismissal of a workman, one anterior to the enquiry and another commencing with and posterior to the enquiry. All the acts relating to the stage anterior to the enquiry including the obtaining of explanation of the delinquent to the charge and consideration of the explanation with a view to forming an opinion whether the enquiry is called for or not must be performed, so runs the argument of Mr. Sharma by the disciplinary authority himself instead of leaving them for performance by the inquiry Officer. Mr. Sharma, cited a Single Bench decision of the Allahabad High Court reported in *Hindustan Lever Ltd. V. Their Workmen* 1974 (29) F.L.R. 305, in support of his argument.

11. Before discussing the authority cited by Mr. Sharma, I may rightly state

that there is nothing in the language of standing order No. 35 (i) and (ii) reproduced above which may be reasonably construed to divide the entire process relating to suspension and dismissal of a workman into two water tight compartments like those suggested by counsel. Standing Order 35 (i) which provides for suspension of a workman for any act or omission of misconduct, lays down that the order of suspension must be reduced to writing and that the workman must be served with a charge-sheet requiring him to state whether he desires to be heard in person. Standing Order 35 (ii) lays down that the workman shall be required to submit his explanation in writing within a period not exceeding a week from the date of service of charge-sheet. If the workman desires to be heard in person, a summary enquiry must be held into the charge sheet in accordance with the other clauses of standing order No. 35. It will thus be seen that there is no requirement of this order that the entire procedure must be divided into two separate stages and that one stage must be dealt with by the disciplinary authority and the other by the Inquiry authority. The disciplinary authority is under no legal obligation to obtain the explanation at his own level and to consider it personally, of course, before the enquiry is commenced, the delinquent must be called upon to file his explanation to the charge-sheet and thus given an opportunity of explaining his side of the case. In case, he admits the charge-sheet he removes the necessity of holding the summary enquiry. The case then goes back to the disciplinary authority for consideration of the question of punishment. If however he does not admit the charge and renders some explanation of his own it is a matter for enquiry and the inquiring authority must hold the enquiry according to law and submit his report to the disciplinary authority. The entire process commencing with the passing of the order of suspension and service of the charge-sheet and the eventual exoneration or punishment of the workman, as the case may be, is a continuous and integrated process and is not susceptible of any such artificial division into water-tight compartments as suggested by counsel for the appellant.

12. This brings me to the case of the Hindustan Lever Ltd. (*supra*) cited by learned counsel for the appellant. The relevant standing order in the cited case, i.e. standing order 23 (c), laid down that "no order of dismissal or suspension...for misconduct shall be made unless the workman concerned, if present, is informed in writing of the misconduct alleged against him and is given an opportunity to produce evidence in his defence". It was on the basis of the particular language of this order that a learned Single Judge of the Allahabad High Court held that standing order 23 (c) contemplates the stage applicable to dismissal or suspension namely, the one anterior to the inquiry and another posterior thereto. It was in that context that the learned judge observed that in the first stage the management is required to serve a charge-sheet and afford the workman an opportunity of offering explanation. No such opportunity had been afforded to the workman in the cited case. The standing order that we are concerned with in the instant case does not contain any standing order like 23 (t) which came up for interpretation before the Allahabad High Court. Moreover, in

the present case, the workman concerned, i.e. the appellant was admittedly served with a charge-sheet and afforded an opportunity of filing explanation. In fact, he did file his explanation before the inquiring authority commenced the enquiry. The cited ruling has therefore no application to the facts of this case.

13. Thus, both the grounds on which this appeal is sought to be admitted are wholly devoid of force. The appeal is therefore, dismissed in limine.