
(2019) 07 CAL CK 0015
In the Calcutta High Court
Case No : Writ Petitions (WP) No. 291 Of 2018

Dinbandhu Rai

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 04-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 12

Citation : (2019) 07 CAL CK 0015

Hon'ble Judges : Amrita Sinha, J

Bench : Single Bench

Advocate : Debductta Basu, D. Chattaraj, N. Bhattacharjee

Final Decision : Disposed Off

Judgement

Amrita Sinha, J

The petitioner was recruited on temporary and contractual basis as provisional bus conductor of the West Bengal Transport Corporation Ltd., formerly

known as the Calcutta Tramways Company (1978) Ltd., herein after referred to as the Company, in October, 2010.

On 4th April, 2018 when the petitioner was performing his evening shift at about 8 pm the checking squad checked his bag and an excess amount of

Rs. 636/- (rupees six hundred thirty six) only was detected from his custody. A show cause memo dated 25th May, 2018 was issued directing the

petitioner to show cause why he will not be terminated from service as per provision of the agreement made between him and the Company. The

petitioner was given seven daysâ?? time to reply to the said show cause.

By a letter dated 31st May, 2018 the petitioner replied to the show cause wherein he mentioned that on the said day he was not in a stable mental

condition as he received a message of accidental death of one of his relatives. He mentioned that he was totally blank and in mental trauma leading to mental and nervous breakdown. He further mentioned that he had no mala fide intention of wrongful gain. He prayed apology and requested for treating his case on humanitarian ground.

By a show cause notice of punishment dated 20th June, 2018 the petitioner was informed that his reply to the show cause was perused and the

Authority came to the conclusion that he acted with ulterior motive for wrongful gain and have cheated and caused loss to the Company. The Deputy

Managing Director of the Company in exercise of his powers under different Clauses/Sections of the Agreement and Amended Standing Orders of

the Company proposed to award punishment of termination of his service. The petitioner was directed to show cause within seven days why the

proposed punishment of termination of service will not be awarded.

The grievance of the petitioner is that no charge sheet was issued against him. He did not have the opportunity to disprove the allegations that were

levelled against him. In the absence of any disciplinary proceeding he is unable to furnish his defence argument. The proposal for awarding

punishment of termination has been taken without giving him an opportunity of hearing. The same is bad in law, contrary to the principles of natural

justice, equity and fair play. Though he is a provisional staff he is entitled to the benefit of the Amended Standing Orders.

The petitioner has annexed a couple of departmental charge sheets issued against contractual drivers and conductors of the said Company to prove

the point that even in case of contractual employees the Company proceeded departmentally and they were given the opportunity to face the

departmental proceedings in terms of the Amended Standing Orders. The petitioner submits that the opportunity of facing a departmental proceeding

has been denied in his case.

The petitioner prays for issuance of a writ of Mandamus directing the respondents to allow him to join his service with all back wages by setting aside

the show cause and to act in accordance with the Amended Standing Orders.

The petitioner relies upon a model form of agreement which is executed between the Company and an employee prior to joining service. Clause 9 of

the said Agreement specify that any kind of misconduct, misdemeanour/minor or

major offence on the part of the employee to be so engaged on contract will invite disciplinary action. Disciplinary cases will be disposed of by the Company's Officers in the prevailing Disciplinary Forum of the Traffic Department of the Company. Only the punishment of termination of service of contract basis will be awarded by the Authority under whose signature the contractual appointment is issued.

The petitioner relies upon the Amended Standing Orders of the Company.

The petitioner states that he joined service in November, 2010 and he continued his service uninterruptedly till the date of the incident on 4th April,

2018. He submits that according to the Amended Standing Orders the maximum limit of the probationary period is six months. As the petitioner was in

service for a considerable period of time he cannot be considered as a probationer. He further submits that he cannot be treated as a temporary

employee of the Company in view of the fact that the nature of work that he performs is not temporary. The work that he performs is permanent in

nature.

The analogy that the petitioner tries to draw is, though the Company never notified him as a permanent employee, but truly speaking, considering the

nature of work that he performed in the Company for more than seven and half years he is deemed to be treated as a permanent employee of the

Company and is entitled to all the benefits under the Amended Standing Orders.

There is a specific provision in the Amended Standing Orders for issuance of charge sheet in respect of charges levelled against an employee. The

petitioner submits that no charge sheet was issued against him. An employee is entitled to rebut the charges brought against him in the charge sheet.

The employee may be suspended and the suspension period shall not generally exceed four days and in any case should not extend beyond seven

days. The employee is entitled to submit his written reply within three working days and soon thereafter an inquiry will be instituted by the

departmental head and the employee therein be given and shall have the right of cross-examination. The employee may opt to be represented by a

fellow employee. No employee will be dismissed or discharged unless a charge sheet has been issued.

The petitioner submits that the Company ought to abide by the Amended Standing Orders and is bound to initiate disciplinary action against an erring

employee. The petitioner ought not to be terminated from service till he gets an opportunity to face the disciplinary proceeding in accordance with the

Amended Standing Orders.

The petitioner relies upon an unreported order passed by a learned Single Judge of this Court on 28th November, 2006 in W.P. No. 5184 (W) of 2006

with CAN 2667 of 2006 wherein the petitioner of the said case was a bus driver serving the Company. The Court held that once the Company has

framed Standing Orders they are bound to adhere to the same and deviation by resorting to a procedure not prescribed therein must be struck down as

being an act which is totally beyond the prescribed Rules and Regulations.

The petitioner further relies upon an order bearing no. GM/OR/267 dated 23rd May, 2001 issued by the Company's General Manager

(Administration) wherein it has been indicated that discharge from the service is considered to be a capital punishment and therefore the authority

issuing 'Discharge Order' is expected to be extremely cautious as well as judicious. Different Law Courts including the Apex Court of the

country have viewed on different occasions that mere rendering natural justice is not enough - one is to prove that natural justice has been duly shown.

It is in this context advisable that before issuing the order of discharge the delinquent employee shall be given an opportunity of being heard.

The learned advocate refers to another order issued by the General Manager of the Company on 30th August, 2003 which says that the principle laid

down in the judgment delivered by the Bench of the Calcutta High Court presided over by the Hon'ble Chief Justice on 1st August, 2003 in FMA

1256 of 2003, MAT 306 of 2002, CAN 5572 of 2002 in the matter of the Calcutta Tramways Company (1978) Ltd. & Ors. 'vs- Panchu Lal Mathor

& Ors. wherein the Hon'ble Court observed that the principle of giving an opportunity of hearing prior to an employee is discharged has to be

strictly adhered to. The Calcutta High Court passed the order relying upon an order passed by the Hon'ble Supreme Court of India in the Scooter

India case wherein the Hon'ble Supreme Court observed that no employee, be he a permanent, temporary or casual or in daily wages can be

discharged from the Company's service without giving an opportunity of hearing irrespective of the Company's own Rules.

The learned counsel also place reliance upon an unreported judgment and order

dated 19th May, 2003 passed by a learned Single Judge of this Court in W.P. No. 5376 (W) of 2003 in the matter of Sushil Chandra Das vs- The State of West Bengal & Ors. wherein the Court considered the case of a casual bus driver who had been discharged from service by the Company. The Court held that unless there is anything repugnant in the subject or context, employee, in accordance with the Amended Standing Orders meant, all persons employed in the Company in various departments. The Court held that even a casual employee must be subject to the Standing Order and the Company cannot disown the petitioner's status as an employee.

The employee should get the benefit of the Standing Order.

The learned advocate appearing on behalf of the Company submits that the petitioner is a contractual employee and there is no such employee status

in the Company. It has been mentioned in the affidavit in opposition filed by the Deputy Managing Director of the respondent Company that the

petitioner was charged of theft which caused serious loss to the Company. The Company can discharge or dismiss the contractual employee and the

Company has taken lawful action as per the terms and conditions of the Agreement entered into between the parties. It has been submitted that there

has been no violation of the Rules of the Amended Standing Order.

The respondents pray for dismissal of the writ application.

The petitioner as well as the respondent both has annexed the copy of the offer letter for training that was issued in favour of the petitioner on 26th

November, 2010. The said letter indicates that the petitioner has been provisionally selected for training. Clause 6 of the said letter mentions that he

will be guided and subject to the conditions as laid down in the Amended Standing Orders and future Amended Rules, if any. It further mentions that

he will be entitled to medical benefit as admissible to the other regular employees of the Company. Clause 11 of the said offer letter mentions that the

terms and conditions of termination/resignation from service will be as per provisions.

From the various Clauses mentioned in the offer letter for training issued in favour of the petitioner as far back as on 26th November, 2010 it appears

that the Amended Standing Orders of the Company were applicable in respect of even a trainee who was selected provisionally for undergoing the

training. The terms and conditions of termination/resignation from service were

also to be guided in accordance with the Amended Standing Orders.

The petitioner served as a bus conductor from 2010 till the date of the incident on 4th April, 2018. Regardless of the fact whether the petitioner was a

contractual or temporary employee, continuance of the petitioner in the said Company clearly indicates that the nature of the work the petitioner

performed was permanent. The Company has not come up with any document to show that contractual employees will not be covered by the

Amended Standing Orders. On the contrary the opening lines of the Amended Standing Orders very specifically state that "the Company and

employees engaged in its various departments are subject to the following Standing Orders regulating the conditions of service". The said lines are

further clarified in the classification Clause of the Standing Orders wherein it mentions that "unless there is anything repugnant to the subject or

context:- employee means all employees employed by the Company in its various departments". The said explanation takes into its sweep all

employees irrespective of their status being permanent, probationer, temporary or apprentice.

The Amended Standing Orders describes a probationer as an employee who is on probation for a specified period. The probationary period will be six

months. According to the said Standing Orders a temporary employee is one who is engaged in any type of work which has a temporary character.

The recruitment letter of the petitioner mentions that he was recruited for the post of conductor on "temporary and contractual" basis, which

means that the petitioner was recruited both as "temporary" and "contractual". As the Amended Standing Orders are applicable in case

of temporary employees accordingly the petitioner is clearly guided by the said Standing Orders.

Clauses 6 and 11 of the offer letter for training issued in favour of the petitioner reflect the intention of the Company to abide by their own Standing

Orders. The Company insists on holding on to the "contractual" status of the petitioner but gives a complete go by to the "temporary"

status. The same is not permissible in law. The status of the petitioner cannot be applied to his disadvantage thereby snatching away his right to face

the disciplinary proceeding to disprove the allegations levelled against him.

The provision relied upon by the respondent for dealing such a case of " "

contractual employee is Clause 9 of the Agreement which was executed by and between the employer and the employee. On a plain reading of the said Agreement it appears that the tenure of contract of a contractual employee may be initially for one year, which can be extended on satisfactory performance maximum up to three years in total. In the instant case the petitioner served the Company for more than seven and half years.

The Agreement further mentions that the contractual engagement will be made from the applicants who have been selected by the Company. The recruitment letter of the petitioner mentions that recruitment will be made on a temporary and contractual basis i.e.; the Company accepts and admits the temporary status of the employee concerned.

None of the Clauses of the Agreement is repugnant to the Amended Standing Orders. In fact, the Clauses of the Agreement are in complete sync with the Amended Standing Orders.

Clause 9 of the Agreement relating to Discipline mentions that any act of misconduct, misdemeanour/ minor or major offences on the part of the employee engaged on contract basis will invite disciplinary action. The definition of the offences- misconduct/misdemeanour was the same as defined in the Amended Standing Orders. The disciplinary cases were to be disposed of in the prevailing Disciplinary Forum and the Head of the Department is the Presiding Officer of the Disciplinary Forum and the Competent Authority to award the punishment. The said clause of the agreement borrows heavily from the Amended Standing Orders.

As the Agreement in question is silent with regard to the steps to be taken in case a disciplinary action is initiated against its employee, accordingly, the Company will be bound by the Amended Standing Orders and the subsequent orders passed by the General Manager of the Company in this regard.

In view of the dictum of the Hon'ble Supreme Court as well as this Hon'ble Court there is no scope to give a go by to the various steps that

an employer is supposed to comply prior to passing an order of termination of service of an employee. In fact the General Manger of the Company

has already passed an order way back in 2001 to the effect that in all cases where a Discharge Order is issued the employee concerned shall be

given an opportunity of being heard.

The learned advocate appearing on behalf of the Company has tried to canvas that the Company acted in conformity with the principles of natural justice by affording the petitioner an opportunity to reply to the show cause notice. According to the respondents, the petitioner has admitted his guilt in his reply to the show cause by stating that he was under mental trauma and imbalance. As the petitioner has prayed for apology it indicates that he admitted his guilt and accordingly no further opportunity is required to be given to him. It has been submitted that the opportunity to give reply to the show cause notice was enough compliance of the principles of natural justice and there was no further requirement for initiating any disciplinary proceeding against the petitioner.

From the first show cause notice issued on 25th May, 2018 it appears that the allegation that was made against the petitioner was holding excess amount of Rs. 636/- (rupees six hundred thirty six) only in the bag which was not supported by a document/witnesses. The petitioner was considered to act with ulterior motive for wrongful gain. From the second show cause notice of punishment dated 20th June, 2018 it appears that the Company after perusal of the reply of the petitioner to the first show cause concluded that he acted with ulterior motive for wrongful gain and thereby cheated and caused loss to the company. The allegations of cheating and causing loss to the Company were missing in the first show cause and these are new grounds that have been mentioned in the show cause notice of punishment. Accordingly without giving an opportunity to the petitioner to repudiate the allegation of theft and causing loss to the Company, the Company cannot propose the order of punishment of termination of his service.

The General Manager in his order dated 23rd May, 2001 equates "Discharge Order" with capital punishment. That being the position, prior to snatching away the means of livelihood of an employee he should be given all opportunity to rebut the allegation made against him.

The petitioner has highlighted the issue of discrimination. A couple of instances have been brought on record to show that charge sheet was issued against contractual drivers and they were subjected to disciplinary action in line with the Amended Standing Orders. The Company being a "State" under Article 12 of the Constitution of India and a model employer cannot pick and choose employees and adopt discriminatory tactics to

decide the allegations levelled against them. The Company ought to act uniformly with erring employees and strictly follow the Amended Standing Orders by which all the employees of the Company are guided.

A formal disciplinary proceeding in line with the Amended Standing orders is required to be initiated. The employee concerned should not feel that he was punished unheard. As observed by the General Manager that mere rendering of natural justice is not enough- one is to prove that natural justice has been duly shown. Giving an opportunity to file reply to the show cause is mere perfunctory and certainly not compliance of natural justice when the Company has already taken a decision and proposed imposing the order of punishment of termination from service.

In view of the discussions made hereinabove and following the decisions laid down by the Honâ??ble Supreme Court as well as by this Honâ??ble Court mentioned hereinabove the instant writ petition is allowed. The impugned notice of punishment dated 20th June, 2018 being annexure P3 to the writ application is set aside.

However, the respondents will be at liberty to take appropriate action against the petitioner in accordance with law and by following the Amended Standing Orders of the Company.

W.P 291 of 2018 is disposed of.

No order as to costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties on compliance of usual legal formalities.

:Later:

The learned advocate appearing for the respondents prays for stay of this judgment. The prayer is considered and rejected.