
(1998) 09 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 487/88

Gayas-ud-Din

APPELLANT

Vs

Managing Director and Others

RESPONDENT

Date of Decision : 17-09-1998

Acts Referred:

Jammu and Kashmir State Road Transport Regulations — Regulation 152

Citation : (1999) KashLJ 225 : (1999) SriLJ 449 : (1999) 2 SriLJ 449

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : Riyaz Hussain, A.Haqani, Advocates appearing for the Parties

Judgement

1. The petitioner is challenging order dated 21st of November 1987. This order has been passed in the exercise power conferred under the Rule

152 framed under the State Road Transport Corporation Act. This Rule for facility of reference being reproduced as under:

152)1 Notwithstanding anything contained in those Regulations if the Chairman or any other officer empowered in this behalf during his inspection

finds passengers travelling without ticket on the Road Transport Corporation vehicles and being satisfied that the Driver/ Cleaner/Conductor has

misappropriated the ticket money, the Driver/Cleaner/ Conductor, as the case may be will be liable for dismissal/discharge summarily"".

2. As the petitioner came to be dismissed in pursuance of power exercised by the above Rule the petitioner is challenging the validity of the above

Rule also.

3. Before dealing with the contention so raised, it would be apt to notice the order passed by the Vice Chairman/Managing Director of

Corporation. This reads as under:

Whereas, Shri Gayas ud din conductor Reg. No. 2513 was detailed on duty with bus No. 1808/JKY on SrinagarShopian route on 2581987;

Whereas, the said bus was put to check by checking squad near 'Kigam' and 25 passengers were found travelling without tickets; Whereas, the

conductor was charge sheeted by the Manager Passenger Service, Srinagar vide his No. SRTC/ MPS/2897 dated 291987 and the reply furnished

thereof was not found convincing.

Whereas, the said conductor was served with a show cause notice vide this office No. JKSRTC/ECIV/3158 dated 21111987;

Whereas, the said conductor filed his reply which was examined in detail particularly with reference to the nature and extents of default committed

by the said conductor and it was found that the default as indicated in the show cause notice has been established beyond the shadow of doubt

and;

Whereas, keeping all aspect of the case in view the conductor warrants deterrent punishment in terms of the rules governing his services. Now

therefore, sh. Gayas ud din conductor Reg. No. 2513 is dismissed from the corporation service"".

4. It be seen that earlier this writ petition came to be allowed on 24th of April 1997. This was on the ground that enquiry was not held in the

matter. The matter was taken up in an appeal. The order passed was set aside and the matter was sent back. This was because the issue regarding

Constitutionality of the provisions though, raised in the writ petition was not adverted to when the writ petition was decided earlier on 2441997.

The petitioner on the basis of decision given by the Supreme Court of India submits that if there are two procedures dealing with the same subject

matter and One of them operates harshly, then the procedure which operates harshly is liable to be declared ultravirus being violative of Articles 14

and 16 of the constitution of India.

5 In this regard reference be made to the decision reported as The State of Orissa Vs. Dhirendranath Das, AIR 1961 SC 1715. In the above case

there were two sets of rules under which enquiry could be ordered. These rules were disciplinary proceedings (Administrative Tribunal) Rule

(1951) and Bihar and Orissa Subordinate Service Discipline and Appeal rules

(1935). Under the disciplinary proceedings Rules of 1951, the public servant against whom a penalty was to be imposed had no right of appeal against the finding and recommendations of the tribunal whereas person similarly situated, when enquiry was held under Bihar and Orissa subordinate Service Discipline and Appeal Rules of 1935, had a right of appeal. It was observed that if it is open to the Government to direct holding of an enquiry under a rule which is harsh, then the rule is liable to be struckdown. In para 5 it was observed as under:

If the two sets of rules were in operation at the material time when the enquiry was directed against the respondents and by order of the Governor, the enquiry was directed under the Tribunal Rules which are more drastic and prejudicial to the interests of the respondent, a clear case of discrimination arises and the order directing enquiry against the respondent and the subsequent proceedings are liable to be struck down as infringing Art of the Constitution".

Similar view seems to have been expressed by the Supreme Court of India in the case reported as Central Inland Water Transport Corporation

Ltd. Vs. Brojo Nath Ganguly Air 1986 SC 1571. This aspect of the matter was again considered in latter decision reported as Delhi Transport

Corporation Vs. D.T.C Mazdoor Congress and others, AIR 1991 SC 101. The power was reserved by the Corporation to bring about an end to

the relationship of master and servant by adopting a summary procedure. This was held to be a power akin to the power which has been

described as "Henry VII Clause". In view of the above three pronouncements of the Supreme Court of India, it can be safely concluded that Rule

152 quoted above confers arbitrary power. This arbitrariness is apparent because

(i) The power reserved under Rule 152 is to be used in the alternative. The other mode of enquiry is not excluded.

(ii) As to what procedure is to be followed in the matter of holding summary enquiry has also not been indicated.

(iii) As to what is to exercise this power is again left to be determined by the Chairman or any other officer empowered in this behalf.

(iv) As to who is to empower, this officer is again not indicated in this rule.

6. This rule is accordingly held to be ultravires.

7. If this be the position then resultant order which was passed on the basis of aforementioned rule would also fail. Same is accordingly set aside.

The petitioner would stand reinstated. The Corporation would be at liberty to hold a fresh enquiry. The petitioner would not be entitled to any

back wages because in these proceedings it is not possible to record a finding as to whether the petitioner was gainfully employed elsewhere or

not. This aspect of the matter i.e. whether the petitioner is entitled to back wages or not is again to be left to be decided by the

respondent authorities. This aspect of the matter be decided within three months. The period of three months would begin from the date a copy of

order passed by this court alongwith copy of writ petition and annexures thereof are made available by the petitioner to the respondent authorities.

If for any practical reason it is not possible to take a decision within stipulated period respondent authorities would be at liberty to seek extension of

time. But in that eventuality they would have to explain each and every day's delay.

8. This petition is allowed in the manner indicated above.