
(1993) 09 AHC CK 0059
In the Allahabad High Court
Case No : C.M.W.P. No. 6023 of 1987

Gopal Das Rawat

APPELLANT

Vs

U.P. State Road Transport Corporations and Others

RESPONDENT

Date of Decision : 27-09-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1994) 68 FLR 291 : (1994) 2 LLJ 1173

Hon'ble Judges : V.N. Khare, J

Bench : Single Bench

Advocate : Mohd. Jafar, for the Appellant; S.K. Sharma, S.C., for the Respondent

Final Decision : Allowed

Judgement

V.N. Khare, J.—This petition under Article 226 of the Constitution is directed against an award dated 12th August, 1986 given by the Presiding Officer of Labour Court U.P. Bareilly in Adjudication Case No. 11/84.

2. Petitioner was appointed as a Conductor in the Uttar Pradesh State Road Transport Corporation (hereinafter referred to as the U.P.S.R.T.C.) in March, 1973. It is alleged that on 22nd November, 1980 the petitioner along with his friend in drunken state entered in the office of bus station, Rampur and twisted the arm of one Shiv Daual and further abused another employee of the U.P.S.R.T.C. Accordingly, the petitioner was placed under suspension and was served with a charge-sheet dated 29th November, 1980. Subsequently by an order dated 13th July, 1981 the Assistant Regional Manager, Moradabad dismissed the petitioner from service. He further directed that the suspension allowance which has not been paid to the petitioner shall be forfeited. Since a dispute arose between the petitioner and the U.P.S.R.T.C. the State Government by an order dated 4th January, 1984 referred the matter of dispute for adjudication to the Labour Court, Bareilly. The Labour Court, Bareilly by the impugned award held that the dismissal of the petitioner from service was valid and the petitioner ; is not entitled to any relief. It is at this stage that the

petitioner has come up to this Court by means of this petition under Article 226 of the constitution.

3. I have heard the learned counsel for the parties. Sri Mohd. Jafar, learned counsel for the petitioner, raised only one submission to the effect that the punishment of dismissal awarded to the petitioner is disproportionate to the gravity of offence and as such the extreme penalty of dismissal from service be set-aside. This plea, as ; raised by the learned counsel for the petitioner, was also raised before the Labour Court and the same was rejected. The questions which arise for consideration are as to whether it is open to this Court to enter into the quantum of punishment awarded to the petitioner and further as to whether the punishment awarded to the petitioner is too severe, seeing the nature of offence alleged against the petitioner.

4. So far as the first question is concerned, the decisions of English Court, Supreme Court as well as of this Court are on one line. In *Council of Civil Service Union v. Minister for the Civil Service* (1984) 3 ALLER 935. it was held as thus::

"Judicial review has I think developed to a stage when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify: under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call "illegality", the second "irrationality" and the third "procedural impropriety". This is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of "proportionality" which is recognised, in the administrative law of several of our fellow members of the European Economic Community...."

The aforesaid view was followed in *Ranjit Thakur Vs. Union of India (UOI) and Others*, and it was observed as thus (p.262):

"The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review."

5. In *Bhagat Ram v. State of Himachal Pradesh* 1983 II LLJ I it was held as under (P-7)

"It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of

the misconduct would be violative of Article 14 of the Constitution."

6. Relying on that decision, in Ved Prakash Gupta Vs. Delton Cable India (P) Ltd., it was held as under (pp.550-551):

"Dismissal of employee on charge of abuse of some worker and officer of management by him held unjustified, particularly in absence of any previous adverse remark against him."

7. In view of the above, it is open to this Court to go into the question as to whether the quantum of punishment awarded to the delinquent official is disproportionate to the offence, Let us see whether the punishment of dismissal from service awarded to the petitioner does not commensurate with the gravity of the misconduct as alleged against the petitioner. The petitioner is alleged to have under the influence of liquor twisted the arm of a co-employee and abused the other employees. Admittedly the petitioner has not embezzled any fund or has acted against the interest of corporation. Mere twisting arm of a co-employee and abusing him is not so serious as to inflict penalty of dismissal. Even if this charge is proved, same would not result in the total loss of the confidence of the employer. There is no material on record to show that any previous misconduct was taken into consideration by the Corporation in awarding the penalty ,of dismissal from the service to the petitioner. The Labour Court in its award has held that the past record of the petitioner was not good and even if the past record of the petitioner is not taken into consideration the penalty of dismissal from the service awarded to the petitioner is just and is not excessive.

9. I have looked into the record. There is no material on the record to show that the past record of the petitioner was not good. Moreover, the order of dismissal passed by the Assistant Regional Manager, Moradabad also does not show that the past record of the petitioner was taken into consideration while awarding the extreme penalty of dismissal from service to the petitioner. Seeing the nature of the charge levelled against the petitioner, I find the extreme penalty awarded to the petitioner is disproportionate to the gravity of the offence. I accordingly set aside the impugned order dated July 13, 1981 whereby the petitioner was dismissed from the service and the award dated August 12, 1986 rendered by the Labour Court with this modification that the petitioner's service from the date of dismissal to the date of judgment shall be treated as leave without any pay. Respondents are directed to reinstate the petitioner forthwith and further to pay the petitioner his suspension allowance which is due to him till July 13, 1981.

10. The writ petition is allowed.