
(1993) 11 AHC CK 0032
In the Allahabad High Court
Case No : Writ Petition No. 9592 (S/S) of 1993

Hashmatullah

APPELLANT

Vs

U.P.S.R.T.C.

RESPONDENT

Date of Decision : 24-11-1993

Acts Referred:

Uttar Pradesh State Road Transport Corporation Employees (Other than Officers)
Service Regulations, 1981 — Regulation 67(1)

Citation : (1993) 11 AHC CK 0032

Hon'ble Judges : H.N.Tilhari, J

Final Decision : Disposed Of

Judgement

H.N. Tilhari, J.—By this petition the petitioner has sought the relief of issuance of writ of certiorari or writ, order or direction in the nature of writ of certiorari quashing the order of suspension dated 161093 contained in annexure1, to the writ petition. The petitioner has further prayed for a writ, order or direction in the nature of mandamus commanding the opposite parties to allow the petitioner to work and discharge his duties on the post of Driver in the Corporation and to pay him his full and regular salary and other allowances each and every month as and when the same falls due. The petitioner's case is that the petitioner was initially appointed on the post of Driver in the month of February 1962 in the U. P. Roadways when it was under the control of State of Uttar Pradesh by an order passed by Assistant General Manager and since then he has been continuously discharging the duties of the post of Driver. According to petitioner vide order dated 71070 the petitioner had crossed the efficiency bar and his services were regularised on the post of Driver in erstwhile U. P. Government Roadways Corporation by an order passed by the Assistant General Manager, U. P. Government Roadways, Lucknow. The petitioner has further averred that since after creation of the U. P. State Road Transport Corporation on July 1, 1972 the petitioners's services were transferred to the Corporation and his past services on the post of Driver were also counted. According to the petitioner the opposite party no. 2 to the writ petition namely, the Regional Manager of the

Lucknow Region of the U. P. State Road Transport Corporation, by an order dated 161093 (mistakenly typed as 131093) suspended the petitioner from the post of Driver. A perusal of annexure1 per se shows that order of suspension is dated October 16, 1993 and so the mistake of the date mentioned in the petition is rectified and the petitioner is allowed to correct the same and so in this order the correct date is being mentioned. Thus according to the petitioner the oppositparty no. 2 had suspended the petitioner"s services by order dated 161093. The petitioner has challenged the order of suspension to be illegal and without jurisdiction as well as to be one to have been passed in an arbitrary manner. In paragraph 15 of the writ petition it has been alleged that it is the established principle of law that a government employee can be placed under suspension only when prima facie at the first instance the charge on which he is placed under suspension is of such a grave nature that if the charge is ultimately established during departmental enquiry then ordinarily it shall entail imposition of punishment such as dismissal, removal or reduction in rank and that resort to such power has got to be taken only in cases where the charges of such a nature as has been mentioned above. The petitioner has further submitted in the writ petition that as suspension is against this well fettled principle of law and is the result of non application of mind, it is arbitrary in nature and, as such, is violative of Article 14 of the Constitution of India.

2. Notice of this petition on behalf of oppositparties 1, 2 and 3 has been accepted by Shri Neerad Kumar, an Advocate of this Court and on behalf of oppositparties the counteraffidavit has been filed. In paragraph 2 of the counteraffidavit it has been averred by the oppositparties that the petitioner has been rightly and lawfully suspended by the person competent to pass suspension order in respect the employees like the petitioner. It has further been stated that the authority who passed the suspension order has been clearly delegated the power by the Board of Directors and, as such, suspension order dated 161093 is neither illegal nor without jurisdiction. It has been mentioned in paragraphs that the petitioner had been suspended by order dated 161093 as he was prima facie guilty of the charges mentioned in the suspension order and that a charge sheet has been served on the petitioner on 161093 and the petitioner has been required to file his reply by or before October 24 1993. In paragraph 10 of the counteraffidavit it has been stated that the misconduct of the petitioner is of extremely serious nature and charges are grave. In paragraph 17 it has been stated that presently oppositparty no. 2 is the appointing authority of the petitioner and order of suspension passed by him is well within his competence. In paragraph 23 again it has been stated that the petitioner has been suspended on the charges of serious and grave nature and this court should not interfere with the suspension order in view of the law laid down by the Supreme Court and this Court. It has been stated in paragraph 26 that the petitioner has got no case to approach this court and to file the petition as he has merely been stopped from performing his usual work and the duties of a Driver pending enquiry into the serious charges and misconduct and that the petition is liable to be

dismissed. The petitioner's learned counsel submitted that the matter may be heard and disposed of finally, to which the learned counsel for the opposite parties has no objection.

3. I have heard Shri Anil Kumar, learned counsel for the petitioner as well as Sri Neerad Kumar, learned Standing Counsel for the Corporation i. e. opposite parties 1 to 3. Sri Anil Kumar, in support of his petition submitted that the order of suspension is illegal, bad and without jurisdiction for the reason that opposite party no. 2 is not the appointing authority of the petitioner, as such, he could not pass the order of suspension and that only administrative powers have been delegated by the opposite parties vide authorisation meeting dated 201286 and there is difference between administrative powers and disciplinary powers. The second submission of Shri Anil Kumar is that in view of the provision of Rule 67 of the U. P. State Road Transport Corporation Employees (Other than Officers) Service Regulations, 1981, the opposite party no. 2. even for a moment it be taken without conceding that opposite party no. 2, had been appointing authority by delegation the opposite party no. 2 could not pass the suspension order in view of second proviso to Regulation 67(1) of the Regulations of 1981 as it clearly mentions that suspension shall not be restored to except in the condition mentioned therein and unless that condition is shown to have existed at the time the order was passed, the bar against the exercise of power to suspend would continue and would not be lifted and when there was a bar to power to suspend it could not be exercised. Shri Neerad Kumar, has disputed both these contentions. He has submitted that there was delegation of power and that the charges were grave. He has taken me through certain allegations made in the counter affidavit as well as he has taken me through order of suspension. I have considered the contentions of the learned counsel for the parties and have gone through the record and now I proceed to examine the above respective contentions.

4. As regards the first contention regarding the question whether the opposite party no 2 was the appointing authority or not I need not go into it as the second submission of Shri Anil Kumar by itself carries weight i. e. even if for a moment and for argument sake it is taken that opposite party no. 2 was the appointing authority or was the person upon whom power had been delegated by the Board, the power of suspension could not be exercised in view of the bar to the exercise thereof. It will be just and proper on my part to quote in extensor Rule 67 (1) of U.P. State Road Transport Corporation Employees (Other than Officers) Regulations, 1981. Rule 67 (1) of the said Regulations along with its two provisos reads as under :

67(1). An employee against whose conduct an enquiry is contemplated or is proceeding may be placed under suspension pending the conclusion of the enquiry in the discretion of the appointing authority ;

Provided that any other authority empowered by the Board in this behalf, may place an employee under suspension under this subregulation;

Provided further that suspension should not be resorted to unless allegations against the employee are so serious that in the event of their being established may ordinarily warrant major penalty."

Regulation 67(1) provides the power or authority or jurisdiction to appointing authority to pass an order of suspension pending enquiry against an employee if an enquiry against the conduct of an employee is contemplated or if the enquiry proceeding in respect of the conduct of an employee is proceeding and pending. Existence of authority or jurisdiction is one thing while exercise of that power or authority is a distinct thing. A power can be exercised only on the existence of the relevant condition provided by the provisions conferring or vesting a power or jurisdiction on an authority quasijudicial, judicial or administrative. If the law i. e. Act or Rules which confers a power to do certain thing or right to exercise certain authority and along with that it specifies certain manner or conditions or certain instrumentality through which that power has got to be exercised then ordinarily the implication is that exercise of that power otherwise than in the manner or otherwise than in the conditions prescribed or otherwise by persons specified is barred and that power shall be exercised only in that manner specified or by person specified or in conditions specified. (See *Nazir Ahmad v. King Emperor* : AIR 1936 PC 253, *State of U. P. v. Singhara Singh* : AIR 1964 SC 358, *A. K. Roy v. State of Punjab* : 1986(4) SCC 326 (paras 10 & 11); 1986 SC 2160 and *Rajsoni v. AIR Officer incharge* : 1990(4) SCC 261).

Clause (1) firstly prescribes the condition that either an enquiry should be in contemplation or it should be pending and proceeding. If either of these conditions are shown to exist the authority will get discretion to pass the order of suspension. Second proviso to subregulation (1) of Regulation 67 puts a rider in negative terms and provides that suspension could not be resorted to unless the conditions mentioned in the proviso are also shown to exist. When the expression used is "it should not be resorted to" the framers of the rule clearly intended how and when alone the power of suspension should be exercised and not otherwise. The mandate is that it could only be exercised where the allegations made against the employee are so serious that in the event of their being established those allegations and charges will ordinarily entail and warrant the major punishment being imposed on the employee concerned, namely, dismissal, removal or reduction in rank. So, therefore, before exercising that power the authority concerned has to apply its mind to that aspect of the matter and there should be something which must indicate that the authority had applied its mind to that aspect of the matter and the orders of suspension must indicate the application of mind to that aspect of the matter and if after application of mind the authority is of opinion that charges are of such a grave nature that they will entail on their establishment the imposition of major punishment then he may exercise the power or authority to pass suspension order and that should be indicated in the order. If the order of suspension does not indicate that those conditions did exist or that sine qua non for exercise of that power did exist at the time of the passing of the suspension order then the

order of suspension can be said to have been passed without jurisdiction and authority or that power for exercise of jurisdiction was not vested in him as other modes to exercise of that power are closed. First I should examine the order of suspension in the present case. The order of suspension reads as under :

Thereafter some charges have been mentioned in the suspension order. Then as usual it is provided that he shall be paid subsistence allowance etc. The suspension order does not indicate that the authority i. e. oppositeparty no. 2 while passing the suspension order did apply his mind to the above mentioned aspect of the matter that the charges are of such serious nature that the charges will entail on their establishment in ordinary course nothing less than imposition of major punishment. The authority concerned not having applied his mind and there being nothing in the suspension order which may be said to indicate the existence of *sine qua non* condition precedent or the application of mind on this aspect of the matter nor there being any allegation in the counteraffidavit even to the effect that the authority passing the suspension order considered the charges to be of such a serious nature that the charges will entail the imposition of major penalty on the petitioner, though I am not expressing any view on the question what would have been the value of those allegations in the counteraffidavit had there been any, particularly, when the suspension order is silent, for the purpose of present case there being neither any allegation in the counteraffidavit nor there being anything in the suspension order indicating the existence of the condition precedent the suspension order, in my opinion and as submitted by the petitioner's counsel, is the result of exercise of power not vested or exercise of power of suspension in a manner otherwise than provided under law i. e. particularly when the exercise of that power otherwise than the manner prescribed is barred, as such, the suspension order is *per se* illegal and without jurisdiction or authority so the writ petition is allowed, the suspension order dated 16/10/1993. contained in Annexure1, to the writ petition is hereby quashed. The order in the nature of mandamus is further issued to the opposite parties to allow the petitioner to work and to pay his salary regularly within a period of one week from its becoming due. It will be open to the opposite parties to take work or not to take work from the petitioner, it will be at their discretion but the petitioner's salary shall be paid regularly as mentioned above. It is clarified that the disciplinary proceeding or contemplated to proceed on the basis of charge sheet issued may continue. Parties to the writ petition shall bear their own cost.