
(1994) 05 RAJ CK 0038
In the Rajasthan High Court
Case No : Civil Spl. Appeal No. 121 of 1990

Jagdish Chandra Vyas

APPELLANT

Vs

Rajasthan State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 25-05-1994

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (1995) 71 FLR 586 : (1995) 2 LLJ 204 : (1994) 1 RLW 652 : (1994) 2 WLN 1

Hon'ble Judges : V.S. Kokje, J;P.K. Palli, J

Bench : Division Bench

Advocate : M.R. Singhvi, for the Appellant; B.S. Bhati, DGA, for the Respondent

Final Decision : Dismissed

Judgement

Kokje, J.—This is an appeal against the decision of the Learned Single Judge dismissing a writ petition filed by the appellant.

2. The appellant was in the service of Rajasthan State Road Transport Corporation, Parivahan Marg, Jaipur (for short, "the Corporation" hereinafter), as Lower Division Clerk and was posted at Phalodi Depot. By an order dated February 16, 1982 he was transferred to Banswara. It was alleged that he did not join at Banswara despite having been relieved from Phalodi Depot. According to the appellant he was not relieved and was granted leave from May 4, 1982 to May 18, 1982. The respondent Corporation on the other hand contended that the appellant did not join at Banswara after being relieved and in fact overstayed the leave granted to him. The Corporation, therefore, proceeded to take action under Clause 26(8) of the Rajasthan State Road Transport Workers & Workshop Employees Standing Orders, 1965 (for short "the Standing Orders of 1965" hereinafter), applicable to the employees of the Corporation.

3. The Corporation published a notice in Rajasthan Patrika on March 22, 1983 calling upon the appellant to explain his absence from duty failing which his

services would be terminated taking it that he is not willing to serve the Corporation. Ultimately when no response was received to the aforesaid notice, the Corporation terminated the services of the appellant under Clause 26 of the Standing Orders of 1965 by publishing a notice dated April 5, 1983 in the local News Paper.

4. The appellant's contention before the Learned Single Judge was that the termination of the services amounted to retrenchment and as provisions of Section 25F of the Industrial Disputes Act were not complied with, the termination order deserves to be set aside.

5. It was also contended by the appellant in the alternative that if the termination is taken to be punitive, it was illegal as provisions of the Standing Orders of 1965 for imposing the punishment were not followed.

6. The Learned Single Judge has held that the termination was made as a measure of punishment and the question of punishment without following procedure for imposing the punishment will be dealt with effectively by the Tribunal set up by the Industrial Disputes Act itself.

7. It was contended by the learned counsel for the appellant that Clause 26 of the Standing Orders of 1965 falls under Rule IV which deals with Leave and not the misconduct or the punishment. It was therefore contended that any action under Rule-IV of the Standing Orders of 1965 could not be taken as punitive and consequently termination of services under Clause 26(8) of the Standing Orders would amount to simple discharge and would not be a punishment.

8. It was further contended that absence without leave for more than ten days is a misconduct separately mentioned in Sub-clause (iv) of Clause 34 of the Standing Orders and therefore if the intention was to impose punishment for such misconduct resort should be taken to Clause 36 of the Standing Orders and not to Clause 26(8) of the Standing Orders.

9. Having carefully considered the arguments advanced by the learned counsel for the parties, we are unable to agree that Clause 26(8) of the Standing Orders provides for a simple discharge. We also do not agree that all punishments under the Standing orders can be imposed only under Clause 36 thereof, and action under no other clause of the Standing Orders could be said to be punitive. Language of Clause 26(8) of the Standing Orders clearly shows that the action under Clause 26(8) can be taken only as a punishment for absence of an employee without proper orders of the General Manager or the competent authority authorised in this behalf for ten days or more. Such an employee has been made liable to be suspended also and in the event of his not giving satisfactory explanation or evidence, the General Manager or the competent authority has been empowered to terminate the services.

10. On a plain reading of the provisions, it is clear that it provides for punitive action and not for simple discharge. In the case of simple discharge, there is no

need to seek an explanation for something which is done or not done by the employee and there is also no power of suspension.

11. We therefore, find nothing wrong in the view taken by the Learned Single Judge that the termination of the appellant's service was by way of punishment taking it out of the definition of "retrenchment" u/s 2(oo) of the Industrial Disputes Act, 1947.

12. The decision in Jai Shanker Vs. State of Rajasthan, has no application on the facts of this case because that was a case of automatic termination of services on over-staying sanctioned leave. In the present case, automatic termination of service is not claimed by the employer.

13. We are also in agreement with the Learned Single Judge that the matter relating to termination of services by the order without following procedure prescribed by law is best left to Tribunal created by the Industrial Disputes Act, 1947. We do not find any reason to interfere with the well considered order passed by the Learned Single Judge.

14. The appeal is dismissed. There shall be no order as to costs.