

(2015) 06 KL CK 0041

In the High Court Of Kerala

Case No : Writ Petition (C) No. 14699 of 2014

Mohanan V.

APPELLANT

Vs

Kerala State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 10-06-2015

Acts Referred:

Citation : (2015) 3 ILR Ker 388 : (2015) 3 KHC 426 : (2015) 3 KLJ 213 : (2015) 3 KLT 18

Hon'ble Judges : V. Chitambaresh, J

Bench : Single Bench

Advocate : Liju M.P., for the Appellant; M. Gopikrishnan Nambiar, SC and Thushara James, Advocates for the Respondent

Final Decision : Allowed

Judgement

V. Chitambaresh, J.—Can the name of an employee be removed from the list of empanelled Conductors for alleged misdemeanor in service without conducting an enquiry or even hearing him? The petitioner has been working as an empanelled Conductor in the Chalakudy Depot of the Kerala State Road Transport Corporation ["KSRTC" for short] ever since 23/05/2000. The claim of the petitioner for regularisation in service was earlier turned down by Ext. P3 order on the premise that he had not discharged the requisite number of duties. It is the case of the petitioner that he is being allotted duties depending upon the contingencies and that he would be entitled to regularisation later. The petitioner is now served with Ext. P1 memorandum intimating that his name has been removed from the list of empanelled Conductors with effect from 28/04/2014. The memorandum reflects that the petitioner created a ruckus and misbehaved with an Inspector in an inebriated state on 19/04/2014 in the rest room of the Depot of the KSRTC. The petitioner emphatically denies the incident and asserts that he was in the Taluk Hospital, Chalakudy at the material time relying on Ext. P2 out patient ticket. The petitioner contends that Ext. P1 memorandum is ill-motivated and is a deliberate attempt on the part of the KSRTC to deny him

regularisation in service. The petitioner adds that Ext. P1 memorandum causes a stigma on his career and that his name should not have been so deleted from the list of empanelled Conductors without notice. The Writ Petition has been filed seeking a direction to restore his name in the list of empanelled Conductors without prejudice to any enquiry being initiated.

2. No counter-affidavit has been filed on behalf of the respondents who are respectively the KSRTC, the Assistant Transport Officer and the Chief Traffic Officer. The respondents justify the action taken against the petitioner contending that no disciplinary proceedings are warranted against an empanelled Conductor. The respondents contend that it is the prerogative of the KSRTC to dispense with the services of an empanelled Conductor or to remove his name from the list without notice. The respondents maintain that an empanelled Conductor is after all a temporary employee who can be discharged from service at any time and the same cannot be questioned.

3. I heard Mr. Liju M.P., Advocate on behalf of the petitioner and Mrs. Thushara James, Advocate on behalf of the respondents.

4. An empanelled employee is one who has been included in the panel of temporary hands whose services would be requisitioned as and when there is a need and the regular hands are not available. It is beyond dispute that the petitioner has been working as an empanelled conductor and the possibility of his services being regularised cannot be ruled out. This is particularly so in view of the Government Orders in vogue and in the light of Suresh Kumar Vs. State of Kerala, (2013) 2 ILR (Ker) 404 : (2013) 2 KHC 220 : (2013) 2 KLJ 386 : (2013) 2 KLT 258 : (2013) LabIC 2334 . Can the services of such an employee be terminated by Ext. P1 memorandum wherein the only reason stated is misdemeanor in the rest room while not on duty?

5. A constitution Bench of the Supreme Court in Jagdish Mitter Vs. The Union of India (UOI), AIR 1964 SC 449 : (1964) 1 LLJ 418 had occasion to observe as follows:

"It is obvious that to say that it is undesirable to continue a temporary servant is very much different from saying that it is unnecessary to continue him. In the first case, a stigma attaches to the servant, while in the second case, termination of service is due to the consideration that a temporary servant need not be continued, and in that sense, no stigma attaches to him. It seems that anyone who reads the order in a reasonable way, would naturally conclude that the appellant was found to be undesirable, and that must necessarily import an element of punishment which is the basis of the order and is its integral part. When an authority wants to terminate the services of a temporary servant, it can pass a simple order of discharge without casting any aspersion against the temporary servant or attaching any stigma to his character. As soon as it is shown that the order purports to cast an aspersion on the temporary servant, it would be idle to suggest that the order is a simple order of discharge. The test in

such cases must be: does the order cast aspersion or attach stigma to the officer when it purports to discharge him? If the answer to this question is in the affirmative, then notwithstanding the form of the order, the termination of service must be held, in substance, to amount to dismissal."

It can by no stretch of imagination be stated that Ext. P1 memorandum merely discharges the petitioner from service on the ground that it is unnecessary to continue him in that post. Ext. P1 memorandum on the other hand casts an aspersion on the petitioner alleging that he created a ruckus and misbehaved with the Inspector in an inebriated state. This certainly attaches a stigma to the character of the petitioner which should not have been done behind his back without affording an opportunity to prove his innocence. Ext. P1 memorandum is punitive in nature in the form of a punishment for alleged misdemeanor in service which should have been preceded by an enquiry or atleast an opportunity to the petitioner of being heard. Ext. P1 memorandum being a stigmatic termination without notice and not a discharge simplicitor is violative of the principles of natural justice.

I quash Ext. P1 memorandum leaving it open to the respondents to proceed against the petitioner for alleged misconduct in service while working as an empanelled Conductor. The petitioner shall be continued in the list of empanelled Conductors with effect from the date of his removal (28/04/2014) with attendant consequential benefits.

The Writ Petition is allowed. No costs.