
(2003) 03 AHC CK 0170
In the Allahabad High Court
Case No : C.M.W.P. No. 37073 of 2002

Naresh Chandra Gupta

APPELLANT

Vs

U.P. State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 05-03-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh State Road Transport Corporation Employees (Other than Officers)
Service Regulations, 1981 — Regulation 67(1), 69

Citation : (2003) 3 AWC 1931(2)

Hon'ble Judges : S.P. Mehrotra, J

Bench : Single Bench

Advocate : Anuradha Sundaram, for the Appellant; Sameer Sharma, M.N. Verma and V.K. Singh and S.C., for the Respondent

Final Decision : Allowed

Judgement

S.P. Mehrotra, J.—This writ petition has been filed by the petitioner under Article 226 of the Constitution of India, inter alia, praying for issuance of a writ, order or direction in the nature of certiorari quashing the order of suspension dated 20.8.2002 (Annexure-2 to the writ petition) passed by the respondent No. 3, and further for issuance of a writ, order or direction in the nature of mandamus commanding the respondents not to interfere in the peaceful functioning of the petitioner on the post of "Junior Foreman", Foundary Nagar Depot. U. P. State Road Transport Corporation, Agra.

2. It is, inter alia, alleged by the petitioner in the writ petition that the petitioner was appointed as "Junior Foreman" in the U. P. State Road Transport Corporation in the year 1990 and was posted at Bareilly ; and that the petitioner was posted as Junior Foreman (Class III) in the U. P. State Road Transport Corporation, Agra, since the year 1997 ; and that the petitioner was served with the order of suspension dated 20.8.2002 passed by the respondent No. 3 which was received by the petitioner on 21.8.2002 ; and that four charges were levelled against the

petitioner in the said order of suspension dated 20.8.2002. It is, inter alia, further alleged by the petitioner that the petitioner was appointed by the Deputy General Manager, and the appointing authority of the petitioner was Deputy General Manager of respective zones whereas the said order of suspension had been passed by the Regional Manager, who was subordinate in rank and he was not authorized or delegated any power to place the petitioner under suspension.

3. Supplementary-affidavit sworn by the petitioner on 8.9.2002 has also been filed on behalf of the petitioner. Along with the said supplementary-affidavit, copies of the communication dated 24.12.1986 and the decision of the Board of Directors of the U. P. State Road Transport Corporation taken in its 100th meeting held on 20.12.1986, inter alia, specifying powers of various authorities of the said Corporation, have also been filed as Annexure-S.A.-1 to the said supplementary-affidavit.

4. Sri Sameer Sharma, advocate, has put in appearance on behalf of the respondents, and has also filed short counter-affidavit sworn on 12.9.2002. It is, inter alia, stated in the said short counter-affidavit that the petitioner was working on the post of Junior Foreman in the Agra Region of the U. P. State Road Transport Corporation (in short the "Corporation") ; and that as the report of serious misconduct was submitted against the petitioner which, if proved, could result in major punishment, due to administrative exigency, the Regional Manager of the Corporation at Agra placed the petitioner under suspension vide order dated 20.8.2002, and a copy of the said order of suspension was forwarded to the appointing authority for the post of Junior Foreman i.e., Zonal General Manager at Meerut for approval.

5. It is, inter alia, further stated in the said short counter-affidavit that the Zonal General Manager, Meerut, vide order dated 4.9.2002 granted approval to the order of suspension of the petitioner dated 20.8.2002. A copy of the said order dated 4.9.2002 issued by the Zonal General Manager, Meerut, has been filed as Annexure-1 to the said short counter-affidavit.

6. It is, inter alia, further stated in the short counter-affidavit that the charge-sheet dated 6.9.2002 was also issued against the petitioner. A copy of the said charge-sheet dated 6.9.2002 has been annexed as Annexure-2 to the said short counter-affidavit.

7. It is, inter alia, further stated in the said short counter-affidavit that the order of suspension was approved by the appointing authority, i.e., Zonal General Manager and hence, there was no infirmity in the said order of suspension. It is, inter alia, further stated in the said short counter-affidavit that the charges levelled against the petitioner were serious in nature and would result in major punishment, if proved. It is, inter alia, further stated in the said short counter-affidavit that the petitioner had got an alternative remedy of filing an appeal before the next higher authority under Regulation 69 of the U. P. State Road Transport Corporation Employees (other than officers) Service Regulations, 1981

(in short "the Regulations"), and the writ petition was liable to be dismissed on the ground of availability of alternative remedy.

8. I have heard Miss Anuradha Sundaram, learned counsel for the petitioner and Sri Sameer Sharma, learned counsel for the respondents.

9. Learned counsel for the petitioner submits that in view of Regulation 67 (1) of the Regulations, the suspension order in respect of an employee may be passed by the appointing authority or by any other authority empowered by the Board of Directors of the Corporation in this behalf. It is further submitted that in view of the decision of the Board of Directors of Corporation taken in its 100th meeting held on 20.12.1986 (Annexure-S.A.-1 to the aforesaid supplementary affidavit filed on behalf of the petitioner), the appointing authority for the post of Junior Foreman is the Deputy General Manager (Zones), as such, the suspension order in respect of an employee holding the post of Junior Foreman may be passed by the Deputy General Manager (Zones) of the Corporation. The Regional Manager, who is subordinate to Deputy General Manager (Zones) has no power to pass the suspension order in respect of an employee holding the post of Junior Foreman. It is further submitted that in the present case, the suspension order dated 20.8.2002 (Annexure-2 to the writ petition) in respect of the petitioner, who was holding the post of Junior Foreman, was issued by the Regional Manager, U. P. State Road Transport Corporation, Agra, who had no power to issue the order of suspension in respect of the petitioner. The order of suspension was thus, null and void and without jurisdiction. It is further submitted that as the said order of suspension dated 20.8.2002 was null and void and without jurisdiction, it was irrelevant that the said order was sent to the Zonal General Manager (Western Zone) Meerut, for approval, and pursuant thereto, Zonal General Manager (Western Zone), Meerut, gave his approval. Learned counsel for the petitioner has placed reliance on the following decisions :

(1) R.P. Kapur v. Union of India and Anr. AIR 1964 SCC 787.

(2) Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, .

(3) Marathwada University Vs. Seshrao Balwant Rao Chavan, .

(4) Saheb Singh Vs. District Cane Officer, Saharanpur and another, .

10. In reply, learned counsel for the respondents submits that the suspension of an employee is purely an administrative function, and not quasi-judicial function. It is, further, submitted that while the dismissal of an employee requires application of mind, there is no such requirement in respect of suspension of an employee. The suspension of an employee being purely administrative action, the contention proceeds the same could be ratified subsequently, if there is no lacuna.

11. It is further submitted by the learned counsel for the respondents that even if the order of suspension dated 20.8.2002 (Annexure-2 to the writ petition)

issued by the Regional Manager, U. P. State Road Transport Corporation, Agra, was without jurisdiction but when the subsequent order of approval was passed by the competent authority on 4.9.2002 (Annexure-1 to the said supplementary-affidavit), the said order of suspension dated 20.8.2002 stood validated and ratified.

12. It is further submitted by the learned counsel for the respondents that the order of suspension was passed in respect of the petitioner on the ground of serious charges which, if proved, would result in the award of major punishment to the petitioner, as such, the said order was legal and valid.

13. It is further submitted by the learned counsel for the respondents that the petitioner has got an alternative remedy of appeal under Regulation 69 of the Regulations against the said order of suspension, as such, the writ petition is liable to be dismissed on the ground of alternative remedy.

14. Learned counsel for the respondents has placed reliance on the following decisions :

(1) Shri Parmeshwari Prasad Gupta Vs. The Union of India (UOI), .

(2) Punjab University Vs. V.N. Tripathi and Another, .

15. In rejoinder, learned counsel for the petitioner submits that as the suspension order dated 20.8.2002 (Annexure-2 to the writ petition) issued by the Regional Manager, U. P. State Road Transport Corporation, Agra, was null and void and without Jurisdiction, the availability of alternative remedy to the petitioner under Regulation 69 of the Regulations will not be a bar to the entertainment of the present writ petition against the said order of suspension. Reliance in this regard is placed on the following decisions :

(1) Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, ,

(2) Pradeep Kumar Singh Vs. Uttar Pradesh State Sugar Corporation and Another,

16. I have considered the submissions made by the learned counsel for the parties and perused the record. Regulation 67 of the Regulations which deals with the suspension of an employee is reproduced below :

"67. Suspension.--(1) An employee against whose conduct an enquiry is contemplated or is proceeding may be placed under suspension pending the conclusion of the inquiry 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 sub-regulation :

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

(2) An employee in respect of, or against whom an investigation, enquiry or trial

relating to a criminal charge is pending, may, at the discretion of the appointing authority under whom he is serving, be placed under suspension until the termination of all proceedings relating to that charge, if the charge is connected with his position as an employee of the Corporation or is likely to embarrass him in the discharge of his duties or involves moral turpitude :

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

(3) An employee shall be deemed to have been placed or, as the case may be, continued to be placed under suspension by an order of the appointing authority :

(a) with effect from the date of his detention, if he is detained in custody, whether the detention is on criminal charge or otherwise, for a period exceeding forty-eight hours ; and

(b) with effect from the date of his conviction, if in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed consequent to such conviction.

Explanation.--The period of forty-eight hours referred to in Clause (b) of this sub-regulation shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

(4) Where a penalty of dismissal or removal from service imposed upon an employee is set aside in appeal under these Regulations and the case is remitted for further inquiry or action or with any other directions :

(a) if he was under suspension immediately before the penalty was awarded to him, the order of his suspension shall, subject to any such directions as aforesaid, be deemed to have continued in force on and from the date of the original order of dismissal or removal ;

(b) if he was not under suspension, he shall if so directed by appellate authority, be deemed to have been placed under suspension by an order of the appointing authority on and from the date of the original order of dismissal or removal ;

Provided that nothing in this sub-regulation shall be construed as affecting the power of the competent authority, in a case where a penalty of dismissal or removal from service imposed upon an employee is set aside in appeal under these Regulations on grounds other than the merits of the allegations on which the said penalty was imposed but the case is not remitted for further inquiry or action or with any other directions, to pass an order of suspension pending further inquiry against him on those allegations, so, however, that any such suspension shall not have retrospective effect.

(5) Where a penalty of dismissal or removal from service imposed upon an employee is set aside or "declared or rendered void in consequence of or by a decision of a court of law and the appointing authority, on a consideration of the

circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal or removal was originally Imposed, whether the allegation remain in their original form or are clarified or their particulars better specified or any part thereof of a minor nature omitted :

(a) if he was under suspension Immediately before the penalty was awarded to him, the order of his suspension shall subject to any direction of the appointing authority, be deemed to have continued in force on and from the date of the original order of dismissal or removal ;

(b) if he was not under such suspension, he shall, if so directed by the appointing authority, be deemed to have been placed under suspension by an order of the competent authority on and from the date of the original order of dismissal or removal.

(6) (a) Any suspension ordered or deemed to have been ordered or to have continued in force, under this Regulation shall continue to remain in force until it is modified by any authority specified in Sub-regulation (1).

(b) Where an employee is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing direct that the employee shall continue to be under suspension till termination of all or any of such proceedings."

17. A perusal of Sub-regulation (1) of Regulation 67 shows that an employee against whose conduct, an enquiry is contemplated or is pending, may be placed under suspension pending conclusion of the said enquiry in the discretion of the appointing authority. First proviso to Sub-regulation (1) of Regulation 67 lays down that any other authority empowered by the Board of Directors of the Corporation in this behalf, may place an employee under suspension under Sub-regulation (1) of Regulation 67. It is thus, evident that the suspension order in respect of an employee of the Corporation may be passed either by the appointing authority or by any other authority empowered by the Board of Directors of the Corporation in this behalf.

18. Second proviso to Sub-regulation (1) of Regulation 67 provides that the suspension of an employee 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 punishment.

19. As the present writ petition may be decided on the question of jurisdiction for passing the said order of suspension dated 20.8.2002, it will not be necessary in the present case to consider as to whether the requirements of the second proviso to Sub-regulation (1) of Regulation 67 were satisfied in the present case or not.

20. As noted above, the said suspension order dated 20.8.2002 (Annexure-2 to

the writ petition) in respect of the petitioner was issued by the Regional Manager, U. P. State Road Transport Corporation, Agra. Copy of the said suspension order dated 20.8.2002 was forwarded to the Zonal General Manager (Western Zone), Meerut, for approval.

21. By the order dated 4.9.2002 (Annexure-1 to the short counter-affidavit), Zonal General Manager (Western Zone), Meerut, gave his approval to the said suspension order dated 20.8.2002.

22. It is not disputed by the learned counsel for the respondents that the order of suspension dated 20.8.2002 in respect of the petitioner, who was holding the post of Junior Foreman could not be issued by the Regional Manager, U. P. State Road Transport Corporation, Agra, but could be passed by the Zonal General Manager who was the appointing authority for the post of Junior Foreman. However, the learned counsel for the respondents submits that when the approval was given by the Zonal General Manager (Western Zone), Meerut, by the order dated 4.9.2002, the said order of suspension dated 20.8.2002 stood validated and ratified.

23. The question which, therefore, crops up for consideration is : if the order of suspension dated 20.8.2002 issued by the Regional Manager, U. P. State Road Transport Corporation was without jurisdiction as the Regional Manager had no power to issue the same, could such an order of suspension be validated and ratified by the approval given by the Zonal General Manager (Western Zone), Meerut, who was the appointing authority and had power to issue the suspension order?

24. As noted above, it is not disputed by the learned counsel for the respondents that the Regional Manager, U. P. State Road Transport Corporation, Agra, had no power to issue the order of suspension in respect of the petitioner, who was holding the post of Junior Foreman. This is also evident from the perusal of the decision of the Board of Directors of the Corporation in its 100th meeting held on 20.12.1986 which has been filed as Annexure-S.A. 1 to the said supplementary affidavit filed on behalf of the petitioner.

25. Regulation 67 (1) of the Regulations, as noted above, provides that the order of suspension may be issued either by the appointing authority or by any other authority empowered by the Board of Directors of the Corporation in this behalf.

26. The Regional Manager, U. P. State Road Transport Corporation was admittedly not the appointing authority for the post of Junior Foreman, nor was the said Regional Manager authorized under first proviso to Sub-regulation (1) of Regulation 67 to issue the order of suspension in respect of an employee holding the post of Junior Foreman. Evidently, therefore, the said Regional Manager had no power or jurisdiction to issue the said order of suspension dated 20.8.2002 in respect of the petitioner who was holding the post of Junior Foreman. The said order of suspension was null and void and without Jurisdiction. As the said order of suspension dated 20.8.2002 was null and void and without jurisdiction, the

said order, in my opinion, could not be validated or ratified by the Zonal General Manager (Western Zones), Meerut, by giving his approval to the said suspension order dated 20.8.2002.

27. In AIR 1949 112 (Privy Council) , the facts were as follows :

"The respondent, Suraj Narain Anand was appointed as Sub-Inspector of Police by the Inspector General of Police, North West Frontier Province on 1.3.1928. The said respondent was dismissed on 25th April, 1938 by the Deputy Inspector General of Police on a charge of copying during the departmental examination. Thus, the said respondent was dismissed by an authority subordinate in rank to the officer, who had appointed him. The said respondent filed appeals to the Inspector General of Police and the Provincial Government, but was unsuccessful."

28. Their Lordships of the Privy Council quoted the provisions of Section 240 of the Government of India Act, 1935, which provided as follows :

"240 (1) Except as expressly provided by this Act, every person who is a member of a civil service of the Crown in India, or holds any civil post under the Crown in India, holds office during his Majesty's pleasure.

(2) No such person as aforesaid shall be dismissed from the service of his Majesty by any authority subordinate to that by which he was appointed.

(3) No such person as aforesaid shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken against him."

29. It will be noticed that Section 240(1) of the Government of India Act, 1935, was similar to Article 310 (1) of the Government of India Act, 1935, was similar to Article 310(1) of the Constitution of India, while Section 240(2) and Section 240(3) of the Government of India Act, 1935, were similar to the provisions of Articles 311(1) and 311(2) of the Constitution of India, respectively.

30. After quoting Section 240 of the Government of India Act, 1935, as aforesaid their Lordships of the Privy Council held as follows (Paragraph 7 of the said AIR) :

"7.

The proper construction of this section has been fully dealt with in the judgment of this Board just delivered in AIR 1948 121 (Privy Council) to which reference may be made. In that case the question arose as to the effect of non-compliance with the provisions of Sub-section (3) of Section 240, and it was held that Sub-section (3) was a statutory term of service of the Crown, which qualified the provisions of Sub-section (1) of Section 240 and was mandatory and not permissive. On the principles of this decision, and the decision in AIR 1937 27 (Privy Council) it is equally clear that Sub-section (2) of Section 240, though it obviously does not apply in the case of dismissal by the Crown itself, is a statutory term of the service of the Crown, and is mandatory and not permissive. It follows that the dismissal of the respondent by an authority subordinate to

that by which he was appointed would be unlawful and inoperative under that section....."

31. It was, thus, held by their Lordships of the Privy Council that just as Sub-section (3) of Section 240 of the Government of India Act, 1935, had been held to be mandatory and not permissive in AIR 1948 121 (Privy Council) so also Sub-section (2) of Section 240 of the Government of India Act, 1935, was mandatory and not permissive. Therefore, the dismissal of the said respondent by an authority subordinate to that by which he was appointed would be unlawful and inoperative under the said section. Thus, the order of dismissal of the said respondent by an authority subordinate to that by which he was appointed was held to be unlawful and inoperative, even though, the said respondent had filed appeals to the Inspector General of Police and the Provincial Government and was unsuccessful in the said appeals.

32. In Sampuran Singh Vs. State of Punjab, , their Lordships of the Supreme Court referred to the decision in Union of India (UOI) and Another Vs. K.S. Subramanian, and laid down as follows (Paragraph 27 of the said 1982 AIR) :

"27. It was further held that a dismissal by an officer subordinate to the appointing authority is null and void. This Article 311 however, does not require that dismissal or removal must be ordered by the same authority who made the appointment. There is a compliance with Clause (1) of Article 311 if the dismissing authority is not lower in rank or grade than the appointing authority."

Thus, in view of this decision, the order of dismissal by an officer subordinate to the appointing authority is null and void.

This decision shows that if the order of dismissal is not passed by the competent authority, then the said order is null and void.

Even though the aforesaid decisions related to the cases of dismissal, the principles can be applied to the case of suspension also.

33. Following the ratio of the aforesaid decisions, it is evident that the order of suspension dated 20.8.2002 (Annexure-2 to the writ petition) in respect of the petitioner issued by the Regional Manager, U. P. State Road Transport Corporation, Agra, who had no power or jurisdiction to issue the same, was null and void. Such order was inoperative being without jurisdiction.

34. Reference may be made to the decision of the Apex Court in R. P. Kapur's case (supra) relied upon by the learned counsel for the petitioner. In R. P. Kapur's case (supra), their Lordships of the Supreme Court laid down as follows (Paragraph 11 of the said AIR) :

"11. The general principle therefore is that an employer can suspend an employee pending an enquiry into his conduct and the only question that can arise on such suspension will relate to the payment during the period of such suspension. If there is no express term in the contract relating to suspension and

payment during such suspension or if there is no statutory provision in any law or rule, the employee is entitled to his full remuneration for the period of his interim suspension ; and on the other hand if there is a term in this respect in the contract or there is a provision in the statute or the rules framed there under providing for the scale of payment during suspension, the payment would be in accordance therewith. These general principles in our opinion apply with equal force in a case where the Government is the employer and a public servant is the employee with this modification that in view of the peculiar structural hierarchy of Government, the employer in the case of Government, must be held to be the authority which has the power to appoint a public servant. On general principles therefore, the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him. This general principle is illustrated by the provision in Section 16 of the General Clauses Act No. X of 1987, which lays down that where any Central Act or Regulation gives power of appointment that includes the power to suspend or dismiss unless a different intention appears. Though this provision does not directly apply in the present case, it is in consonance with the general law of master and servant. But what amount should be paid to the public servant during such suspension will depend upon the provisions of the statute or rule in that connection. If there is such a provision the payment during suspension will be in accordance therewith. But if there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension. This suspension must be distinguished from suspension as a punishment which is a different matter altogether depending upon the rules in that behalf. On general principles, therefore, the Government, like any other employer, would have right to suspend a public servant in one of two ways. It may suspend any public servant pending departmental enquiry or pending criminal proceedings; this may be called interim suspension. Or the Government may proceed to hold a departmental enquiry and after his being found guilty order suspension as a punishment if the rules so permit. This will be suspension as a penalty. These general principles will apply to all public servants but they will naturally be subject to the provisions of Article 314 and this brings us to an investigation of what was the right of a member of the former Secretary of State's Services in the matter of suspension, whether as a penalty or otherwise."

35. In view of this decision, it is evident that on general principles, the authority entitled to appoint an employee, would be entitled to suspend him pending a departmental enquiry into his conduct. Thus, even on general principles, the order of suspension dated 20.8.2002 issued by the Regional Manager, U. P. State Road Transport Corporation, Agra, who was subordinate to the appointing authority, was without jurisdiction.

36. In Sahab Singh's case (supra) relied upon by the learned counsel for the petitioner, the order of suspension in respect of the petitioner therein was issued by the Cane Commissioner while in view of the relevant Regulation 29 of the U.

P. Cane Cooperative Service Regulation, 1975, the order of suspension can be issued only by the Secretary. In the circumstances, it was held by a learned single Judge of this Court as follows (Paragraph 3 of the said UPLBEC) :

"3. The impugned order having been admittedly passed by the Cane Commissioner, it is beyond the scope and ambit of Regulation 29, which empowers the Secretary to pass such an order. The said Regulations of 1975 nowhere provides that the Cane Commissioner is empowered to pass an order of suspension."

The question may be examined from another angle.

37. In Mohinder Singh Gill's case (supra) relied upon by the learned counsel for the petitioner, their Lordships of the Supreme Court, laid down as follows (Paragraph 8 of the said AIR) :

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time It comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J., in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, :

"Public orders publicly made, in exercise of a statutory authority can not be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Orders are not like old wine becoming better as they grow older. A caveat."

In view of this decision, the validity of the order issued by a statutory functionary on certain grounds, is to be judged on the basis of the grounds mentioned in the order itself. Such an order cannot be supplemented by providing fresh or additional reasons/grounds in order to validate the same.

38. Applying the analogy of the aforesaid principles to the present case, it is evident that the validity of the order of suspension dated 20.8.2002 is to be judged on the basis of what has been stated in the said order itself. A perusal of the said order dated 20.8.2002 shows that the said order dated 20.8.2002 was issued by the Regional Manager, U. P. State Road Transport Corporation, Agra. The said Regional Manager, U. P. State Road Transport Corporation, Agra, had no power to issue the said order of suspension dated 20.8.2002, as such, the said order dated 20.8.2002 was invalid. The subsequent approval given by the Zonal General Manager (Western Zone), Meerut, by the order dated 4.9.2002 would not validate the said order of suspension dated 20.8.2002.

39. Let Us now consider the rival contentions of the learned counsel for the parties on the question as to whether the order of suspension dated 20.8.2002 could be validated by ratification done by the Zonal General Manager (Western Zone), Meerut, by the order dated 4.9.2002.

40. In Marathwada University's case (supra), on the conclusion of the departmental proceedings, the Vice-Chancellor of the Marathwada University passed the order on January 2, 1980 of dismissal of the respondent who was the Deputy Registrar of the said University. The Executive Council in the meeting held on December 26/27, 1985 passed a resolution, inter alia, ratifying the action taken by the Vice-Chancellor and confirming the dismissal of the respondent.

The question to be considered was as to whether the order of the Vice-Chancellor which was without authority of law, could be ratified by the subsequent resolution of the Executive Council.

Their Lordships of the Supreme Court laid down as follows (Paragraphs 20 and 27 of the said (SCC) :

"20. Counsel for the appellant argued that the express power to the Vice-Chancellor to regulate the work and conduct of officers of the university implies as well, the power to take disciplinary action against officers. We are unable to agree with this contention. Firstly, the power to regulate the work and conduct of officers cannot include the power to take disciplinary action for their removal. Secondly, the Act confers power to appoint officers on the Executive Council and it generally includes the power to remove. This power is located u/s 24(1)(xxix) of the Act. It is, therefore, futile to contend that the Vice-Chancellor can exercise that power which is conferred on the Executive Council. It is a settled principle that when the Act prescribes a particular body to exercise a power, it must be exercised only by that body. It cannot be exercised by others unless it is delegated. The law must also provide for such delegation. Halsbury's Law of England (Vol. I, 4th ed., para 32) summarizes these principles as follows :

32. Sub-delegation of powers.--In accordance with the maxim delegatus non protest delegare, a statutory power must be exercised only by the body or officer in whom it has been confided, unless sub-delegation of the power is authorized by express words or necessary implication. There is a strong presumption against construing a grant of legislative, judicial or disciplinary power as impliedly authorising sub-delegation ; and the same be said of any power to the exercise of which the designated body should address its own mind.

27. These principles of ratification, apparently do not have any application with regard to exercise of powers conferred under statutory provisions. The statutory authority cannot travel beyond the power conferred and any action without power has no legal validity. It is ab initio void and cannot be ratified."

In view of this decision, it is evident that if a statutory authority travels beyond

the power conferred, such an action being without power, is ab initio void, and such an action cannot be ratified.

41. In Sri Parmeshwari Prasad Gupta's case (supra) relied upon by the learned counsel for the respondents, the services of the appellant had been terminated by telegram and letter of the Chairman, dated December 17, 1953, addressed to the appellant pursuant to the resolution passed by the Board of Director on December 16, 1953. The action of the Chairman was confirmed by the meeting of the Board of Directors held on December 23, 1953.

It was held by the Apex Court that the meeting of the Board of Directors held on December 16, 1953, was not duly convened, and the resolution passed in the said meeting was invalid. The action of the Chairman in terminating the services of the appellant by his telegram and letter dated December 17, 1953, was thus in pursuance of the invalid resolution of the Board dated December 16, 1953.

The Apex Court then proceeded to consider the effect of confirmation of the action of the Chairman by the meeting of the Board of Directors held on December 23, 1953.

The question which came up for consideration before the Apex Court was stated as follows in the said decision (Paragraph 13 of the said SCC) :

"13. Then, the question for consideration is, what is the effect of the confirmation of the minutes of the meeting of the Board of Directors held on December 16, 1953 and the action of the Chairman in terminating the services of the appellant by his telegram and letter, dated December 17, 1953, in pursuance to the invalid resolution of the Board of Directors to terminate his services, in the meeting of the Board of Directors held on December 23, 1953?"

After framing the question as aforesaid, their Lordships of the Supreme Court laid down as follows (Paragraph 14 of the said SCC) :

"14. The agenda of the meeting of the Board of Directors held on December 23, 1953, shows that one item of business was the confirmation of the minutes of the meeting of the Directors held on December 16, 1953. The confirmation of the minutes of the meeting of the Directors held on December 16, 1953, would not in any way show that the Board of Directors adopted the resolution to terminate the services of the appellant passed on December 16, 1953. It only shows that the Board passed the minutes of the proceedings of the meeting held on December 16, 1953. But the resolution of the Board of Directors to confirm the action of the Chairman to terminate the services of the appellant by his telegram and letter dated December 17, 1953, would show that the Board ratified the action of the Chairman. Even if it be assumed that the telegram and the letter terminating the services of the appellant by the Chairman was in pursuance to the invalid resolution of the Board of Directors passed on December, 16, 1953, to terminate his services, it would not follow that the action of the Chairman could not be ratified in a regularly convened meeting of the Board of Directors. The

point is that even assuming that the Chairman was not legally authorized to terminate the services of the appellant, he was acting on behalf of the company in doing so, because, he purported to act in pursuance of the invalid resolution. Therefore, it was open to a regularly constituted meeting of the Board of Directors of ratify that action which, though unauthorized, was done on behalf of the company, Ratification would always relate back to the date of the act ratified and so it must be held that the services of the appellant were validly terminated on December 17, 1953. The appellant was not entitled to the declaration prayed for by him and the trial court as well as the High Court was right in dismissing the claim."

From the perusal of the said decision of the Apex Court in Sri Parmeshwari Prasad Gupta's case, it is evident that the Chairman of the respondent-company could terminate the services of the appellant provided there was resolution passed by the Board of Directors in this behalf. Thus, the Chairman of the respondent-company could be given power to terminate the services of the appellant by resolution passed by the Board of Directors of the respondent-company ; as such, even if the resolution of the Board of Directors prior to the issuance of the order of termination by the Chairman was not valid, the action of the Chairman terminating the services of the appellant could be ratified by a subsequent resolution of the Board of Directors. In other words, if an authority can be conferred power to take a particular action/decision by following a particular procedure, and such an authority takes such an action/decision without such procedure having been followed prior to the taking of such action/decision, then such an action/decision can be ratified by fulfilling the required procedural requirements even after the action/decision has been taken by such an authority.

42. In Punjab University's case (supra) relied upon by the learned counsel for the respondents, the appeals against the judgments and decrees of the trial court were preferred by the Punjab University. The objection was taken before the first appellate court as well as before the High Court in second appeals that the Registrar of the University was not authorized or competent to file appeals, in absence of any decision taken by the Senate of the University. The objection was sustained by the first appellate court as well as by the High Court in second appeals. Thereafter, the matter came up before the Supreme Court. The point for consideration was as to whether the Registrar of the Punjab University was competent to file appeals without any decision of the Senate of the University to that effect or not. It was contended before the Apex Court that on the recommendation of the Syndicate, the Senate of the University passed a resolution on 29.9.1991 and in view of the said resolution, the action of the Registrar in filing the appeals stood ratified.

The said resolution is quoted below :

"The recommendations of the Syndicate contained in Item 23 on the agenda were read out, and unanimously approved i.e. :

23. That the Registrar/Vice-Chancellor be authorized to sue or file an appeal in the Court (under Regulation 10.2 at page 32 of the U. P. Cal., Vol. 1, 1989)

That the action taken by the Registrar/Vice-Chancellor in cases where suits had already been filed or appeals preferred by them stood ratified."

Their Lordships of the Apex Court laid down as follows (Paragraphs 7 and 8 of the said SCC) :

"7. On the basis of the above resolution, it is submitted that the action of the Registrar in filing the appeals stands ratified, hence, the plea of the respondents that the appeals are incompetent has no force. Learned counsel for the respondent submits that the Senate of the University is the main body invested with powers of entire management of the affairs of the University in accordance with the Statutes, Rules and Regulations in force. This would also include powers to initiate legal proceedings as well. It is further submitted that under Regulation 10.2 of the Regulations of Punjab University, the Senate can delegate its function to those authorities as mentioned in the said Regulation and the Registrar is not one of the authorities to whom the delegation could be made. Therefore, it is submitted that the High Court was right in holding that the action of the Registrar in filing the appeal was void and that being the position his action in filing the appeal could not be ratified. In support of the above contentions, he has relied upon the decision in *Marathwada University Vs. Seshrao Balwant Rao Chavan*, . This case, in our view, will not help the respondent. The Executive Council was competent to dismiss an officer of the University. On receipt of an Inquiry report against the officer, the Executive Council resolved to give full power to the Vice-Chancellor to take the decision on the report. The Vice-Chancellor instead of acting on the basis of the inquiry report, appointed another inquiry Officer and on the basis of the second inquiry report, dismissed the officer of the University. The Executive Council sought to ratify the action of the Vice-Chancellor in passing the order of dismissal but the Court did not accept the same mainly on two grounds, that the Vice-Chancellor could pass any order on the basis of the report supplied by the Executive Council but he could not appoint another Inquiry Officer and Act on the basis of the second report. And secondly, the delegation of the power under the statute was subject to approval by the Chancellor which was lacking in the case, hence, the action of the Vice-Chancellor was held to be void ab initio and no amount of ratification could validate the order. The case pertains to the realm of disciplinary proceedings and dismissal of an officer of the University by the authority competent under the enactment. The case stands on a different footing. The learned counsel for the appellant places reliance upon a case in *Jugraj Singh and Another Vs. Jaswant Singh and Others*, . In this case the act of the holder of power of attorney in transaction of sale, including presentation of the deed before the Registrar, at a time when the power of attorney did not authorize him to present the deed of registration but the act was ratified in the subsequent power of attorney. It was held that the ratification was valid and relates back to the date of original act.

8. The resolution dated 29.9.1991 is in two parts. The first part deals with the delegation of the powers to the Registrar/Vice-Chancellor authorizing them to sue or file an appeal under Regulation 10.2 of the Regulations of Punjab University. The other part pertains to the suits or appeals which have already been filed by the Registrar/Vice-Chancellor that act of filing of the appeals has been ratified. The first part thus deals with delegation of the power for acts to be done in future. The other part is not delegation of power, but ratifying the action, which has already been taken by the authorities mentioned therein by action filing the appeals. It has already been noticed that the Registrar u/s 21 of the Punjab University Act, 1947, is authorized to represent the University in all legal proceedings, except where there is a decision of the Senate to the contrary. While representing the University, in view of the provisions u/s 21 of the Punjab University Act, the Registrar would obviously be taking several steps in prosecution of the legal proceedings. The Registrar would not be totally a stranger in the matters relating to legal proceedings in the Court. In this background if the Registrar filed the appeal, against the decision of the trial court, which had gone against Punjab University though strictly speaking exceeded his authority, but his action in having filed the appeals was later on ratified by the competent authority by resolution dated 29.9.1991. The Registrar is a responsible officer of the University and has statutory power u/s 21 of the Act to represent the University in legal proceedings. Had the Senate not ratified the act of the filing of the appeal, it would of course have been a different matter, but not thereafter. We also find no substance in the submission made on behalf of the respondent that the ratification came very late. In our view, it would not have any material bearing on the fact of ratification of the action of the Registrar in filing the appeals. The ratification has the effect of relating back to the time when the action was taken without authority. Despite the ratification by the competent authority, refusal to examine the matter on merits, would in no way serve the ends of justice. It would only be hankering to the technicalities rather than to be concerned with the intent and the substance. In view of the discussion held above, we allow the appeals and set aside the judgments passed by the High Court and appellate courts below and remand the matters to the respective first appellate courts for decision on merits. Since the appeals have become old, they shall be disposed of expeditiously. There would, however, be no order as to costs."

It will be noticed that in the aforesaid decision in Punjab University's case (supra), their Lordship of the Supreme Court also considered the decision in Marathwada University's case (supra).

A perusal of the said decision of the Apex Court in Punjab University's case (supra), shows that u/s 21 of the Punjab University Act, 1947, the Registrar of the University had power to represent the University in all legal proceedings. However, the decision to initiate any legal proceedings had to be taken by the authority competent to do so, and thereafter in such proceedings, for or against the University, the Registrar was to represent the University. It is, thus, evident

that in this case, the Registrar could be conferred power to initiate the legal proceedings by decision taken by the authority competent to do so. Hence, even if competent authority had not taken such decision prior to the initiation of the legal proceedings by the Registrar of the University, such initiation of the legal proceedings by the Registrar of the University could be ratified by the competent authority by taking subsequent decision in this regard.

Thus, this decision of the Apex Court in Punjab University's case (supra), also shows that if the authority can take a particular action/decision after following certain procedure, and if such an authority takes such an action/decision without fulfilling such procedure, then the action/decision of the authority can be ratified by fulfilling the requisite procedure even subsequent to such an action/decision.

43. In my opinion, therefore, the following principles can be derived from the aforesaid decisions :

If under the existing provisions of the relevant statute/rules/regulations/orders, etc., an authority has power/jurisdiction to take a particular action/ decision provided certain procedural requirements are fulfilled prior to such action/ decision, and if such an authority takes such action/decision without prior fulfilment of such procedural requirements, then the action/decision can be ratified by fulfilling the procedural requirements subsequent to such action/ decision.

However, if under the existing provisions of the relevant statute/ rules/ regulations/orders, etc., an authority has no power/ jurisdiction to take a particular action/decision, and still such an authority takes such action/ decision, then there cannot be any question of ratifying such action/ decision by fulfilling any procedural requirements. In other words, where an authority takes a particular action/decision which such authority has no power to take under the existing provisions of the relevant statute/rules/ regulations/orders etc./then such action/decision cannot be ratified. Such action/decision is null and void and without jurisdiction, and there cannot be any ratification of such action/decision.

44. Coming to the present case, as noted above, in view of Regulation 67 (1) read with the decision of the Board of Directors of the Corporation in its 100th meeting held on 20.12.1986, the Regional Manager, U. P. State Road Transport Corporation, Agra, had no power/jurisdiction to issue order of suspension in respect of the petitioner. Therefore, the said order of suspension dated 20.8.2002 was null and void and without jurisdiction. Such an order could not be ratified by the Zonal General Manager (Western Zone), Meerut, by giving his approval by the orders dated 4.9.2002, in view of the principles mentioned above.

45. Hence, in my opinion, the said order of suspension dated 20.8.2002 was not validated by the subsequent approval/ratification by the Zonal General Manager (Western Zone), Meerut, by the order dated 4.9.2002. The submission of the learned counsel for the respondents in this regard cannot be accepted.

46. Coming now to the submission made by the learned counsel for the respondents that the petitioner has got an alternative remedy of appeal under Regulation 69 of the Regulations against the said order of suspension, it will be relevant to reproduce Regulation 69 of the Regulations which provides as follows :

"69. Appeal.--(1) An employee shall be entitled to appeal to the next higher authority from an order passed by the appointing or any other authority.

(2) An employee preferring an appeal shall do so in his name. The memorandum of appeal shall contain all material statement and arguments relied upon by the appellant.

(3) The appeal shall not contain any intemperate language. Any appeal, which contains such language may be liable to be summarily dismissed.

(4) The appeal shall be addressed to the appellate authority and submitted to the authority, against whose order it is preferred through the normal proper channel.

The appeal shall be preferred within three months of the date of the order. An appeal, preferred beyond three months but not beyond six months of the date of the order, may be accepted by the appellate authority if sufficient cause is shown for the delay. An appeal preferred beyond time shall be dismissed summarily."

47. Thus, in view of the aforesaid Regulation 69, it was open to the petitioner to file an appeal against the said order of suspension to the next higher authority. However, as noted above, the said order of suspension dated 20.8.2002 was null and void and without jurisdiction. Therefore, even though the petitioner has got an alternative remedy of filing an appeal under Regulation 69 of the Regulations against the said order of suspension, still this Court under Article 226 of the Constitution of India can entertain the writ petition filed by the petitioner against the said order of suspension which was null and void and without Jurisdiction.

48. In Whirlpool Corporation's case (supra) relied upon by the learned counsel for the petitioner, their Lordships of the Supreme Court laid down as follows (Paragraphs 15, 20 and 21 of the said AIR) :

"15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order of proceedings are wholly without jurisdiction or the vires of an Act are challenged. There is a plethora of case law on this point put to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

20. Much water has since flown beneath the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp Jurisdiction without any legal foundation.

21. That being so, the High Court was not justified in dismissing the writ petition at the initial stage without examining the contention that the show cause notice issued to the appellant was wholly without jurisdiction and that the Registrar, in the circumstances of the case, was not justified in acting as the "Tribunal".

Hence, one of the cases where alternative remedy would not operate as a bar to the entertainment of the writ petition by the High Court under Article 226 of the Constitution of India is that where the order impugned is wholly without jurisdiction.

49. In Pradeep Kumar's case (supra), a Division Bench of our Court laid down as follows (Paragraph 22 of the said ESC) :

"22. Thus, from the various decisions referred to above the following principles emerge regarding maintainability of a petition under Article 226 of the Constitution of India.

(1) While exercising its writ jurisdiction under Article 226 of the Constitution of India, the High Court may decline to grant relief until such statutory remedy is exhausted. However, this rule is a rule of policy, convenience and discretion and not a rule of law nor it bars the Jurisdiction of the High Court under Article 226 of the Constitution in granting relief in appropriate case and exceptional circumstances ; (II) Alternative remedy is not a bar where a writ petition has been filed for enforcement of any fundamental rights ; or where there is violation of principles of natural Justice ; or where the order or the proceedings are wholly without jurisdiction or the vires of an Act is challenged."

In view of this decision also, availability of alternative remedy is not a bar to the entertainment of the writ petition by the High Court under Article 226 of the Constitution where the order impugned is wholly without Jurisdiction.

50. Following the ratio of the aforesaid decisions, it is evident that the present writ petition filed by the petitioner may be entertained despite availability of an alternative remedy under the aforesaid Regulation 69 of the Regulations as the said order of suspension impugned in the writ petition is null and void and without jurisdiction.

Therefore, the submission made by the learned counsel for the respondents that the writ petition be dismissed on the ground of availability of an alternative remedy cannot be accepted.

51. In view of the aforesaid discussion, I am of the opinion that the writ petition filed by the petitioner deserves to be allowed, and the Impugned order of suspension dated 20.8.2002 (Annexure-2 to the writ petition) is liable to be quashed.

52. The writ petition is accordingly allowed. The impugned order of suspension dated 20.8.2002 (Annexure-2 to the writ petition) issued by the Regional Manager, U. P. State Road Transport Corporation, Agra, is quashed.

53. It is, however, left open to the respondents to pass fresh order of suspension in accordance with law.

54. Having regard to the facts and circumstances of the case, there will be no order as to cost.