(1996) 02 AHC CK 0009

In the Allahabad High Court

Case No : C.M.W.P. No. 18951 of 1988

Narvadeshwar Rai — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 02-02-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1996) 02 AHC CK 0009

Hon'ble Judges : Binod Kumar Roy, J

Bench : Single Bench

Advocate : Rajesh Tandon, for the Appellant;

Judgement

Binod Kumar Roy, J.—The Petitioner prays to quash an order dated 21.1.1982, passed by the Assistant Regional Manager, U.P. State Road Transport Corporation, Deoria, Respondent No. 3 (as contained in Annexure-1) and the order dated 26.8.1988 passed by the Regional Manager, U.P. State Road Transport Corporation, Gorakhpur, Respondent No. 2, (as contained in Annexure-8) by grant of a writ of certiorari. He also prays to command the Respondent Nos. 2 and 3 aforementioned to treat him in service in continuity.

2. A perusal of Annexure-1 shows that vide office order dated 21.1.1982, the Petitioner, then booking clerk Deoria Depot, was suspended with immediate effect and that he was held to be entitled to have half of his salary besides dearness allowances as per the rules. Perusal of Annexure-8 shows that vide office order dated 26.8.88, his services were terminated with immediate effect after finding him guilty of the charges levelled against him vide charge sheet dated 5.8.1983 (as contained in Annexure-5).

3. Shortly put, the case of the Petitioner is that in the year 1959, he was appointed as a booking clerk in the U.P. State Road Transport Corporation (hereinafter referred to as the Corporation for the sake of brevity) and was posted at Kasaya under Deoria Depot; throughout his service record has been

without any blemish and there was no bad entry; vide the order as contained in Annexure-1 he was suspended by Respondent No. 3 but vide his order dated 3.8.1982 (as contained in Annexure-2) Respondent No. 2 revoked his suspension order and reinstated his service up to the finalisatlon of the disciplinary proceedings; on the basis of the enquiry report dated 5.3.1982 (as contained in Annexure-3) showing him that he has made false entries in the checking register about the amount of the way bills deposited by the conductors with the cashier and the number of deposit receipt Form No. 44, a charge sheet was served on the allegations, inter alia, that he has misappropriated Rs. 4,930.11 paise In collusion with other employees by making false entries in the checking register requiring him to submit his written statement up to 21.8.1983 that he submitted his reply dated 23.8.1983 (as contained in Annexure-5) asserting, inter alia, that he was not at all responsible for the amount realised by the conductors, namely. Shambhu Lal Srivastava, Rampati Singh and Awadhesh Kumar Srivastava, who were also placed under suspension and that the entire allegation against him are wholly false; and that he was never entrusted with the work of depositing the amount realised by the conductors and as shown in the way bills rather he was required to Inspect them (way-bills) and enter the amount in the checking register as deposited by the conductors in Form No 44 with the Cashier and to inform to him about the deposit receipt Form No. 44 and that if the conductors had not deposited the way-bills, they would be responsible for the same; thereafter he was served with a notice dated 14.6.1986 (as contained in Annexure-6) asking him to show cause as to why he should not be removed from the service, along with a copy of the enquiry report; he submitted his reply dated 23.7.1986 reiterating his defence and further pointing out that if the conductors had mentioned wrong number of Form No. 44, the Accountant would also be responsible as Form No. 44 has to be issued under the signature who has to verify the serial number of the forms; as the Respondent No. 2 had no right to suspend him the order dated 21.1.1982 was invalid; the finding of Respondent No. 2 that the Petitioner has tried to cheat the department by making false entries in the checking register is wholly illegal and erroneous; he was not supposed to check the correctness of Form No. 44, which was the responsibility of the Accountant and the checking section incharge and if there was any discrepancy in the receipt number, the liability stands fastened on the aforementioned persons; even though the conductors involved are liable for the alleged cheating, but no action was taken against them, as after revocation of their suspension order, they are continuing in service; admittedly the amount of the pay bills were deposited by the conductors with the Cashier but ignoring this fact Respondent No. 2 wrongly terminated his service; as the charge sheet was served on 5.8.1983, i.e., after a lapse of one year of his suspension, the entire proceedings of removal are wholly erroneous and liable to be quashed and as the Petitioner has no other alternative remedy he is filing the instant writ petition. In his supplementary affidavit, he further alleges that during the period of their suspension, Shambhu Lal Srivastava deposited Rs. 3,325. Rampati Singh deposited Rs. 1,478.76 paisa and Awadhesh Kumar Srivastava deposited Rs. 100

and as such the entire amount was got deposited by the aforementioned conductors; pursuant to the deposits aforementioned, the department awarded minor punishment to them vide order dated 23.4.1988 (as contained in Annexures-1, 2 and 3 to the supplementary affidavit) from a bare perusal of which it would appear that the Petitioner cannot be treated as guilty for non-deposit of the aforesaid amount.

4. No counter affidavit has been filed in this case even though Respondents had entered appearance long ago.

5. The learned Counsel appearing for the Petitioner contended as follows:

(i) As no counter affidavit has been filed by the Respondents and the statements made by the Petitioner stand supported by the documents appended to the writ petition and Its supplementary coupled with the fact that neither In the enquiry report nor In the final order terminating the services of the Petitioner, any rule or standing order has been shown fastening the liability with the Petitioner in regard to his alleged misconduct, the impugned order terminating his service is liable to be quashed on this ground alone;

(ii) even assuming that this Court does not accept the submission made aforementioned, in view of the fact that the Petitioner, who continued in service pursuant to the interim order passed by this Court vide order dated 13.8.1991 staying operation of the impugned order and the Petitioner also superannuated in the meantime coupled with the further fact that the three conductors, who were responsible for non-deposit of the amount, had deposited the amount in question thereupon a minor punishment was Inflicted on them, justice requires remission of the matter for taking a lenient view and for imposing minor punishment to save the impugned order from the vice of discremisnation prohibited under Article 16 read with Article 14 of the Constitution of India.

6. Sri D.K.S. Rathor, the learned Counsel appearing on behalf of the Corporation, contended that it is true that no counter affidavit has been filed but from the charge sheet, this much is clear that the Petitioner at the relevant time was not a booking clerk but inspection clerk and the allegations made against him were correctly made inasmuch as it was his responsibility to see that the amount, etc, are properly deposited. A number of witnesses were examined, and documents produced, to support the allegations, after perusal of which the findings were correctly recorded and accordingly, there is no scope for Interference by this Court. In regard to the alternative submission, he contended that in that event, the case be remitted back.

7. In Union of India (UOI) Vs. Chaturbhai M. Patel and Co., , the Apex Court held as follows:

It Is well-settled that fraud like any other charge of a criminal offence, whether made in civil or criminal proceedings, must be established beyond reasonable doubt : Per Lord Atkin in AIR 1941 93 (Privy Council) . However suspicious may be the circumstances, however strange the coincidences, and however grave the doubts, suspicion alone can never take the place of proof. In our normal life, we are sometimes faced with unexplainable phenomenon and strange coincidences, for, as It is said, truth is stranger than fiction. In these circumstances, therefore, after going through the judgment of the High Court, we are satisfied that the Appellant has not been able to make out a case of fraud as found by the High Court. As such, the High Court was fully justified in negativing the plea of fraud and in decreeing the suit of the Plaintiff. This dictum applies to the seria jurisprudence as well.

8. Unfortunately, neither the enquiry report nor the final order shows as to under what regulation and/or standing orders the Petitioner was required to discharge the functions alleged in the charge sheet.

9. In the absence of any counter affidavit to the statements made in the supplementary affidavit of the Petitioner in order to save the Respondents for having adopted a double standard, in my view justice requries remission of the matter.

10. For the reasons aforementioned the impugned order, as contained in Annexure-8 is quashed and the matter is remitted back to Respondent No. 2 for fresh disposal in accordance with law. In view of the fact that the Petitioner has superannuated during the pendency of this writ petition, Respondent No. 2 is further commanded to dispose of the proceedings within two months from the date of receipt of a copy of this order from any quarter whatsoever.

11. In the peculiar facts and circumstances I make no order as to cost.

12. Let a writ of certiorari issue accordingly.

