
(1987) 12 AHC CK 0059
In the Allahabad High Court
Case No : Second Appeal No. 2200 of 1980

Parasu Ram Misra

APPELLANT

Vs

U. P. State Road Transport Corporation and Another

RESPONDENT

Date of Decision : 15-12-1987

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (1988) 1 AWC 416

Hon'ble Judges : B.L. Yadav, J

Bench : Single Bench

Advocate : S.R. Misra and H.R. Misra, for the Appellant; S.K. Sharma, for the Respondent

Final Decision : Partly Allowed

Judgement

B.L. Yadav, J.—This is plaintiffs second appeal in a suit for declaration that the order dated 1-6-1976 orally terminating the services was illegal.

2. The plaintiff-Appellant alleged that he was appointed on 24-11-1971 as Bus Conductor in U.P. State Road Transport Corporation on usual pay scale. He was directed to deposit Rs. 200/- as security. He was working as such till 31-5-1976. There was no complaint against his conduct from any quarter and his services were appreciated. He was granted annual increments. He was serving in U.P. Bus No. 264. On 1-6-1976 defendant No. 2, the Asstt. Regional Manager, issued a verbal instruction to the plaintiff not to come to the work as his services were terminated. He asked for the reasons, but the same were not applied. No written order terminating his services was passed. He made a representation and met personally Respondent No. 2 requesting him either to disclose the charges or permit him to discharge his duties, but all this was in vain. The plaintiff was not served with the charge-sheet nor he was suspended. No notice for termination was given and it appears that against some anonymous complaints and on the basis of some secret enquiry about which he was not informed nor he has any knowledge, his services were terminated by verbal orders. His case was that he

was appointed in substantive capacity and termination of his service by oral order without any opportunity of hearing was by way of punishment. The relief claimed was that order terminating his services may be set aside and he may be declared to be in continuous service.

3. Defendant-Respondents contested the suit denying the plaintiff allegations. It was mainly urged that the Appellant was not appointed in substantive vacancy rather he was appointed from time to time since 1971. The term of the plaintiff was not extended beyond 25-8-1972 as there were complaints of corruption against him. The representation of the plaintiff was dismissed on 18-11-72. Again during mass strike in the month of March, 1973 the plaintiff was given appointment with effect from 17-2-1973, which was extended upto 31-5-1976 and it was not extended thereafter. The plaintiff can seek his remedy under the U.P. Industrial Disputes Act, 1947.

The following issues were framed:

- (1) Whether the order of termination is illegal?
- (2) Whether the suit is barred by provisions of Industrial Disputes Act?
- (3) Whether the suit is barred by time?
- (4) To what relief, if any, is the plaintiff entitled.

4. Both the courts below have decided issues No. 2 and 3 in favour of the plaintiff. The learned Additional Munsif however, held that the Appellant was not appointed for a fixed term rather he was appointed in substantive vacancy on the date of the termination of the service, there were some complaints of corruption against the Appellant and the verbal order of termination apparently was innocuous, but in the back-ground there were complaints of corruption ; the impugned oral order was passed without any opportunity either to show cause or to be heard. The trial court consequently decreed the suit. The defendant-Respondents preferred an appeal, which has been allowed up-holding the findings of the trial court that the suit was not barred by provisions of Industrial Disputes Act, nor the same was time barred. The appeal has been allowed by the court below on the grounds that the Appellant was not appointed in the substantive vacancy rather he was appointed for a fixed term and the order of termination was not by way of punishment nor it was an order of dismissal, it was perfectly correct.

5. The learned Counsel for the plaintiff-Appellant urged that the Appellant was not appointed from time to time for a fixed period, rather he was appointed as a Bus Conductor in substantive vacancy, even the increments were given to the Appellant, who has been serving regularly since 24-11-1971, but in the service record there appears to be some break. The verbal order of termination may appear to be innocuous, but it was certainly on the basis of some complaints against the conduct of the Appellant. Some enquiries appear to have been made behind the back of the Appellant about which the Appellant had no information,

nor opportunity was given to him to show cause before passing the oral order of termination, which was an order of dismissal. Reliance was placed on the cases of Smt. Rajinder Kaur Vs. State of Punjab and Another, ; Anoop Jaiswal Vs. Government of India and Another, ; State of Bihar v. Shiv Bhikshuk Misra (1971) 2 SCC 191.

6. The learned Counsel for the Respondents, on the other hand, urged that the appointment of the Appellant was for a fixed term and the said period expired on 31-5-1976 and that the impugned oral order was not by way of punishment. Reliance was placed strongly on the cases of Mysore State Road Transport Corporation Vs. Gopinath Gundachar Char, .

7. Having heard the learned Counsel for the parties the questions, which require determination are whether the Appellant was appointed in substantive vacancy as a conductor, even though, his appointment was temporary or whether he was appointed for a fixed period only and next question is as to whether the impugned oral order terminating the services of the Appellant was a simple order of termination or the same was by way of punishment; whether the background leading to the impugned order can be looked into in order to ascertain nature and form of the order. And what shall be effect of the gap in service, can it be condoned.

8. As regards the first question, it is sufficient to say that We increments have been given to the Appellant. The learned Munsif has considered the circumstances which proved that the appointment of the Appellant was not from time to time or on ad-hoc basis rather it was in substantive vacancy. In Bhagwan Dass and Others Vs. State of Haryana and Others, it was held in connection with break in service, in an employment in Adult Education Scheme as follows:

In our opinion, therefore, the prayer of the petitioners to absorb them as regular employees on a permanent basis from the date of their initial appointment has no justifications That, however, does not mean that the petitioners should be deprived of legitimate benefits of being fixed in a pay scale corresponding to the one applicable to Respondents No. 2 to 6 by treating them as employees, who have continued from the date of initial appointment by disregarding the breaks which have been given on account of the peculiar nature of the scheme, while, therefore, the petitioners cannot claim as a matter of right to be absorbed as permanent and regular employee from the inception, they would be justified in claiming pay on the basis of length of service computed from the date of their appointment depending on the length of service by disregarding the breaks which have been given for a limited purpose. If this is not done the anomaly such as the one highlighted by the petitioners in their rejoinder affidavit dated 13-12-1985 will arise.

9. Ultimately summing up (on page 2055) the writ petition was partly allowed and it was directed that (i) the petitioners shall be fixed in the same pay scale as that of Respondents 2 to 6 (ii) the pay-scale of each of the petitioners shall be

fixed having regard to the length of service with effect from the date of his initial appointment by ignoring the break in service arising as the context of the fact that the initial appointment orders were for six months and fresh appointment orders were issued after giving a break of a day or so.

10. In the present case also after a short break after 25-8-1972, the Appellant was given another appointment since 17-2-1973. There is no justification why the Appellant should suffer on account of short break in service. The plaintiff Appellant would be entitled to his salary and other emoluments disregarding the break in service. In other words for all practical purposes he would be treated to be in continuous service from his initial appointment. There is nothing to indicate that the appointment of the Appellant was for a fixed period. Considering the entire evidence on record, the facts and circumstances of the case, and after perusing the judgments of the courts below, it becomes crystal clear that the Appellant was appointed in a substantive vacancy and his services must be counted from the initial appointment. The findings of the learned second additional District Judge in appeal to the contrary deserve to be set aside.

11. This aspect pertaining to the continuity or break in service can be viewed from another angle. In the instant case the plaintiff-Appellant claimed continuity in his service since the date of initial appointment, whereas the case of defendant Respondent was break in service. The evidence has been led to prove the respective case. The learned Munsif was of the view that there was no break in the service, the lower appellate court, however held otherwise. This Court in an appropriate case has power to condone the break in service and to treat the employee in continuous service from the initial appointment. What I mean to suggest is not that the contract of service between the parties must be given a go-bye. Having regard to the ends of justice and the circumstances of this case I am of the view that the plaintiff-Appellant was entitled to the condonations of the break in service. From initial appointment he would be treated to be in continuous service and as an inescapable corollary he would also be entitled to consequential financial and other benefits-See Sushil Kumar Yadunath Jha Vs. Union of India (UOI) and Others, .

12. Adverting to the second question, which emanates from the first as to whether the oral order of termination dated 1-6-1976 was a simple order of termination or has it been passed on the basis of some complaints and charges against the Appellant for which some secret enquiry was held if so, its effect? The case of the Appellant was that neither the contents of enquiry, nor he was served with any charge-sheet and nor he was given any opportunity of show cause and on the basis of such "enquiry his services have been terminated. The defendant-Respondent's admitted case was that some complaints of corruption were made against the Appellant and the term of the appointment was not extended beyond 25-8-1972. It is evident, therefore, that the allegations of the corruption against the Appellant were in the back-ground of passing the impugned order of termination of the service of the Appellant. Even though the

oral order of termination of service was innocuous, but the same was based on some earlier complaints against the conduct of the Appellant. It is well settled that even though the order of termination may appear to be innocuous, if the same is based on the basis of confidential enquiry conducted in respect of the allegations of misconduct without affording any opportunity of hearing, it would be violative of Article 311(2) of the Constitution. To put it differently mere form of the order purporting to be made under services rules would not save it from invalidity if in essence it is punitive and in non-compliance with natural justice rules-See *Smt. Rajinder Kaur v. State of Punjab*, (supra). In *Anoop Jaiswal v. Government of India*, (supra), it was held by their Lordships of the Supreme Court, that even if the services of the probationer were terminated and the formal order of termination did not contain any allegation about unsuitability, which was the basis of passing the impugned order, in that event, it shall be open to the Court to go behind the formal order to find the real cause of action. Such orders are based on the alleged misconduct and these orders are punitive in nature, which, in absence of any proper enquiry, amounted to the violation of Article 311 Sub-clause (2). In *State of Bihar v. Shiv Bhikshuk Misra* (supra), it was held that in the cases of reversion and dismissal of a Government Servant, it has to be ascertained that the impugned order did not cast a stigma and the said order may appear to be innocuous. The entirety of the circumstances leading to the passing of the impugned order must be seen, in order to determine whether the order was one by way of punishment, though not expressly so.

13. In the instant case, I am of the view that even though the oral order dated 1-6-1976 directing the Appellant that his services have been terminated, was innocuous and did not assign any reason nor any stigma on the conduct of the Appellant, but in view of the admitted case of the defendant Respondent that there were complaints of corruption against the Appellant for which the Appellant was given no opportunity to explain his conduct, consequently principles of natural justice were violated.

14. I have profound regards for the propositions laid down in the case of *Mysore State Road Transport Corporation v. Gopinath Gundachar Char* (supra) relied upon by the Respondents, where it was held that the Road Transport Corporation created under the Road Transport Corporation Act 1950, was entitled to make the appointment of officers pending framing of regulation or receiving directions from the State Government. I however, endorse the finding recorded by the trial court that the Appellant's appointment was not for fixed term only rather it was on in substantive vacancy and there was no break in his services. The break, if any, is hereby condoned.

15. In view of the premises above, the decree dated 18th February, 1980 passed by the I Ind Additional District Judge, Allahabad, cannot be sustained and the same is, hereby, set aside and I restore it to that of the trial court. The suit of the plaintiff-Appellant is decreed with costs throughout. The Appellant shall be treated in; continuous service and he shall be entitled to all his back salary with

financial and other benefits. The Respondents are directed to grant financial and other benefits to the Appellant within a period of three months from the date a certified copy of this judgment is furnished before them.