

(2000) 01 RAJ CK 0030
In the Rajasthan High Court
Case No : Civil W.P. No. 55 of 1990

Rajasthan State Road Transport Corporation	APPELLANT
Vs	
Jagdish Ram and Another	RESPONDENT

Date of Decision : 21-01-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A, 2, 25F

Citation : (2001) 3 LLJ 839 : (2000) 2 RLW 933 : (2000) 4 WLC 319

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.S. Chauhan, J.—The instant writ petition has been filed challenging the impugned award of the Labour Court dated May 22, 1989, by which the claim of the respondent-workman had been allowed after holding that the termination of his services, vide order, dated August 8, 1984, was invalid, and the Labour Court directed the reinstatement of the workman along with back wages and all other consequential benefits.

2. The facts and circumstances giving rise to this case are that respondent-workman had been appointed on daily wages on probation of two years as a conductor vide Order No. 898 dated March 22, 1983 by the Rajasthan State Road Transport Corporation (for short the Corporation). On January 25, 1984, the vehicle on which the workman had been working as conductor, was checked on Ganganagar-Gharsana route and out of 49-1/2 passengers, twelve passengers were found travelling without tickets. On further investigation, it was revealed that the workman had realised the fare from two passengers but did not issue tickets to them; while the remaining ten passengers had neither been issued ticket nor fare had been charged from them. The Corporation issued show- case notice to the workman, dated July 25, 1984, to which the respondent-workman replied and after considering the same, his services stood terminated vide order dated April 8, 1984, by paying him a sum of Rs. 720 in lieu of the notice on the

ground that his work was not found satisfactory during the probation period. The said order was challenged by the workman and the "appropriate Government" made a reference vide order, dated June 30, 1986; the Labour Court, after considering the evidence on record, came to the conclusion that the termination of services of the workman had been without conducting any inquiry and in spite of the fact that it was a termination of probation simpliciter, it tantamounts to retrenchment and being in violation of provisions of the Industrial Disputes Act, 1947 (for short, the Act), it was invalid and, therefore, the workman was entitled for reinstatement with back wages and all consequential benefits. Hence this writ petition.

3. It has been pointed out that during pendency of the proceedings before the Labour Court, the Corporation adduced sufficient evidence before the Labour Court to justify the termination of the workman and Sri Bhati, learned counsel for the petitioner-Corporation, has drawn the attention of the Court to the deposition of Sri Bishan Singh, Traffic Inspector, who was involved in the checking, and he had categorically deposed before the Labour Court that out of twelve passengers found travelling without tickets, two passengers had paid the fare to the workman but the workman had not issued them the tickets. He was cross-examined by the defence nominee Sri Jaiveer Singh but nothing could be extracted which may hamper the veracity of his statement, made by the said witness.

4. Even if the inquiry was not held as required by law, if the Corporation has led sufficient evidence before the Labour Court under the provisions of Section 11-A of the Act and the Corporation proved before the Labour Court that workman was guilty of embezzlement and as per the law laid down by the Hon"ble Supreme Court in *Employers in relation to the Management of Reserve Bank of India Vs. Their Workmen*, , there can be no punishment other than dismissal for a misconduct of embezzlement.

5. There is no force in the contention of Sri Parihar that the Corporation did not examine a single passenger in support of its case and statement of Sri Bishan was sufficient to prove its case for the reason that in a similar situation, in *State of Haryana and Anr. v. Ratan Singh* AIR 1997 SC 1512, the Hon"ble Supreme Court has observed as under:

"We cannot hold that merely because statements of passengers were not recorded, the order that followed it, was invalid. Where a bus conductor of a State Transport undertaking was chargesheeted for not collecting the fare from certain passengers and on his guilt being established, there was simple termination of his service it should not be said that merely because statements of passengers were not recorded by the Inspector of the Flying Squad the order that followed, was invalid. The evidence of the Inspector was the same evidence which had relevance to the charge against the bus conductor, order of simple termination of service was valid."

6. Even otherwise, in a case where the Tribunal comes to the conclusion that the inquiry has not been held, or held but not properly, the Court must give an opportunity to the employer to adduce evidence to justify the imposition of punishment and failure to give such opportunity vitiates the award. (vide *Lakshmiratan Cotton Mills Company Ltd. v. Its workmen*).

7. Therefore, the termination of services of the workman was justified and as per the settled law that even if the inquiry has not been held properly by the employer or inquiry has been defective and the employer adduced evidence before the Labour Court u/s 11-A and justified the termination/ removal, the findings recorded by the Labour Court would relate back to the date of termination.

8. This issue was considered by the Supreme Court in *Desh Raj Gupta Vs. Industrial Tribunal IV, U.P., Lucknow and another*, , and the Apex Court held that in a case where Industrial Tribunal comes to conclusion that the domestic enquiry was unfair and holds the inquiry itself and even then it comes to conclusion that the termination was valid or termination order was passed on substantial evidence; the termination would be effective from the date the Labour Court passed the order. However, in *R. Thiruvirkolam Vs. Presiding Officer and another*, , the Supreme Court took a contrary view and held that in such an eventuality, the order of the Labour Court will relate back to the date of order of termination was passed by the employer and in such a case, the workman cannot be held entitled for any relief for the interregum period from the date of termination order passed by the employer and final award made by the Tribunal.

9. All these cases were reconsidered by Supreme Court in *Punjab Dairy Development Corporation Limited and another, etc. Vs. Kala Singh, etc.*, and the Apex Court held that the judgment in *Desraj Gupta* case (vide supra), was not correct law. The Supreme Court had subsequently, in *Director, State Transport, Punjab and Another Vs. Gurdev Singh and Another*, has reiterated the law laid down by Supreme Court in *R. Thiruvirkolam* case (supra).

10. More so, in *Graphite India Ltd. and Another Vs. Durgapur Projects Ltd. and Others*, , the similar principle has been reiterated and it has been held that when an action is approved, it would relate back to date of action. The award of the Labour Court cannot be upheld.

11. In spite of the fact that this Court has not granted any interim relief against the award and the workman was given employment and this Court, vide order, dated July 1, 1999, asked the Corporation as to whether it would be desirable to remove the workman from service even if the Corporation succeeds in writ petition, as he had been working for last ten years under the award? The Corporation, through its assistant Divisional Manager, has filed an affidavit, dated August 6, 1999, explaining that even after the award, the workman was found guilty of misconduct pertaining to carrying passengers without tickets after realising the fare from them and he had been imposed the punishment of

withholding of two annual grade increments without cumulative effect. He has also been censured and warned vide order, dated May 3, 1995, (Annexure A1) and again, vide order, dated May 19, 1995 (Annexure A2), he has been imposed the punishment of withholding of five annual grade increments without cumulative effect and warned for carrying five passengers without tickets, after realising the fare from them. He is facing another inquiry, wherein the chargesheet has been issued to him on October 7, 1997, (Annexure A3) for carrying four passengers without tickets after realising the fare from them. Thus, Sri Bhati has submitted that the conduct of the workman had not been such that he may be allowed to continue only on the ground that even if the award is not valid, it would not be desirable to remove him from service at such a belated stage.

12. More so, in view of the law referred to above, the workman has repeatedly committed the misconduct of embezzlement, for which the punishment other than dismissal, cannot be awarded and the Corporation has unnecessarily been too sympathetic to the workman. The said orders of imposing the punishment have become final as the workman has not preferred any appeal and did not challenge the same before any other forum. Taking any lenient view in such a master would cause great injustice to the Corporation when the award is liable to be set aside.

13. Even otherwise, the workman was appointed on probation of two years on daily wages basis and his discharge has been merely termination simpliciter without any stigma as his services had not been found satisfactory during the period of probation.

14. Sri Parihar, learned counsel for the respondent-workman has submitted that when the order of discharge is based on a particular incident and not on an overall assessment of performance of the petitioner, it cannot be said to be a discharge simpliciter as the mind of the competent authority has been actuated by a particular incident and, thus, the order is penal in nature and it required the enquiry before passing of such an order. Sri Parihar has further urged that in no case the petitioner could have been discharged prior to the completion of two years probation period. His conduct could have been observed/watched for two years and even if the competent authority was not satisfied with his performance, the Statutory Rules provided for further extension of probation period, maximum for three years, in case of petitioner being a scheduled caste. In support of his contention, Sri Parihar has placed reliance on a Division Bench judgment of this Court in Ram Kumar Bairwa v. Rajasthan State Road Transport Corporation and Ors. 1989 (1) RLW 675 , wherein after placing reliance on the judgment of the Hon"ble Supreme Court in The Management of the Express Newspapers (Private) Ltd. Madurai Vs. The Presiding Officer, Labour Court, Madurai and Another, , it has been held that the services of the probationer cannot be terminated before expiry of the initial probation period. Terminating the services of the petitioner before completion of two years of probation period

itself makes it evident that he has been discharged/terminated on the ground of misconduct. In *Syed Azam Hussaini Vs. Andhra Bank Ltd.*, , the Apex Court has held that the services of the probationer should not be terminated during the period of probation or extended period of probation without showing sufficient cause.

15. Sri Bhati, learned counsel for the petitioner has placed reliance on the judgment of the Supreme Court in *Kunwar Arun Kumar Vs. U.P. Hill Electronics Corporation Ltd. and Others*, , wherein it has been held:

"..... termination of the services of the probationer for unsatisfactory performance after recording a finding that he was "regularly absent on one ground or the other" is no bad in law, of the reason that recording of such reason was the motive and not the foundation as a ground for termination and hence such termination cannot be held, as based on misconduct and in such circumstances, inquiry was not warranted. .."

16. However, the ratio of the aforesaid case is not applicable in the instant case as the factual matrix of both the cases is entirely different. In the aforesaid case, the Hon'ble Supreme Court has observed to the effect that the petitioner therein was "regularly absent on one ground or the other," therefore, in the said case, as it was an over all assessment of the competent authority of the performance of the duties of the employee, the order was discharge simpliciter and could not be penal in nature and thus, the facts and circumstances of that case did not require any enquiry. The instant is a case where the services of the petitioner had been terminated on an eventuality of one particular incident. Therefore it cannot be said to be the over all assessment of the petitioner's performance, during the probation period.

17. This issue has been considered by the Apex Court from time and again and it has consistently been held that a probationer can be terminated from service for "failure to satisfactorily completing the period of probation" the termination of services on the ground of unsatisfactory work cannot be termed as penal and does not require any enquiry, (vide *State of Punjab Vs. Baldev Singh Khosla*, .

In *K.V. Krishnamani Vs. Lalit Kala Academy*, , the Supreme Court observed as under in *K.V. Krishnamani Vs. Lalit Kala Academy*, .

"4. The very object of the probation is to test the suitability and if the appointing authority finds that the candidate is not suitable, it certainly has the power to terminate the services of the employee., Under these circumstances it cannot but be held that the reasons mentioned constitute the motive and not foundation for termination of services..... ".

19. In *State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla*, , the Apex Court has held that termination of services of temporary Government servant, in terms of contract of service, by passing an order of termination simpliciter on assessment of; suitability after considering his work and service record, must be

held as valid and not punitive. Similar view has been taken by the Apex Court in Ram Chandra Tripathi Vs. U.P. Public Services Tribunal IV and Others, .

20. In Governing Council of Kidwai Memorial Institute of Oncology, Bangalore Vs. Dr. Pandurang Godwalkar and another, , the Hon"ble Supreme Court has observed as under, in 1993-I-LLJ-308 at 310, 311.

"4. But whenever the service of an employee is terminated during the period of probation or while his appointment is on temporary basis, by an order of termination simpliciter after some preliminary enquiry it cannot be held that as some enquiry had been made against him before issuance of order of termination, it really amounts to his removal from service on a charge, as such penal in nature.

5. The principle of tearing of the veil for finding out the real nature of order shall be applicable only in the case where the Court is satisfied that there is a direct nexus between the charges so levelled and the action taken. If the decision is taken to terminate the services of an employee during the period of probation after taking into consideration the over all performance and some action or inaction on the part of such an employee, then it cannot be said that it amounts to his removal from service as a punishment. It need not be said that the appointing authority, at the stage of confirmation or while examining the question as to whether the services of such employee be terminated during the continuance of the period of probation, is entitled to look into any complaint made in respect of such employee while discharging his duties for purpose of making assessment of the performance of such employee."

21. While deciding the aforesaid case the Apex Court had placed reliance on its earlier judgment in Oil and Natural Gas Commission v. Dr. Mohammed S. Iskander Ali 1980 (2) LLN 165, wherein it was held, in Para 7, at page 167, that:

"... If a person is appointed on probation for a particular period only in order to test whether his conduct is good and satisfactory so that he may be retained even if misconduct, negligence or inefficiency may be the motive, or the influencing factors which induced the employer to terminate the services of the employee, which such employer admittedly held under the terms of appointment, such termination cannot be held to be punitive. But such misconduct, etc., should be considered while making the over all assessment of his performance."

22. The issue, was, also, considered in Anoop Jaiswal Vs. Government of India and Another, , and the Supreme Court came to the conclusion that as the discharge was based on a particular incident which reflected on inefficiency of probationer, the termination could not have been made without holding proper enquiry and the Court held.

".... if the probationer is discharged on the ground of misconduct or inefficiency or for similar reason without a proper enquiry and without giving him a reasonable opportunity to show cause against his discharge, it may be violative

of the mandate of law and in such a case it is open to the Court to examine whether the order, which apparently looks innocuous, has been passed for some other reason."

23. Similarly, in the case of Jarnail Singh and Others Vs. State of Punjab and Others, , Supreme Court held, in Para 32 .

"... the mere form of order is not sufficient to hold that the order of termination was innocuous. When an allegation is made by the employee assailing the order of termination as one based on misconduct, though couched on innocuous terms, it is incumbent on the Court to lift the veil and to see the real circumstances as well as the basis and foundation of the order complained of. In such a case the Court may lift the veil and see whether the order was made on the ground of misconduct/inefficiency, or not; but for that an allegation of serious magnitude must be alleged by the discharged employee and he must adduce sufficient evidence in support of it."

24. In the instant case, as the termination has been simpliciter and workman's unsatisfactory service had been the motive for discharge and not the ground, the learned Labour Court has erred in holding that the termination of the workman was in violation of the statutory provisions.

25. In M. Venugopal Vs. The Divisional Manager, Life Insurance Corporation of India, Machilipatnam, Andhra Pradesh and another, , the Hon''ble Supreme Court has categorically held that if the services of a probationer are terminated on the ground of "unsatisfactory service" during probation, it cannot amount to "retrenchment" u/s 2(oo)(bb) and the provisions of Section 25F of the Act would not be attracted as it cannot be deemed to be "retrenchment" under the provisions of the Act for the reason that in case of an employee under probation, it is always open to the competent authority to terminate his services even without giving notice to him.

26. In Sudhir Vishnu Panvalkar Vs. Bank of India, , the Hon''ble Apex Court has held that in case the services of an employee have been terminated, without holding formal inquiry, on the ground of "loss of confidence," and the documents filed by the employer justifies the loss of confidence and the evidence on record also justifies that the termination order did not suffer from any vice, the Court or the authority should not interfere merely on technical grounds. The Hon''ble Apex Court observed as under:

"...The only ground that survives for our consideration is as to whether the bank was justified in terminating the services of the appellant on the ground of loss of confidence and in the facts and circumstances of the case, whether any such inquiry was necessary. From the material placed on record before us, it is quite clear that the appellant was involved in misappropriation of society's funds... It is in these circumstances, we are of the view that these documents could be relied upon by the bank to justify the order of termination on the ground of loss of confidence. On perusal of the material produced before us, we are of the

opinion that the order of termination, passed by the bank does not suffer from any vice...."

27. Thus, in view of the above, it is clear that the termination simpliciter of a probationer on the ground of unsatisfactory service during the probation, does not amount to retrenchment" within the meaning of the provisions of the Act, nor any inquiry is contemplated in such a case. More so, it was a case of loss of confidence and in the facts and circumstances of the case, no inquiry was required. The petitioner-Corporation has led sufficient evidence before the Labour Court to justify the termination and, thus, the Labour Court has erred in allowing the claim of the workman.

28. The writ petition succeeds and is allowed. The award, dated May 23, 1989, passed by the Labour Court is set aside and the order of termination, passed by the Corporation, is upheld. There shall be no order as to costs.