
(1975) 09 OHC CK 0014
In the Orissa High Court

Ram Chandra Nisanko

APPELLANT

Vs

District Transport Manager, State Transport Services and
Others

RESPONDENT

Date of Decision : 30-09-1975

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 311

Citation : (1976) 2 LLJ 374

Hon'ble Judges : G.K. Misra, C.J.;S.K. Ray, J

Bench : Division Bench

Judgement

G.K. Misra, C.J.—The petitioner was appointed as a conductor by the letter (Annexure 1) dated 1-9-1971. The appointment was purely on temporary basis and terminable at any time without notice. His services were terminated by an order (Annexure 6) dated 8-8-1972 which runs thus:

Sri R.C. Nisanko, temporary conductor, S.T.S. through S.S.M., Jeypore.

He is informed that his services are terminated with effect from 15-8-72 forenoon as per the terms and conditions of his appointment order.

x x x

The petitioner has filed this writ application under Articles 226 and 227 of the Constitution challenging the validity of the impugned order. There is no dispute that at the relevant time of termination of service the petitioner was a Government servant. Article 311(2) of the Constitution applies to his case.

2. Facts may be stated in short to appreciate the point in issue. On 27th of July, 1972 the petitioner was in charge of a bus which was to proceed from Jeypore in Orissa to Kanker in Madhya Pradesh. He was alleged to have allowed 20 1/2 passengers passengers to travel without ticket in respect of the Madhya Pradesh route. Luggage weighing 20 kgs. was alleged to have been carried without any ticket being issued therefor. On 29th of July, 1972 by Annexure 2 the detecting

officer made a report against the petitioner. Petitioner was called upon to attend an enquiry with his witnesses on 2-8-1972. That day petitioner submitted an explanation (Annexure 3). An enquiry was held. Petitioner's witnesses were first examined and cross-examined by the enquiry officer. Witnesses given by the prosecution were thereafter examined and cross-examined. The enquiry officer submitted his report (Annexure 5) dated 7-8-1972. The petitioner was discharged from service on 8-8-1972. His appeal to the Divisional Manager was dismissed on 24-9-1973. The writ application was filed on 22-3-1974.

3. The enquiry proceedings unmistakably show that the enquiry officer and the appellate authority were thoroughly ignorant of the procedure to be followed under Article 311(2). It is remarkable to notice that the enquiry officer did not specifically frame charges though the allegations were indicated in a letter calling upon the petitioner to appear at the enquiry which the petitioner has stated in paragraph 6 of the writ application. Then again, the petitioner was not called upon to furnish his explanation which he voluntarily submitted from his side and the worst of it is that the prosecution did not first proceed to examine its witnesses in support of the allegations but the defence was called upon to give its evidence first. Despite all these irregularities we do not find absence of observance of the principles of natural justice in-as much as the petitioner did not make any complaint of prejudice on any of the grounds.

4. The main contention advanced by Mr. Nanda is that there was a full-fledged disciplinary proceeding in which the enquiry officer reached the conclusion that the petitioner was guilty and it is on the basis of such a conclusion that the petitioner's services were terminated. The misconduct of the petitioner constitutes the foundation of the termination of service and as such the termination order is liable to be quashed as there was no second show-cause notice. There is no dispute that no second show-cause notice was served on the petitioner.

5. The sole question for consideration, therefore, is whether the alleged misconduct of the petitioner as ultimately found in the disciplinary proceeding constituted the foundation of the termination of service. In *Banamali Das v. Board of Secondary Education, Orissa* ILR 1971 Cutt 685, all the relevant Supreme Court decisions were reviewed. We had pointed out therein that a temporary servant has no right to the post and his services can be terminated after holding a preliminary enquiry. The preliminary enquiry is held for the satisfaction of the competent authority to decide whether the services of the delinquent would be terminated simpliciter or after imposing penalty. If after the preliminary enquiry the appointing authority is satisfied that the work of the delinquent is unsatisfactory and he should not be further allowed to continue in service, then the termination of service does not constitute a penalty. The object of the preliminary enquiry is merely to examine and find out the usefulness of the temporary employee and to take a decision whether he should be further allowed to continue in service. Where, however, the appointing authority is of

opinion that the services of the delinquent should not be merely terminated but some punishment should be imposed, then a regular enquiry is resorted to after giving full opportunity to the delinquent to meet the charges against him. In such a case the misconduct of the delinquent constitutes the foundation of the termination of service and the ultimate order passed is penal in character. That is the distinction which must always be kept in view.

6. In this case, as has already been indicated, the enquiry officer resorted to a comprehensive enquiry right up to the stage of allowing each party to cross-examine the witnesses of the other party. Despite our repeated questions to Mr. Mohanty, the learned Standing Counsel, he was unable to bring to our notice any other material that could be brought into record to decide the question as to whether punishment should be imposed or not. We are satisfied that the enquiry in this case was not a preliminary enquiry but was a regular disciplinary proceeding under Article 311(2). The misconduct alleged against the petitioner constitute the foundation of the termination of service.

7. On the accepted position that no second show-cause notice was issued to call upon the petitioner to make his representation against the proposed punishment the order of termination is liable to be quashed.

8. In the result, the writ application is allowed with costs. Hearing fee is of Rs. 100, A writ of certiorari be issued quashing the impugned order of termination (Annexure 6). A writ of mandamus be issued to the opposite parties directing them to treat the petitioner as continuing in service. The petitioner is entitled to all service benefits including arrears of salary which are payable within three months from to-day. We would further make it clear that it is open to the opposite parties, if they so think, to continue the disciplinary proceeding from the stage where it was left.

S.K. Ray, J.

9. I agree.