(2004) 02 GUJ CK 0077

In the Gujarat High Court

Case No : Special Civil Application No. 10777 OF 1998

R.R. Payak and Others APPELLANT

Vs

Gujarat State Road Transport Corporation and Another RESPONDENT

Date of Decision : 17-02-2004

Acts Referred:

Citation : (2005) 104 FLR 256 : (2004) 3 GLR 497

Hon'ble Judges : Ravi R. Tripathi, J

Bench : Single Bench

Advocate : Prabhakar Upadyay, for Mukesh H. Rathod, for Petitioner Nos. 1-1/3, for the Appellant; Vasavdatta Bhatt, for Respondent Nos. 1-2, for the Respondent

Final Decision : Allowed

Judgement

Ravi R. Tripathi, J.—The present petition is filed seeking the relief to quash and set aside order of termination dated 21st August, 1996, punishment order dated 6th May, 1995 and undertaking or purshis filed by the then petitioner (as the petitioner expired on 24.04.2000, his heirs are on record) on 24th February, 1997.

2. The facts of the case are that the deceased petitioner, serving as a Depot Manager at Radhanpur Depot of the respondent No. 1-Gujarat State Road Transport Corporation (hereinafter referred to as "the Corporation" for short), was served with an order bearing No. 77/1995 stopping his annual increment for a period of one year with permanent effect, as it was found that he had committed breach of clauses 11, 22, 24(a), 24(b) and 27 of the "Discipline and Appeal Procedure for the Gujarat State Road Transport Corporation Employees" ("the Procedure" for short). It was also found that on 6th January, 1994, a car bearing Registration No. GJJ-7010 was found to have been transporting passengers unauthorisedly. It was noticed that the said car was in the name of the son of the deceased petitioner. The car was intercepted in a common checking of the State Transport Authorities, police and the R.T.O. Authorities. The car was used as a taxi since 20.03.1993, but, this fact came to

light only when the car was intercepted on 06.01.1994. The deceased petitioner had accompanied the driver to get the car released from the R.T.O. Authorities. A record was created to put forward lame defence by selling the car to one Namori Ummar Kumbhar on 30.01.1993. The deceased petitioner, who was holding the post of Depot Manager, a responsible officer, was found to have indulged in the activities prejudicial to the financial interest of the Corporation.

Being aggrieved of the said order of punishment, the deceased petitioner filed departmental First Appeal. While that appeal was pending, on 26th February, 1996, the Reviewing Authority issued a show cause notice for review dated 29th March, 1996, stating that taking into consideration the facts presented during the hearing of the appeal, the case papers, the facts and circumstances, and looking to the nature of offence and its gravity, the punishment imposed by the disciplinary authority is found to be insufficient and, therefore, it is decided to take the case in review. The deceased petitioner was called upon to file his explanation within seven days as to why the punishment upto the dismissal from service should not be imposed. The deceased petitioner filed his reply dated 28th May, 1996 raising various contentions, including that, under Clause-9 of the Procedure, the authority has no power to enhance the punishment; that the deceased petitioner is not involved in violation of any of the clauses which are mentioned in the order dated 6th May, 1995; that in view of the judgement of the Honourable Apex Court in the matter of Makeshwar Nath Srivastava Vs. The State of Bihar and Others, the show cause notice for review is not given and, therefore, it is violative of the principles of natural justice; and, that the authority has not set out the reasons for which the authority issuing notice has come to the conclusion that the decision of the earlier authority (disciplinary authority) was defective. The deceased petitioner had also contended that the allegations made against him are not proved; that any of the clauses 11, 22, 24(a), 24(b) and 27 is not violated by him; that the help, if any, extended by him to his son in his business cannot be said to be misconduct; and, that the involvement of the deceased petitioner in the business of his son was not proved as there is no proof of the same on the record. The authority, after taking into consideration the reply of the deceased petitioner and after according him an opportunity of personal hearing, passed an order on 21st August, 1996, terminating the service of the deceased petitioner with immediate effect.

3. The deceased petitioner, being aggrieved of that, preferred departmental second appeal before the Special Appellate Board on 20th September, 1996. While the said second appeal was pending, the deceased petitioner approached this Court by filing Special Civil Application No. 779 of 1998, but then, the same was withdrawn with a view to pursue the departmental second appeal. The second appeal was withdrawn by the deceased petitioner under compulsion on 24th February, 1997 by passing a purshis to the effect that he is withdrawing the appeal voluntarily and does not want to pursue the same and does not intend to raise any dispute either in the Court or in any other forum.

Thereafter, Miscellaneous Civil Application No. 864 of 1998 was filed before this Court, seeking revival of Special Civil Application No. 779 of 1998 on various grounds like the applicant had to withdraw his appeal because on account of pendency of the appeal, the deceased petitioner was denied all his legal dues like P.F., Gratuity and Earned Leave. The Court did not grant the said Miscellaneous Civil Application and he was denied the permission to revive Special Civil Application No. 779 of 1998. The Court, in its order dated 24th June, 1998, passed in the Miscellaneous Civil Application, observed that :

"... ... ... I can only say that it is open for the applicant to file a fresh petition and the same will be considered on its own merits. ... ..."

4. It is thereafter that the present petition is filed on 17th December, 1998 wherein the Court issued Notice on 18th December, 1998 and on 20th July, 1999, the Court issued `Rule'' and observed as under:

"Looking to the nature of the case, this matter deserves to be given priority in hearing. The office is directed to place this matter for final hearing in the court on 16/08/1999. ... ..."

5. An affidavit-in-reply is filed by the respondent-Corporation and it is contended that, `this is a fit case wherein the order under challenge dated 21st August, 1996 of terminating the services of the deceased petitioner is passed, having found guilty of the violations of clauses 11, 22, 24(a), 24(b) and 27 of Schedule-A of the Procedure''.

6. Mr. Prabhakar Upadyay, learned Advocate appearing for the petitioners, strenuously contended that if clauses 22, 24(a), 24(b) and 27 are perused, it will be clear that the deceased petitioner has not committed violation of any of them. He submitted that there is no material on the basis of which it can be said that the deceased petitioner is guilty of the conduct which will fall within any of the aforesaid provisions. It will be appropriate to reproduce the aforesaid clauses for ready perusal:

"(11) Gross negligence resulting in serious loss to the Corporation or inconvenience to the public or both.

(22) Repeated or continued breach of any notified administrative circulars or orders.

(24) (a) Undertaking or entering into or continuing in any private trade contract business or vocation of any nature, either independently or in partnership and either directly or indirectly, unless this restriction has been relaxed as a special case by the Corporation in respect of the employee concerned or undertaking regular or part time employment except occasional or temporary and part time work undertaken with the permission of the Competent Authorities.

(b) Using position as an employee of the Corporation to help any business or undertaking. "

27. Repeated or continued negligence or neglect of work."

Of the aforesaid, clauses 22 and 27 start with the words, `repeated or continued'', and for that the authorities ought to have shown that earlier, the deceased petitioner was found to have indulged in similar type of activities. The learned Advocate appearing for the respondent-Corporation is not able to point out anything on the record of the case to suggest that earlier, the deceased petitioner was found to have been issued even a simple `warning letter'' for having committed an act of which he is accused of. Clause-11 pertains to gross negligence resulting in serious loss to the Corporation or inconvenience to the public or both. No details about the conduct of the deceased petitioner are placed on the record of the case. The details, which are placed on the record, are in the form of order dated 6th May, 1995 wherein it is stated that on 6th February, 1995, a car was intercepted by the police, which was found to be transporting passengers unauthorisedly. By that itself, it cannot be attributed that it was the deceased petitioner, who was indulging in that activity. Then, it is further stated in the said order that the said car was in the name of the son of the deceased petitioner on the date of the interception i.e. 6th January, 1994. Thereby from the aforesaid facts alone, no misconduct on the part of the deceased petitioner can be assumed. It is then stated that, `the said car might have been used as taxi since 20th March, 1993 and that the said fact came to light only in the checking held on 6th January, 1994''. The only averments, which implicate the deceased petitioner, are that, `he accompanied the driver to get the car released from R.T.O. and that a record is created to the effect that the said car was sold to the driver on 30th January, 1993''. It is then stated that the said evidence is sought to be created to put forward a `lame excuse''. After narrating the aforesaid facts, it is alleged that, `the deceased petitioner is guilty of the violation of the aforesaid clauses'' and last but not the least, it is stated that the deceased petitioner, being a Depot Manager, a responsible officer, is found to have indulged in the activities which are prejudicial to the financial interest of the Corporation.

7. In the considered opinion of this Court, there is no material placed on the record of the case to prove that the deceased petitioner has committed any act forbidden by the aforesaid clauses. Besides, there is no material to suggest as to how the deceased petitioner was found to have been indulged in the activities prejudicial to the financial interest of the Corporation. It is not a case of the Corporation that being a Depot Manager in S.T. Corporation, the deceased petitioner cancelled a particular trip of S.T. bus to see that the passengers are transported by car, which was registered in the name of his son. If that was so, the matter would have been different. So far as involvement of the deceased petitioner in the activity, which is prejudicial to the financial interest of the Corporation, is concerned, much more detailed narration of facts, supported by acceptable evidence, was required. In the present case, in a nutshell what comes out is that the deceased petitioner, a Depot Manager, was having a son, who was having a car registered in his name; that car was intercepted on 6th January,

1994 by R.T.O. Authorities transporting the passengers unauthorisedly; and, that being so, the deceased petitioner accompanied the driver of the car to get the car released from the R.T.O. Authorities. Besides, it is also alleged that the deceased petitioner tried to create a record to the effect that the car was sold to the driver on 30th January, 1993. By mere allegations, it does not stand proved that the deceased petitioner committed an act of misconduct.

8. Mr. Prabhakar Upadyay, the learned Advocate, submitted that the petitioner has expired on 24th April, 2000 and, therefore, his heirs are brought on record by filing Civil Application No. 4707 of 2002, which was allowed by an order dated 7th August, 2002. He submitted that on 24th February, 1997, when he gave an undertaking/purshis to withdraw his second appeal, it was under compulsion so as to get the amount of P.F., Gratuity and Earned Leave because otherwise even as per the say of the Corporation, if his son was earning by running a taxi, there was no reason for the deceased petitioner to withdraw his appeal. As rightly and succinctly put by number of decisions of this Court as well as that of the Apex Court, dismissal is a penalty of economic death. Therefore, in the present case, the authorities, having failed in establishing any misconduct on the part of the deceased petitioner, much less a misconduct of such gravity, which will warrant dismissal from the service, this petition deserves to be allowed.

9. In the result, the present petition is allowed. The order under challenge dated 21st August, 1996, the order dated 6th May, 1995 and the undertaking/purshis dated 24th February, 1997 are hereby quashed and set aside. The respondent-Corporation is directed to treat the deceased petitioner in service till the date of his reaching the age of superannuation or the date on which he died i.e. 24.04.2000, whichever is earlier, and pay the heirs of the deceased petitioner all the consequential benefits flowing from this order. Rule is made absolute. No order as to costs.