

(2000) 07 RAJ CK 0018
In the Rajasthan High Court
Case No : Civil Writ Petition No. 817 of 1996

R.S.R.T.C. and Another

APPELLANT

Vs

Sanwal Chand and Another

RESPONDENT

Date of Decision : 29-07-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2000) 4 WLC 479 : (2001) 1 WLN 717

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—For the alleged mis-conduct for allowing 53 passengers to travel in a bus on 17.7.1977 the respondent workman working as conductor with the petitioner corporation was charge sheeted and after the evidence was led the enquiry officer has exonerated him by holding that the Department was not able to prove the charge against him. However, the disciplinary authority did not agree with that finding and without issuing any notice to the respondent workman straightway took the different view of the matter and passed an order of punishment of stoppage of three increments with cumulative effect and also forfeited the subsistence allowance during the period of suspension by an order dated 27.3.1981. The same was challenged before the Labour Court. The Labour Court on 25.2.1995 set aside the order of punishment on the ground that no reasonable opportunity was given to the workman before passing the order of punishment particularly when the enquiry officer exonerated him for the charges levelled against him. This has been challenged by the petitioner Corporation in this petition which is labelled as petition under Article 226 of the Constitution of India. Strictly speaking this is a petition under Article 227 of the Constitution of India and not under Article 226 of the Constitution of India. The scope of which is very narrow and limited as held by the Hon'ble Supreme Court in several cases that the supervisory power are to be exercised only where jurisdictional error

is committed and the court should not correct even the error committed on law by the subordinate court.

2. Learned Counsel Shri Bhati for the petitioner relying upon the unreported judgment of this Court dated 3.12.1999 delivered by my learned brother N.N. Mathur, J. in S.B. Civil Writ Petition No. 1155/1992 submitted that instead of quashing the order of punishment the Labour Court should have ordered the petitioner to hold fresh enquiry and permitted the corporation to pass order in accordance with law. He also submitted that when the Labour Court had set aside the order of punishment on the technical ground of not giving an opportunity of hearing before passing the impugned order of punishment then the Labour Court should have permitted the petitioner Corporation to pass fresh order after extending an opportunity of hearing to the respondent workman. He also submitted that irrespective of the fact whether the Corporation has asked for leading any evidence or not the Labour Court should have ordered fresh enquiry or it should have ordered the Corporation to lead fresh evidence before it. He also submitted that if the disciplinary authority was not agreeing with the finding recorded by the enquiry officer which were available to the workman then in such type of cases it was necessary to give an opportunity to the workman as there are no such Rules or Regulations and by not giving any opportunity to the workman it would not be violating the principles of natural justice. In support of his submission, he has placed reliance upon the Hon''ble Supreme Court Judgment in case of State Bank of Bhopal v. S.S. Koshal reported in 1994 S.C.C. 1019.

3. However, it was pointed out by the learned Counsel Shri Mehta for the respondent workman that the aforesaid judgment has been over ruled by the Hon''ble Supreme Court in its later judgment delivered in case of Punjab National Bank and Ors. v. Kunj Bihari Mishra reported in AIR 1998 SC 2713. In Kunj Bihari's case (supra) while over ruling the earlier judgment in Koshal's case (supra) the Hon''ble Supreme Court observed that:

It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer.

4. In view of the above, it cannot be said that the Labour Court committed any error in quashing the order of punishment imposed against respondent workman by the petitioner Corporation.

5. Next question is that what course should have been adopted by the Labour Court after setting aside the order of punishment of stoppage of three increments with cumulative effect. Unreported judgment dated 3.12.1999 delivered by my learned brother N.N. Mathur, J. in Writ Petition No. 1155/1992 facts were different. Admittedly, in that case no enquiry was held. While allowing the petition, it was held that the fresh enquiry may be held. However, the facts of

present case are totally different. It is clear that not only the evidence was led but the enquiry officer exonerated the workman from the charges levelled against him on appreciation of evidence led before him, therefore, there is no question of ordering fresh enquiry or giving any opportunity to the corporation to lead fresh evidence in the matter.

6. Request made by the learned Counsel Shri Bhati for the petitioner Corporation to permit the Corporation to pass fresh order after extending an opportunity of hearing to workman is a belated one, and on facts and circumstances of the case, cannot be granted because the impugned award was passed way back on 25.2.1995 and mis-conduct alleged to have been committed is of 17.7.1977 i.e. more than a period of 23 years has passed. By making such request it appears to the court that being the employer, the Corporation wants to punish the respondent workman anyhow, which is not at all proper.

7. Having regard to the facts and circumstances of the case, such a permission to pass fresh order after extending an opportunity of hearing to the respondent workman cannot be granted and final curtain should be there in this case because the respondent workman is an ordinary conductor and except one alleged mis-conduct, nothing has been alleged against him.

8. In view of the above discussion, I do not find any substance or merit in this case and accordingly, this petition fails and is hereby dismissed. Stay, if any, granted earlier stands vacated. Stay petition is also dismissed.