

(1979) 04 MP CK 0011
In the Madhya Pradesh High Court
Case No : M.P. No. 200 of 1977

S.K. Mandle

APPELLANT

Vs

State Industrial Court and others

RESPONDENT

Date of Decision : 30-04-1979

Acts Referred:

Constitution of India, 1950 — Article 226, 311
Road Transport Corporations Act, 1950 — Section 14(3), 3, 34, 45

Citation : (1979) JLI 617

Hon'ble Judges : U.N. Bhachawat, J;J.S. Verma, J

Bench : Division Bench

Advocate : Gulab Gupta, for the Appellant; P.S. Nair for respondent No. 3., for the Respondent

Final Decision : Allowed

Judgement

J.S. Verma, J.—The petitioner was a cashier in the Piparia Sub-Depot of Madhya Pradesh State Road Transport Corporation. By order Annexure-B dated 24th October 1974 issued by the Chief Accounts Officer of the Corporation under Regulation 69 of the Regulations made u/s 45 of the Road Transport Corporations Act 1950, the services of the petitioner were terminated with immediate effect and the petitioner was given 60 days' pay in lieu of notice. The petitioner challenged the termination of his service in this manner by an application made u/s 31 of the M.P. Industrial Relations Act, 1960 before the Labour Court. The Labour Court dismissed that application by its order Annexure-H dated 22nd September 1976. The petitioner then filed a revision u/s 66 of the Act to the Industrial Court which has also been dismissed by order Annexure-J dated 16th November 1976. The petitioner challenges the termination of his service in this manner and seeks a writ to quash the termination order Annexure-B and the orders Annexure-H and Annexure-J passed by the Labour Court and the Industrial Court respectively.

2. The petitioner was initially appointed on 1-2-1954 in the Central Provinces

Transport Services (C.P.T.S.) which was run as a departmental undertaking of the former State of Madhya Pradesh and continued to be an, undertaking of the Government of the New State. The M.P S.R.T.C. was established by the State Government u/s 3 of the Road Transport Corporations Act, 1950 by order dated 9th of May 1962, with effect from 21st of May 1962. The services of the staff employed in the C.P.T.S. and Madhya Bharat Roadways (which also was a departmental undertaking of the erstwhile Government of Madhya Bharat) were transferred to the M.P.S.R.T.C. from 1st of June 1962. The petitioner's services were accordingly transferred to the Corporation from the 1st of June 1962. By order dated 29th of May 1962, the State Government decided that the transfer of the employees of C.P.T.S. and M.B.R. to the Corporation should be subject to certain conditions and one such condition was that their pay scales and "conditions of service" were not affected by the transfer. Pursuant to this decision of the State Government, the petitioner was informed by order Annexure-A issued by the General Manager that his services will stand transferred to the Corporation and that the transfer will be subject to the following conditions, namely, :

(a) That your services will not be regarded as interrupted by reasons of the transfer;

(b) that the terms and conditions of service applicable to you after such transfer will not in any way, be less favourable to you than those applicable to you immediately before the transfer; and

(c) that the M.P. State Road Transport Corporation will be legally liable to pay to you, in the event of your retrenchment after the transfer of your services to the Corporation, compensations on the basis that your service, ha, been continuous and has not been interrupted by the transfer.

The petitioner's services stood transferred to the M.P.S.R.T.C in this manner and subject to these conditions.

3. Regulation 69, in accordance with which the order Annexure-B terminating the petitioner's service was issued by the Corporation enables the termination of service of a permanent employee of the Corporation by giving 60 days" notice or pay in lieu thereof. This is the only power relied on for termination of the petitioner's service. Admittedly the petitioner's service has not been terminated for any misconduct and this has not been done after holding any domestic enquiry on a charge of misconduct. The main contention of Shri Gulab Gupta, learned counsel for the petitioner, is that the petitioner carried with him the protection of Article 311 of the Constitution even after transfer of his services to the Corporation from the C.P.T.S in the above manner because the terms and conditions of service applicable to him as an employee of the C.P.T.S. were not adversely affected by the transfer in view of the State Government's decision subject to which alone his service was transferred. On this basis, it is contended that Regulation 69 which enables termination of service of even a permanent

employee by 60 days" notice or pay in lieu thereof could not be applied to the petitioner as it took away the protection available to the petitioner under Article 311 of the Constitution. In support of this contention Shri Gupta relies on the recent decision of this Court in *Ram Gopal v. M.P.S.R.T.C.* 1978 MPLJ 858 . The other contention of Shri Gupta is that the stand taken by the Corporation before the Labour Court indicates that the petitioner's service was terminated for misconduct and this has been relied on by the Labour Court to justify the employer's action on the ground of loss of confidence in the employee and for this reason a domestic enquiry was incumbent to enquire into the charge of misconduct. In reply Shri P.S. Nair has advanced several arguments on behalf of the Corporation. His first contention is that Regulation 69 applied to the petitioner and that he was not entitled to the protection contained in Article 311 of the Constitution. Reliance has been placed on *Mazhar Hussain Vs. Madhya Pradesh State Road Transport Corporation* (by Divisional Manager), for this contention and it is urged that *Ran Gopal's* case (*supra*) requires re-consideration. The next contention of Shri Nair is that even if Regulation 69 did not apply, the termination order Annexure-B can be upheld on the basis of clause 11 of the Standing Orders. The last contention of Shri Nair is that the Labour Court and the Industrial Court having found the petitioner guilty of misconduct, the absence of a prior domestic enquiry is of no consequence and this is not a fit case for exercise of our discretion under Article 226 of the Constitution.

4. The contention of Shri Nair based on clause 11 of the Standing Orders may be disposed of at the very outset. In the first place the termination order Annexure-B is expressly made only under Regulation 69 and gives no indication of clause 11 of the Standing Orders. Moreover, without going into the question whether the Standing Orders applied to the petitioner in such a case, the termination order does not even satisfy the requirements of clause 11 of the Standings Orders. The requirement of clause 11 is that the Corporation must record in writing the reason for termination of service of the employee and communicate the same to the employee. This position is settled by several decisions of this Court and is no longer in controversy. Applying that test, the termination order Annexure-B cannot be upheld even on the basis of clause 11 of the Standing Orders inasmuch as it gives no reasons and admittedly no reason for termination of petitioner's service was ever communicated to the petitioner by the Corporation. This attempt of Shri Nair to support the termination order must, therefore, be rejected.

5. The contention of Shri Nair that this is not a fit case for exercise of our discretion under Article 226 of the Constitution cannot also be accepted. Shri Nair based this argument on the ground that the petitioner himself admitted his misconduct before the Labour Court. A perusal of the discussion contained in the Labour Court's order on issue No. 3 which is relied on for this purpose indicates that there is no such admission made by the petitioner. The so-called admission has to be read as a whole and only a part thereof cannot be relied on to contend that he admitted any misconduct. Reading the petitioner's statement as a whole

as it ought to be done, it contains the petitioner's explanation which has not been found to be false, and not his admission of the misconduct. There can be no dispute that if the petitioner is entitled to the protection of Article 311 of the Constitution as he claims, then this argument of Shri Nair is of no avail. The real question for decision, therefore, is the main contention of the petitioner based on the protection contained in Article 311 of the Constitution. We shall hereafter consider this question which alone now survives for our consideration.

6. In *Ram Gopal v. M.P.S.R.T.C.* (supra) it was clearly held that the Regulations made u/s 14(3) read with section 45 of the Road Transport Corporations Act, 1950 are subject to instructions and directions issued u/s 34 of that Act and that such directions and instructions must prevail over the Regulations on the subject in case of conflict. It was also held therein that the expression "conditions of service" has a very wide connotation and includes security of tenure of an employee which is a very important condition of his service. That too was a case of an employee whose service was transferred to the M.P.S.R.T.C. from the M.B.R. and the question there was whether Regulation 69 was available to terminate the service of such an employee in view of the Government's order saying that the transfer of services of such staff to the Corporation would not affect the terms and conditions of their service. A similar contention based on the protection available under Article 311 of the Constitution was upheld therein and it was held that the petitioner's service could not be terminated in exercise of the power conferred by Regulation 69. Same is the position in the case before us. There can be no doubt that *Ram Gopal's* case fully supports the petitioner. It is for this reason that Shri Nair has argued that *Ram Gopal's* case requires re-consideration in view of the decision in *S. Mazhar Hussain v. Divisional Manager, M.P.S.R.T.C.* (supra). This case does hold that employees of Statutory Corporations such as M.P.S.R.T.C. do not hold civil posts under the State and cannot claim benefit under Article 311 of the Constitution; that as soon as an employee's service was transferred from the C.P.T.S. to the M.P.S.R.T.C, he ceased to hold a civil post under the State and the protection of Article 311 was not available to him; and that the condition that his service could not be affected by the transfer did not alter this position.

7. Obviously the decision in *S. Mazhar Hussain's* case (supra) was not placed before the Division Bench which decided *Ram Gopal Vs.* case on account of which this case was not referred therein. However, we do not think that this position makes any difference or that *Ram Gopal's* case requires re-consideration. In the first place the effect of section 34 of the Road Transport Corporations Act, 1950 permitting the issue of instructions and directions by the State Government was not noticed in *S. Mazhar Hussain's* case. That case was decided mainly on the ground that the employees of Statutory Corporations which are separate legal entities having independent existence, do not hold civil posts and for this reason an employee of an incorporated body constituted under a Central Act ceased to hold a civil post under the State within the meaning of Article 311 of the Constitution. Several decisions laying down this principle were relied on and on

the basis of this principle it was held that such an employee ceased to hold a civil post under the State as soon as his services were transferred to the M. P. S.R.T.C. and he could not, therefore, claim the protection of Article 311 of the Constitution. This was the main basis for the view taken in S. Mazhar Hussain's case. It is sufficient to say that the decision in Ram Gopal's case rests on a different reason i.e. section 34 of the Road Transport Corporations Act, 1950 which gives statutory force to the instructions and directions given by the State Government. It is by virtue of such a direction given by the State Government that the conditions of service of employees of the C.P.T.S. or M.B.R. transferred to the M.P.S.R.T.C continued to include their security of tenure guaranteed under Article 311 of the Constitution. The decision in S. Mazhar Hussain's case contains nothing to the contrary on this point which was not even noticed. There being no conflict on this point in the two decisions, there is no occasion for reconsideration of the decision in Ram Gopal's case. With respect, it must be said that the decision in S. Mazhar Hussain's case was rendered "per incur am", and, therefore, presents no difficulty in our following the view taken in Ram Gopal's case, with which we fully agree. The main contention of learned counsel for the petitioner must, therefore, be accepted. The other contention of Shri Gupta does not require any consideration for this reason.

8. For the aforesaid reasons, this petition is allowed. The order Annexure-B dated 24th October 1974 issued by the Chief Accounts Officers of the Corporation, the order Annexure-H dated 22nd September 1976 passed by the Labour Court and the order Annexure-J dated 16th November 1976 passed by the Industrial Court are quashed. No order as to costs. The outstanding amount of security deposit shall be refunded to the petitioner.