

(1979) 08 MP CK 0001

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 103 of 1976

S.N. Trivedi

APPELLANT

Vs

M.P. State Road Transport Corpn., Bhopal

RESPONDENT

Date of Decision : 17-08-1979

Acts Referred:

Constitution of India, 1950 — Article 226
Road Transport Corporations Act, 1950 — Section 45

Citation : (1979) 08 MP CK 0001

Hon'ble Judges : G.P. Singh, C.J.;U.N. Bhachawat, J

Bench : Division Bench

Advocate : Gulab Gupta, for the Appellant; V.S. Dabir, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Singh, C.J.—The petitioner, S.N. Trivedi, started his career in the service of the Madhya Pradesh State Road Transport Corporation as a Law Superintendent in the year 1966. He was promoted to the post of senior Depot Manager in 1970 on which post he was confirmed in December 1971. In May 1973, the Corporation decided to keep the post of Chief Law Officer in abeyance until further orders and the petitioner was directed to look after the work of Chief Law Officer for which he was paid a special pay of Rs. 150 per month. The petitioner's services were terminated as no longer required by order dated 22nd November 1975, under Regulation 69 of the Madhya Pradesh State Road Transport Employees Service Regulations, 1963, and he was paid two months' salary in lieu of notice by a cheque. By this petition under Article 226 of the Constitution, the petitioner challenges the order of termination of his services.

2. The first contention raised by the learned counsel for the petitioner is that the Regulations made by the Corporation could not be given effect to as they were not published.

3. The Regulations were made by the Corporation u/s 45 of the Road Transport

Corporation Act, 1950. The section provides that "the Corporation may with the previous sanction of the State Government, make regulations, not inconsistent with this Act and the rules made thereunder, for the administration of the affairs of the Corporation." The various steps leading to the making of the Regulations are discussed in the Full Bench case of *M. P. S. R. T. C. v. Ramchandra* 1977 M P L 341. Paragraph 23 of the judgment in that case, which is relevant on this point, reads as follows:

The regulations were "proposed" and sent to the State Government on June 28, 1963, when it placed a resolution to that effect. This was the first step. Then, it was on June 26, 1964, that the State Government accorded its sanction. This was the second step. Now, the third step was taken by the General Manager, M. P. S. R. T. C., who by his order dated July 8, 1964, enforced the regulations. The question is whether the General Manager had any such power. It is not to be found either in the Road Transport Corporation Act, or in the Regulations. It is not necessary to examine the question whether such power could be delegated to the General Manager, because no material has been placed before us to show that in fact such power had been delegated to him. In these circumstances, it cannot be said that the third step was taken before June 1, 1970. It was on the last mentioned date that the Corporation passed a resolution enforcing the regulations and giving them retrospective effect from July 8, 1964. This resolution of June 1, 1970 was the third step. Therefore, it was on June 1, 1970, that the regulations were "made" within the meaning of section 45 of the Act.

4. The point that has been argued before us is that the Regulations were not published and, therefore, they did not come into force. It will be seen that section 45 does not require that the Regulations made by the Corporation should be published to make them operative. It is a matter of great controversy whether a delegated legislation must be published to make it operative, although publication is not expressly required by the law which authorises its making; See *Rajendra Kumar Vs. State of Madhya Pradesh and Another*, . We will, however, assume that publication in some form is necessary for making a delegated legislation operative, even though the Act under which it is made does not provide for publication as a necessary step for making it operative. The order of the General Manager dated 8th July 1964, referred in the passage extracted from the Full Bench judgment, directed that the Regulations be printed and circulated to different offices. The petitioner did not allege in his petition that the Regulations were not printed or circulated. All that is alleged in the petition is that the Regulations were not published in the Gazette. Publication in the Gazette, when it is not expressly provided in section 45 of the Road Transport Corporation Act, cannot be taken to be obligatory for making the Regulations operative. The Regulations must be taken to have been printed and circulated in accordance with the orders of the General Manager, as that fact has not been challenged in the petition. The circulation to the employees of the different offices as envisaged in the order of the General Manager, is sufficient publication to make the Regulations operative. The challenge to the Regulations on the

ground of non-publication must, therefore fail.

5. It was then contended that Regulation 69 under which the petitioner's services were terminated was not applicable to confirmed employees. This Regulation reads as follows:

69. The service of an employee who does not hold a permanent appointment in the State Transport or a lien in a permanent appointment in any Government Department from which his services have been obtained are liable to be terminated by the Competent Authority by giving a calendar month's pay in lieu:

Provided that the services of casual workers and part time workers may be terminated without any notice:

Provided further that a permanent employee of State Transport shall be entitled to 60 days notice or 60 days' pay in lieu.

6. The argument of the learned counsel for the petitioner is that the words-"provided further that a permanent employee of State Transport shall be entitled to 60 days' notice or 60 days' pay in lieu"--do not confer any power of termination of the services of a permanent employee simply by giving a notice and that this provision makes it incumbent to give 60 days' notice or 60 days' pay in lieu of notice when under some other provision of the Regulations a permanent employee's services are liable to be terminated. Generally speaking, termination of employment falls under two categories; (i) termination simpliciter; and (ii) termination founded on misconduct. Regulation 69, in our opinion, deals with the first category of cases. The first part of this regulation enables the Corporation to terminate the services of a non-permanent employee by a calendar month's notice. The first proviso indicates that the services of casual workers and part time workers may be terminated without any notice. The second proviso with which we are concerned, says that in case of permanent employees 60 days' notice is required. The second proviso should not be read in isolation. This proviso should be read along with other parts of Regulation 69 and so read, it is clear that the intention of the proviso is to confer on the Corporation power to terminate the services of a permanent employee after giving 60 days' notice or 60 days' pay in lieu of notice. It is true that normally a proviso is in the nature of an exception to or restriction of the subject-matter dealt with in the main enacting provision. But the insertion of a proviso by the draftsman is not always strictly adhered to its legitimate use and at times a section worded as a proviso may wholly or partly be in substance a fresh enactment adding to and not merely excepting something out of or qualifying what goes before. It has, therefore, been said that undue weight should not be given to the label under which a provision appears and attention should be directed to the substance rather than to the form. The proper course is that a section or an enactment must be construed as a whole, each portion throwing light, if need be, on the rest and this rule applies also for construing a proviso or a saving clause; *Jennings v. Kelly* (1939) 4 All E R 464, *Commr. of Stamp Duties*

v. Atwill (1973) 1 All E R 581 , Hiralal Rattanlal Vs. State of U.P. and Another etc. etc., and Dwarka Prasad Vs. Dwarka Das Saraf, Applying the aforesaid principles, we have no doubt that the subject-matter dealt with by Regulation 69 is termination simpliciter of all categories of employees. The first part provides for termination of non-permanent employees; the first proviso provides for casual and part time employees and the second proviso provides for permanent employees. The second proviso, in our opinion, like the rest of the Regulation deals with termination simpliciter and entitles the Corporation to terminate the services of a permanent employee after giving him a notice of 60 days or 60 days" pay in lieu of notice. This is also how the proviso was read in Ram Copal v. M. P. S. R. T. C. 1978 M P L J 858 by Division Bench.

7. Learned counsel for the petitioner referred to us the Madhya Pradesh State Road Transport Corporation Employees Conduct, Discipline and Appeal Regulations, 1975, which, in clause 32, provides compulsory retirement, removal from service and dismissal from service as major penalties, and submitted that if a permanent employee is compulsorily retired, removed or dismissed from service, he will be entitled to two months" notice under Regulation 69, and that except in such cases the services of a permanent employee cannot be terminated merely by notice. He also drew our attention to the Explanation (vii) contained in Regulation 32 which is to the effect that the termination of the services of an employee appointed on probation during or at the end of the period of probation in accordance with the terms of his appointment or the rules, or regulations and orders governing such probation; or of a temporary employee appointed until further orders on the ground that his services are no longer required; or of an employee who has been employed under an agreement, in accordance with the terms of such agreement, does not amount to penalty within the meaning of the regulation. Learned counsel submitted that if the intention in making Regulation 69 of the 1963 Regulations was to enable the termination of the services of a permanent employee simply by notice, such a case would have been included in the exception contained in Explanation (vii) to Regulation 32. Now it is not permissible to construe any provision in the 1963 Regulations by recourse to the 1975 Regulations. Further, as earlier pointed out by us, termination of employment founded on misconduct is-entirely different from termination of employment simpliciter. Regulation 32 deals with major penalties which include the penalties of compulsory retirement, removal and dismissal from service. These penalties are imposed after a departmental enquiry on charges of misconduct. The explanation (vii) to which reference was made by the learned counsel for the petitioner has been added as a matter of abundant caution and, probably, for the reason that Regulation 32 has been borrowed from corresponding rules in force for Government servants. If it was intended to take away the power of termination simpliciter in case of permanent employees, the 1975 Regulations would have said so expressly. That intention cannot be inferred from Explanation (vii) contained in Regulation 32. We may in this context point out that even under the 1963 Regulations, the Corporation had independent

power conferred under Regulation 108 to impose punishments for misconduct in accordance with the procedure prescribed by it. That power is now regulated by the 1975 Regulations. But the power of termination simpliciter of all categories of employees dealt with in Regulations 69 remains unaffected.

8. Learned counsel for the petitioner then contended that the order of termination of the petitioner's services was punitive in nature. When the employer has power to terminate the services of an employee by giving notice and when he has also the power to remove or dismiss the employee on a charge of misconduct, both powers must be so construed that neither of them is rendered ineffective or otiose. Termination simpliciter by notice brings no stigma to the employee. Dismissal or removal from service on the ground of misconduct, on the other hand, casts stigma on the employee and affects him seriously by making it difficult, if not impossible, for him to get a fresh employment. The Court is, however, not bound by the form of the order and it is open to it to see whether the order, though couched in the form of termination simpliciter, is punitive in the real sense. But if the Court finds that the order was not founded on misconduct and was made in good faith because of unsatisfactory service record of the employee, the Court would uphold it as termination simpliciter. These principles have been applied in industrial adjudications : *L. Michael and Another Vs. Johnson Pumps Ltd.*, and *The Municipal Corporation of Greater Bombay Vs. P.S. Malvenkar and Others*, . Similar principles have also been applied in dealing with cases of temporary and probationer Government servants: See *Samsher Singh Vs. State of Punjab and Another*, *The State of U.P. Vs. Ram Chandra Trivedi*, , *The Manager, Government Branch Press and Another Vs. D.B. Belliappa*, and *State of Uttar Pradesh Vs. Bhoop Singh Verma*, . In our opinion, the same principles must be applied in judging the validity of termination of services of a permanent employee governed by the Regulations. It is open for the Court to see whether the order is an order under Regulation 69, i. e. an order of termination simpliciter, or whether, it is really an order founded on misconduct.

9. By the General Manager's letter dated 18th August 1975, the petitioner was communicated the adverse entries in his annual confidential reports which were as under:

His role during the month long employees strike (April-May 1974) left much to be desired. His integrity cannot be vouched.

Does not exert.

He had attended a press conference during the strike in which managements figures of financial implication of Pandey Pay Commission were refuted and an anti-management stand was taken.

Utterly unreliable and integrity doubtful.

The letter by which these entries were communicated asked the petitioner to

rectify the above shortcomings and show improvement in future. Shri Tandon, who was then the Chief Law Officer on deputation, made a report on 13th November 1975, which showed that a large number of very important files needing immediate decision and action had been kept by the petitioner undisposed and pending since long. It was on the basis of the aforesaid adverse reports about his work that action was taken under Regulation 69 to terminate his services. The Chairman on 19th November 1975 observed in the note-sheet: "Shri S. N. Trivedi, S. D. M. (Law) does not deserve any lesser punishment than termination of his services under SR 69. There can be no fitter case when the Corporation can lose confidence in its employee than this case." It was after this that the notice terminating the services was served on the petitioner. Although the note of the Chairman to which we have referred uses the word punishment, but the use of that word, in our opinion, in the note is made in a loose sense and what the Chairman meant was termination of employment on the ground of loss of confidence as is expressly stated in the note. The order of termination does not contain any stigma and does not say that it proceeds on the basis of any misconduct. The reason for termination was unsatisfactory service and, consequent, loss of confidence. Having regard to all the relevant circumstances, we are of opinion that the order of termination was a bona fide-exercise of power under Regulation 69 and; it was really a case of termination simpliciter and not dismissal or removal founded on misconduct.

10. Learned counsel for the petitioner submitted that the conduct of the petitioner while he was incharge Law Officer in 1973 had no nexus with the termination of appointment as Senior Depot Manager and, therefore, his services could not be terminated on that ground. There is absolutely no-merit in this argument. The petitioner was all along working in Law Section. As Senior Depot Manager also he was in the Law Department. His unsatisfactory work while he was incharge as Chief Law Officer has great relevance whether he was fit for continuance as Senior Depot Manager.

11. Learned counsel for the petitioner lastly submitted that the order was discriminatory in the sense that juniors and unconfirmed employees were retained while the petitioner's services were terminated. Now from the preceding discussion it is clear that the petitioner's services were terminated; because of unsatisfactory work. On the finding that the petitioner's work, was unsatisfactory, the question of discrimination or arbitrariness does not arise. In paragraph 2 of the application dated 12th July 1979, in which for the first time the petitioner has taken the plea of discrimination, he has mentioned the names of Sarvashri R.K. Amar and A.K. Banerjee, Senior Depot Managers, against whom the petitioner says he has been discriminated. We were informed at the time of hearing that Shri A. K. Banerjee was reverted in 1976 and Shri R. K. Amar has been retired. The petitioner has also mentioned three names of paragraph 6 of his application. But these officers, we were told, are Law Superintendents and not Depot Managers. No case of discrimination is made out by the petitioner.

12. The petition fails and is dismissed, but without any order as to" costs. The security amount be refunded to the petitioner.