

(1989) 02 KAR CK 0041
In the Karnataka High Court
Case No : Writ Petition No. 2123 of 1989

Syed Nizaiulla

APPELLANT

Vs

Vice Chairman and Managing Director, KSRTC

RESPONDENT

Date of Decision : 24-02-1989

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227
Karnataka State Road Transport Corporation Servants (Conduct and Discipline),
Regulations, 1971 — Regulation 21 (6) (a), 21 (6) (b) (2)

Citation : (1990) 60 FLR 124 : (1989) ILR (Kar) 2249 : (1989) 2 KarLJ 389

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : V. Lakshminarayana, for the Appellant;

Final Decision : Dismissed

Judgement

K.A. Swami, J.—In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has sought for the following reliefs:

"(i) Issue Writ of certiorari quashing the order No. KST:CO:DEL:D6/274, dated 6-6-1986, as per Annexure-A, in so far as it relates to denial of backwages, continuity of service and all other consequential benefits;

(ii) Declare that the order of the respondents is illegal, unjust, arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India;

(iii) Issue a Writ of Mandamus directing the respondents to extend backwages, continuity of service and all other consequential benefits; and also to consider the case in terms of Circular dated 18-8-1986.

(iv) Issue any appropriate Writ or Order or direction in the circumstances of the case including an order as to costs, to meet the ends of justice,

2. However during the course of argument, it is submitted by Sri Lakshminarayana, learned Counsel for the petitioner that the petitioner's

grievance In this Writ Petition is confined to two matters:

(i) That the Revisional Authority is not right in denying back wages and (ii) that it is not right in Imposing a penalty of reducing the pay of the petitioner by 3 incremental stages to be effective for the remaining period of service.

3. It is not possible to accept any one of these contentions. My reasons are as follows:

A disciplinary proceeding was held against the petitioner for certain misconducts. The disciplinary authority found the charges proved and imposed the penalty of dismissal of the petitioner from service. There was an appeal filed by the petitioner against the order of penalty. The Appellate Authority dismissed the appeal and confirmed the penalty of dismissal from service. However, the petitioner preferred a revision petition before the Vice Chairman and the Managing Director of the Karnataka State Road Transport Corporation (hereinafter referred to as "Corporation". The revisional authority, in my opinion, without any good reason and even after holding that the charges of dereliction of duty and callousness in performance of work entrusted are manifest on record, without any reason, except stating that there is no material on record to hold that the petitioner had either colluded with Sri G.K. Bhat, Conductor, or abetted his activities, has set aside the order of dismissal and in lieu thereof, imposed the lesser penalty. The relevant portion of the order is as follows:-

"The petitioner has no grievance with the manner of inquiry held.

In fact, the petitioner has been provided opportunity at each stage to understand the evidence led against his interest and impeach its veracity by effective cross-examination. The petitioner after availing of such opportunity has explained the circumstances which came in the way of proper discharge of duty.

It is established by due inquiry that the petitioner had verified 8 CWA operated by Sri G.K. Bhat, Conductor who had indulged in malpractice of issuing tickets by reshaping the tickets providing higher denominational value and making unlawful personal gain, but failed to point out the irregularities, due to which, the Conductor could continue to indulge in such pilferage.

Circular No. 228, enjoined, on a Traffic Assistant of a Depot, the responsibility to verify and tally the opening and closing tickets denomination wise in CWA and ensure that the sale entries in the Way Bill tally with the actual number of tickets held by conductor in his tray any time.

The evidence on record goes to establish that the petitioner has failed to discharge his duties in term of instructions issued in Circular No. 228.

The petitioner has admitted during the inquiry that he was aware that Sri G.K. Bhat, Conductor was continuously engaged on super fast Shimoga-Davangere service and had brought low earnings. In spite of the above, he had not taken any corrective measures to prevent this conductor from being engaged on same

route. This is another area where, the petitioner had failed to exhibit the desired degree of responsibility behooving his status of employment in a superior capacity at the material time.

Although the charges of -

(a) dereliction in duty

(b) Callousness in performance of work entrusted are manifest on record, there is no material on record to hold that the petitioner had either colluded with Sri G.K. Bhat, Conductor or abetted his activities.

In the circumstances, I am inclined to hold that the penalty imposed by Divisional Controller was disproportionate to the nature and gravity of charges held proved.

Now, therefore, I consider it expedient to modify the impugned order and direct as under:-

1. The order dismissing Sri Syed Naziulla, Traffic Inspector from service issued by Divisional Controller, Hassan Division in No. KST: HSN: DFL:1325:79:592 dated 28-1-82 be and is set aside.

2. In lieu, the pay of Sri Syed Naziulla, Traffic Inspector is reduced by 3 incremental states and this reduction will be effective for the remaining period of his service. He is entitled to earn his increments in the revised pay afresh against rendering actual duties and to his eligibility as per Rules.

3. The intervening period from the date of dismissal to the date he is allowed to resume duty is treated as period spent not on duty for all purposes except continuity of service for the purpose of gratuity only.

4. He is posted to CLS.BTS against existing vacancy."

(Underlining by me)

4. Thus the revisional Authority ordered that the intervening period from the date of dismissal to the date he is allowed to resume duty, is treated as period spent not on duty for all purposes except for the purpose of gratuity only.

5. The contention of the petitioner is that it is not at all permissible for the revisional authority to pass such a consequential order after setting aside the order of dismissal. The contention proceeds on a wrong assumption of facts. The order of dismissal is converted into a lesser penalty inasmuch as the revisional authority has not held that the charges are not proved nor he has exonerated the petitioner. It is clear that he has only reduced the penalty. In lieu of the penalty of dismissal from service a lesser penalty is imposed and that it is so, is clear from the very order as reproduced above.

6. The contention that no such order denying the back wages can be passed by the Revisional Authority, is also not tenable in law. The matter is governed by

Regulation 21(6) of the Karnataka State Road Transport Corporation Servants (Conduct and Discipline) Regulations, 1971 (hereinafter referred to as the "Regulations"). Regulation 21(6) reads thus:-

"21(6)(a) When a Corporation servant who has been dismissed, removed, or suspended is reinstated or would have been reinstated but for his retirement on superannuation while under suspension, the authority competent to order reinstatement shall consider and make order as to --

(i) The wages or pay and allowances which shall be paid to the Corporation servant for the period of his absence from duty or for the period of suspension ending with the date of his retirement on superannuation, as the case may be; and

(ii) Whether or not the said period shall be treated as period spent on duty.

(b)(i) Where such competent authority holds that the Corporation servant has been exonerated or, in the case of suspension under this regulation that it was unjustifiable, the Corporation servant shall be granted the full wages or pay to which he would have been entitled, had he not been dismissed, removed or suspended, as the case may be, together with any allowances of which he was in receipt immediately prior to his dismissal, removal or suspension or may have been sanctioned subsequently and made applicable to Corporation servant of his class.

(ii) In all other cases, the Corporation servant shall be granted such proportion of such wages or pay and allowances as such Competent Authority may direct.

Provided that the payment of allowances under this clause shall be subject to all other conditions subject to which such allowances are admissible.

Provided further that the wages or pay and allowances granted under this sub-clause shall not be less than subsistence and other allowances admissible under Sub-regulation (5).

(c)(i) In a case falling under Sub-clause (i) of Clause (b), the period of absence from duty shall for all purposes be treated as period spent on duty.

(ii) In a case falling under Sub-clause (ii) of Clause (b), the period of absence from duty shall not be treated as period spent on duty unless the competent authority specifically directs, for reasons to be recorded in writing that it shall be treated for any specific purpose."

The case of the petitioner does not fall either under Regulation 21(6)(b)(i) or 21(6)(b)(ii) of the Regulations because, this is not a case in which the petitioner has been exonerated. Regulation No. 21(6)(b)(ii) covers all other cases which are not covered by Regulation 21(6)(a) and 21(6)(b)(i). Therefore, Regulation 21(6)(b)(ii) applies to a case which does not fall either under Regulation 21(6)(a) or 21(6)(b)(i). In the instant, case, the charges framed against the petitioner are held proved by the Disciplinary Authority and affirmed by the Appellate Authority.

The Revisional Authority, has also agreed with the said findings. However, the Revisional Authority as already pointed out, has chosen to reduce the penalty of dismissal from service to one of lesser penalty. To such a case, Regulation No. 21(6)(a) is attracted. It is clear from the following words contained in Regulation 21(6)(a):

"When a Corporation servant who has been dismissed.is reinstated.,...,... .the authority competent to order reinstatement shall consider and make order as to:-

a) the wages or pay and allowances which shall be paid to the Corporation Servant for the period of his absence from duty....."

That there is a power vested in the authority whether It is a Disciplinary Authority or Appellate Authority or Revisional Authority to pass a consequential order in the case of dismissal from service and subsequent reinstatement as a result of Imposition of lesser penalty. As per the aforesaid provisions, in a case falling under Regulation 21(6)(a), it is open to the concerned authority either to order the back wages for the period concerned therein or deny the same. In case the authority decide to allow the back wages, the Regulation 21(6)(a)(1) prescribes the period for which back wages should be ordered. Clause (II) thereof further directs the authority to consider and make an order as to whether or not the period specified in Clause (I) thereof shall be treated as period spent on duty- It does not take away the power of the authority to decide In each case where a penalty of dismissal is reduced to a lesser penalty, having regard to the nature of misconduct, the ground/s on which the penalty of dismissal Is reduced to a lesser penalty and all other relevant facts and circumstances, either to deny the back wages or to grant the same. However, the learned Counsel for the petitioner has placed reliance on a decision of this Court in C.B. DEGANATTI v. K.S.R.T.C. In that case it was not at all brought to the notice of the Court the provisions contained in Regulation 21(6) of the Regulations, The Court was called upon to consider only Regulation 34(1) of the Regulations. Therefore, the said decision is not relevant for considering the effect of Regulation 21(6) of the Regulations.

7. Learned Counsel however placed reliance on another decision of this Court in K. SIDDARAMAIAH v. THE MANAGING DIRECTOR & VICE CHAIRMAN, K.S.R.T.C. AND ANR. 1985 (1) SLR 66 2. W.P. 10579 of 1988 DD 14-10-1988 No doubt in that decision, Regulation 21(6) has been considered. The relevant portion of the Judgment Is as follows:

"As can be seen from Clause (a) of Rule 21(6) it requires the authority ordering reinstatement to pass order regarding wages and allowances for the period of his absence from duty and also on the question whether or not the said period should be treated as period spent on duty. Clause (b)(i) of Regulation 21(6) governs cases where the Competent Authority - Corporation exonerates the servant concerned. This is not a case in which the Appellate Authority exonerated

the petitioner in appeal. It was the jurisdictional Magistrate who found the petitioner guilty of offences under the Indian Penal Code and passed an order of conviction and sentence and the Disciplinary Authority imposed the penalty of dismissal from service on the basis of the conduct which had led to his conviction and it is the Criminal Appellate Court which set aside the conviction. Therefore, it is Clause (ii) of Regulation 21(6)(b) which gets attracted to this case. According to that provision the Competent Authority has to decide as to what proportion of wages should be granted to the employee concerned. The second proviso to the said clause however makes it clear that the wages and allowances granted under the said Rule shall not be less than the subsistence allowance as is admissible under the Regulation. Therefore, the Appellate Authority was required to make an order for payment of an amount not less than the subsistence allowance. Therefore, the order of the Appellate Authority directing that wages be paid during the period of absence, is unsupportable. However, as regards the direction given by the Appellate Authority that the period of absence shall not be treated as duty but shall count only for gratuity is well within the competence of the authority and therefore, there is no ground to interfere with that part of the order. In the circumstances, I make the following:-

ORDER

(i) Writ Petition is allowed;

(ii) The impugned order of the Appellate Authority to the extent it directed that no back-wages whatsoever should be paid for the period of absence of the petitioner, is set-aside.

(iii) A direction shall issue to the Appellate, Authority to pass order regarding the amount to be paid to the petitioner for the period of absence in accordance with Regulation 21(6)(b)(ii).

and in the light of this order,

(iv) The respondents shall, however, be at liberty to hold an inquiry as to whether the petitioner has gainfully employed during the said period and if so what amount should be deducted out of the amount payable for the period of absence.

Time for compliance six months."

8. From the aforesaid decision, it is clear that this Court has not: considered the scope of Regulation 21(6)(a). This Court has considered the case falling under Regulation 21(6)(b)(ii). This Court has also not laid down that there is no power in the authority to deny back wages having regard to the facts and circumstances of each case. In case the authority decides to grant back wages, it can grant only in the proportion provided under Regulation 21(6). In a case where there is no complete exoneration and the charges are found proved and only the penalty of dismissal is reduced into a lesser penalty by the Revisional Authority under Regulation 21(6)(a), it is always left to the discretion of such authority to allow

or not to allow back wages depending upon the facts and circumstances of each case. Whereas in the case of complete exoneration, there will be no reason whatsoever for denying the back wages. Same thing, does not follow or does not hold good in the case where there is no exoneration but only a reduction in the penalty. Therefore, It is not possible to hold that the decision in K. Siddaramaiah's case is of any help to the petitioner.

9. Lastly, the learned Counsel for the petitioner placed reliance on another decision of this Court IN B. ABDUL BARI v. THE GENERAL MANAGER, K.S.R.T.C. The point concerned herein is not considered in that case. Therefore it is of no help to the petitioner.

10. For the reasons stated above, I do not see any justification to interfere with the order of the Revisional Authority denying the back wages. Hence, there is no ground to issue Rule.

The petition is accordingly rejected.