

(2002) 09 AHC CK 0003
In the Allahabad High Court

Case No : C.M.W.P. No. 3661 of 1986 & Writ Petition No. 3361 of 1986

U.P. State Road Transport Corporation	APPELLANT
Vs	
U.P. Public Service Tribunal (V) and Another	RESPONDENT

Date of Decision : 03-09-2002

Acts Referred:

Citation : (2001) 88 FLR 315 : (2003) 2 LLJ 1119

Hon'ble Judges : Sudhir Narain, J; O.P. Srivastava, J

Bench : Division Bench

Advocate : Samir Sharma and S.K. Sharma, for the Appellant; H.N. Tripathi, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner seeks to quash the impugned order dated November 5, 1985 (Annexure 5 to the writ petition) passed by the U.P. Public Services Tribunal No. 5, Lucknow (respondent No. 1) allowing the claim petition filed by respondent No. 3 (hereinafter referred to as respondent) and setting aside the order of the petitioner-U.P. State Road Transport Corporation (in short the Corporation) dated April 21, 1977.

2. Briefly stated the facts are that the respondent Vijay Bahadur Singh was appointed as a driver in the erstwhile U.P. Government Roadways on March 19, 1971 on temporary basis and subsequent to creation of the Corporation with effect from June 1, 1972 he was sent on deputation with the Corporation vide Government Order dated January 5, 1972. By this Government order, all the employees/officers of the erstwhile U.P. Government Roadways were sent on deputation with the Corporation.

3. The Zonal Manager (Central Zone, U.P.S.R.T.C.), Bareilly issued a direction vide letter dated March 4, 1977 to the Assistant Regional Manager, Bareilly to assess the performance of the drivers working in the Region and to take necessary steps in that regard. On that basis a report was called for which was

submitted by the Assistant Regional Manager on April 11, 1977 in which the performance of the respondent was assessed. The Assistant Regional Manager, Government Roadways found that the work and conduct of the respondent was not satisfactory. He passed an order on April 21, 1977 terminating his services without disclosing any reasons on the ground that he was appointed on temporary basis. The respondent preferred an appeal to the Regional Manager, U.P. State Road Transport Corporation, Bareilly. The appeal was dismissed by an order dated August 8, 1977. He thereafter preferred an application before the Regional Conciliation Officer, Bareilly alleging that his services were illegally terminated. The petitioner submitted a reply alleging that the respondent was rash and negligent in his driving and caused four accidents and other losses to the Corporation and when despite being afforded opportunity to improve his performance he did not improve his performance, his services were terminated. A report was submitted to the State Government and the State Government declined to make any reference under the Industrial Disputes Act. The respondent, thereafter preferred a claim petition to the U.P. Public Services Tribunal, Lucknow (in short the Tribunal). The petitioner submitted a reply that the services of the respondent were terminated on assessment of his poor performance and in accordance with the terms and conditions of his employment. The Tribunal relying upon the contents of the written statement filed by the petitioner before the Regional Conciliation Officer held that for the reasons disclosed in the written statement, the order of termination shall be treated as punitive in nature. The Tribunal allowed the claim petition vide impugned order dated November 5, 1985 and set aside the order of termination dated April 21, 1977.

4. We have heard Shri Samir Sharma, learned counsel for the petitioner, and Dr. H.N. Tripathi, learned counsel for respondent No. 2.

5. The basic question to be decided is whether the order of termination of services of the respondent passed by the petitioner is simpliciter or is punitive in nature. In Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others, the Apex Court after surveying various decisions held that whether an order of termination is simpliciter or punitive depends upon whether certain allegations which are the cause of the termination are the motive or the foundation. If findings were arrived at in inquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad. But if the inquiry was not held, no findings were arrived at and the employer was not inclined to conduct an inquiry but, at the same time he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Admittedly against the respondent No. 2 no regular inquiry was held that his termination was not based on any finding recorded on any inquiry. The Tribunal held that the order of termination was punitive on the ground that the petitioner had submitted written statement in reply to the averments made in the

complaint made by the respondent No. 2 before the Regional Conciliation Officer, Bareilly and the reasons disclosed in that written statement show that the order was founded on certain allegation and that will be treated to have been passed by way of punishment. Para 3 of the said written statement reads as under:

"The application was found unsuitable for his Job as four bus accidents were on his credit firstly on April 4, 1974 by Bus No. 3943, secondly on December 11, 1974 by Bus No. 6836, thirdly on January 18, 1977 by Bus No. 5053 and lastly on April 5, 1977 by Bus No. 7289 which was fatal one causing death of two persons and also caused damage to the bus. All the previous accidents, mentioned above, were due to incompetence of the applicant which resulted in damages to the buses and loss of lives. As such it was not safe in the public interest to allow the applicant to continue in service."

6. The Assistant Regional Manager while terminating the services of respondent No. 2 had considered his service and if he finds that his performance was not up to the mark, and takes decision that his services be dispensed with, it would not amount to termination of his services by way of punishment. The mere fact that the reasons were disclosed in the written statement filed in reply to the claim petition filed by respondent itself does not establish that the termination order was passed by way of punishment. If an employee challenges the order of termination on the ground that it is arbitrary, mala fide or his juniors have been retained, the employer is bound to disclose the reasons for termination of services of such employee. In Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, the Apex Court observed at pp. 696, 697 of LLJ:

"32. We are also not prepared to hold that the enquiry held prior to the order of termination turned this otherwise innocuous order into one of punishment. An employer is entitled to satisfy itself as to the competence of a probationer to be confirmed in service and for this purpose satisfy itself fairly as to the truth of any allegation that may have been made about the employee. A charge sheet merely details the allegations so that the employee may deal with them effectively. The enquiry report in this case found nothing more against the appellant than an inability to meet the requirements for the post. None of the three factors catalogued above for holding that the termination was in substance punitive exists here.

34. That an affidavit cannot be relied on to improve or supplement an order has been held by a Constitution Bench in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others,

"When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise."

7. The Tribunal has erred in holding that the order of termination should be treated as punitive in nature merely on the ground that the petitioner by way of

defence in its written statement filed before the Regional Conciliation Officer disclosed the reason to terminate the service of the respondent No. 2.

8. The learned counsel for the respondent No. 2 relied upon the decision rendered in K.C. Joshi Vs. Union of India (UOI) and Others, wherein the Supreme Court held that an order of termination is illegal if the juniors are retained and the services of senior employee are dispensed with. This case has no application to the facts of the present case. The order of termination, if passed after considering the performance of a probationer or a temporary employee, unless it is shown that it was by way of punishment, it shall not be treated as illegal.

9. Learned counsel for respondent No. 2 then contended that the Assistant Regional Manager of the Corporation had no power to terminate his services as the respondent No. 2 was on deputation and continued to be so till his services were terminated. The respondent No. 2 was appointed as a driver in the erstwhile U.P. Government Roadways on March 19, 1971 on temporary basis. The U.P. Road Transport Corporation came into existence on June 1, 1972. He was sent on deputation with the Corporation by Government Order dated July 5, 1972. The other officers and employees, who were working with the U.P. Government Roadways were also sent on deputation. The Assistant Regional Manager who terminated the services of the respondent No. 2 was also on deputation. He had power to terminate his services. He never challenged the order on the ground that the Assistant Regional Manager of the Corporation was not authorised to terminate his services. In Jai Jai Ram and others Vs. U.P. State Road Transport Corporation, Lucknow, and others, it was held that if a Government servant was sent on deputation to the U.P. State Road Transport Corporation, Lucknow and other officers were also sent on deputation, the officer appointing such person is entitled to terminate the services of such employee who was also sent on deputation.

10. In view of the above, the writ petition is allowed and the order of Tribunal dated November 5, 1985 is hereby, quashed. The parties shall, however, bear their own costs.