

(2008) 08 AHC CK 0331

Allahabad High Court

Case No: None

Subedar Awasthi

APPELLANT

Vs

The State of U.P., Uttar Pradesh
State Road Transport
Corporation and Assistant
Regional Manager, Uttar
Pradesh State Road Transport
Corporation, Unnao Depot,
Unnao Region

RESPONDENT

Date of Decision: Aug. 19, 2008

Acts Referred:

- Constitution of India, 1950 - Article 311

Citation: (2008) 119 FLR 928

Hon'ble Judges: Rakesh Tiwari, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Rakesh Tiwari, J.

Heard Counsel for the parties and perused the record.

2. The petitioner has challenged the validity and correctness of the impugned award dated 28.11.2005 passed by Labour Court, U.P. at Lucknow in adjudication case No. 190 of 2001.

3. The petitioner claims that he was appointed on the post of driver in U.P. State Road Transport Corporation in the year 1982, the petitioner was deputed to drive bus No. UP78/974 on 07.03.1994 on Unnao-Maurawa route. The case of the department is that a tempo had developed the mechanical fault and as such the checking staff gave signal to the petitioner near Delhi Chowki to stop the bus but he did not stop the bus. Report about of alleged misconduct was submitted by Sri

Mushraf Ali, Traffic Superintendent to Regional Manager against the petitioner on 12.03.1994 inter-alia that in spite of being given signal for checking the bus by 5 officers on duty by staff car on 07.03.1994, the petitioner did not stopped the bus.

The petitioner was charged on 09.11.1994 for aforesaid alleged misconduct as reported by the Traffic Superintendent. The petitioner also filed his reply on 06.01.1995 denying the charges leveled against him inter-alia that he was never given signal to stop the bus as such he has not committed any misconduct.

4. It was also alleged in the reply that Inquiry Officer appointed was not an independent person being Assistant Regional Manager of the corporation. In the inquiry he claims to have requested the Inquiry Officer to calling the Traffic Superintendent and other officers for giving evidence but Inquiry Officer submitted the report without taking evidence of any checking staff. A show cause notice was given to the petitioner on 15.09.1997 as to why the punishment of removal of service may not be awarded. The petitioner submitted his reply to the aforesaid show cause notice on 07.10.1997. The Inquiry Officer after considering the reply of the petitioner vide order dated 30.06.2001 dismissed the petitioner from his service.

Aggrieved the petitioner raised an Industrial Dispute before the Presiding Officer. The conciliation proceedings having filed and the State Government being of the opinion that an industrial dispute existed between the parties, made the following reference to Labour Court:

D;k Isok;kstdks }kjk vius Jfed Jh lwcsnkj iq= Jh foUnzk izlkn voLFkh in MkbZoj dks fnukad 30-6-2001 Is dk;Z Is Ik`Fkd @ oafpr fd;k tkuk mfpr rFkk oS/kkfud gS ;fn ugh rks lacaf/kr Jfed D;k fgrykHk @ vuqrks"ik ikus dk vf/kdkjh gS A rFkk fdu vU; fooj.k ds lkFk

5. The aforesaid reference was registered as adjudication case No. 190 of 2001 by the Presiding Officer, Labour Court, Lucknow.

6. Before the Labour Court the workman challenged the departmental inquiry proceedings on the ground that they were not fair and proper. It was stated that the workman was neither given any opportunity to cross examine the witnesses of employer nor was given any opportunity to lead his evidence and that on the basis of the aforesaid illegal inquiry, has been wrongfully dismissed from service.

As regards the charges, it was stated though it has been stated in the report that the checking staff had given the signal to the petitioner to stop the bus but neither the driver of the staff car nor any passenger of the tempo which is stated to have developed some mechanical fault was examined in this regard and that in fact neither any signal to stop the bus was given nor he had seen the staff car or the signal and in fact this averment has been made only to give colours to the charges for justifying their action by the employers.

The parties filed their written statements, documents and also adduced oral evidences before the Labour Court.

7. One of the question raised by the workman before the Labour court was regarding jurisdiction of the punishing authority, on the ground that he was not competent to have pass order of punishment against the workman according to the rules of the corporation.

8. The Labour Court by the impugned award observed that any person holding charge of a post cannot be said to a person appointed on the post and that it would be said that punishing authority who was holding charge on the post of Regional Manager could not have passed the order and that since the workman had not got summoned the appointment of letter of the Regional Manager, it cannot be said that he was not competent to act as a punishing authority on the date the order was passed. The Labour Court held that as the workman concerned challenged the jurisdiction of the punishing authority in the inquiry as such the inquiry held by officer was fair and proper and consequently the termination of services of the workman is in accordance with law and he is not entitled to get any relief.

9. In support of his case the Counsel for the petitioner has firstly relied upon letter dated 01.04.1997 appended as Annexure No. 7 to the writ petition directing Sri A.K. Srivastava, Service Manager, Central Workshop, Kanpur to discharge function and responsibility of post of Regional Manager, Kanpur in addition to his own work. It is also mentioned in the letter that this arrangement is totally temporary and Sri A.K. Srivastava would not be entitled to any financial or other benefits for discharging the duties of the post of Regional Manager. The letter is as under:

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i= la[;k&681@ihp,u;w@2000 fnukad 01-4-07

dk;kZy; Kki

{ks=h; izcU/kd] dkuiqj ds fjDr in ds drZO; ,oa nkf;Roks dk fuoZgu vius dk;skZ ds lkFk
lkFk vfxze vkns"kks rd ds fy, Jh ,0ds0 JhokLro lsok izcU/kd] dsfUnz; dk;Z"kkyk] dkuiqj
>kjk fd;k tk;sxk A mijksDr O;oLFkk iw.Zkr% vLFkkbZ gS A JhokLro dks blls dksbZ foRrh;
,oa fof/kd ykHk vuqeU; ugha gksxs A

g0 vk0

◆Jh johUnz flag◆

izcU/k funs"kd

10. On the basis of the aforesaid letter it is contended by the petitioner that since Sri A.K. Srivastava is not a person appointed on the post, he could not have passed order dismissing the petitioner from his service exercising the power of Regional Manager.

11. In support of his argument the petitioner relied upon Annexure No. 8 to the writ petition which is an office order in respect of one Sri Y.K. Bhatnagar, Office Assistant

(Second), Central Workshop, U.P. State Road Transport Corporation, Kanpur whereby his punishment of dismissal from service from the post in the corporation was set aside on his representation on the ground that major punishment cannot be given by a person holding a substantive lower post than the punishing authority or than the appointing authority and as such the then Chief Manager, Central Workshop who was holding the charge of the punishing authority was not competent to pass order against Sri Y.X. Bhatnagar.

12. On the basis of aforesaid document it is urged by the Counsel for the petitioner that in the instant case also the Regional Manager who was holding charge was not competent, as such in this case also he could not have passed order of dismissal from service against the petitioner as he was not competent to do so for he was holding a substantive post lower than the punishing authority. He further relied upon para-2 of Annexure No. 9 which is an office order dated 19.02.1988 as under:-

2- mijksDr funsZ"kks ij "kklu }kjk iqu% xgjkBZ ls fopkj fd;k x;k gS A xq;eq[k flag cuke ;wfu;u cuke ;wfu;u vkWQ bf.M;k] b0vkbZ0vkj0 1963 iatkc 370 o uckc gq|Su cuke LVsV vkWQ ;w0ih0 ,vkbZvkj 1969 bykgkckn 466 vkfn oknks esa fn;s x;s ek0 U;k;ky;ksa ds fu.kZ;ksa dks ns[kus ls ;g fu"d"kZ fudyrk gS fd okLro esa fu;qfDr vf/kdkjh og vf/kdkjh gksxk ftlus fu;qfDr dh gS vr% mijksDr dk;kZy; Kki dks vfrdzfer djrs gq, v/kksgLrk{kjh dks ;g Li"V djus dk funsZ"k gqvk gS fd lafo/kku ds vuqPNsn 311-1 ds iz;kstuks ds fy, fu;qfDr izkf/kdkjh mlh izkf/kdkjh dks ekuk tk;sxk ftlus IEcfU/kr ljdkjh lsod dks IEcfU/kr in ij fu;qDr fd;k gks] pkgs mDr fu;qfDr LFkk;h gks ;k vLFkk;h A ;fn dksbZ O;fDr fdlh izoj vf/kdkjh ls uhps ds LRkj ds ,sls inkf/kdkjh }kjk tkjh fd;s x;s gks ftls LFkk;hdj.k ds vkns"k tkjh djrs le; ml in dh fu;qfDr izkf/kdkjh ?kksf"kr fd;k tk pqdk gks rks Hkh IEcfU/kr ljdkjh lsod dk LFkkuh; j.kuhfr--- mijksDr izkf/kdkjh ?kksf"kr fd;k tk pqdk gks rks Hkh IEcfU/kr ljdkjh lsod dh inP;qfr ;k lsok ls gVkus  dismissal of removal  ds o`gn n.M nsus ds fy, lafo/kku ds vuqPNsn 311-1 ds iz;kstufkZ mlds ^^fu;qfDr izkf/kdkjh^^ ugh ekus tk ldrs A mDr iz;kstu ds fy, ml ljdkjh lsod dh fu;qfDr izkf/kdkjh mlh izoj  fu;qfDr vf/kdkjh  dks ekuk tk;sxk ftlus mls IEcfU/kr in ij izFke  vLFkk;h ;k LFkk;h  fu;qfDr iznku dh gS A vkSj os gh mls mijksDr o`gn n.M ns ldrs gS A

13. He submits that from this order also it is very apparent that the punishment or removal from the service can be passed only by the competent authority and not by any other person holding charge. It is stated that since Sri A.K. Srivastava was working on his substantive post of Service Manager and not that of Regional Manager he could not have passed the order of major punishment of removal or termination of service of the petitioner while holding additional temporary charge of higher post of Regional Manager.

14. The Counsel for the respondents submits that the petitioner was holding a post and since the employers have lost confidence in him therefore the High Court should not interfere in the punishment awarded to the petitioner.

15. The Counsel for the respondents relied upon these cases (1) 2003(3) 605 [The Regional Manager, Rajasthan State Road Transport Corporation Vs. Sohan Lal etc.,](#) Regional Manager, Rajasthan State Road Transport Corporation v. Sohan Lal and (3) 2005(3) 254 Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane.

16. Learned Counsel for the respondents submitted that in the aforesaid first case the Hon"ble Apex Court while discussing scope of judicial review with the test of proportionality held that the "Court or Tribunal while dealing with the quantum of the punishment as record the reason as to why the punishment was not commensurate with the proved charges. The scope for interference is very limited and exceptional cases.

"The court or tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. The scope for interference is very limited and restricted to exceptional cases. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. A mere statement that it is disproportionate would not suffice. It is not only the amount involved but the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or Disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently.

Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusion of the Division Bench of the High Court are not proper.

17. The second case cited by the Counsel for the respondents is Regional Manager, Rajasthan State Road Transport Corporation v. Sohan Lal wherein it was held that Moulding of relief of superior courts to interfere to the quantum of sentence unless is wholly disproportionate to the misconduct proved. In that case bus conductor was not issuing the tickets to the passengers which lay not to the corporation but also lost of evidence to the employee. It was on the aforesaid facts that it was held that reinstatement of such an employee by virtue of a judicial order is an act of misplaced sympathy which can find no foundation in law or in equity. In that case on case no such finding have been recorded in the impugned order and the dismissal has been up held by the tribunal and the Single Judge. The Appellate Bench of the High Court in that case on the offer of the employee to lieu to being reinstated inferred in the matter which was set-aside by the labour court holding that such an offer cannot be taken into consideration by the court unless and until the finding as to misconduct is not set-aside.

18. In the case of Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane was also a case of judicial review of the domestic inquiry, it was held by the court that once a domestic tribunal based on an evidence comes to a broad conclusion then normally it is not open to the appellate tribunal and courts to substitute their subjective opinion in place of the one arrived by the domestic tribunal. The court also held that in that case misappropriation of funds by delinquent employee was found proved. The court in that situation has held that the loss of confidence as the primary factor and not the amount of money misappropriated hence sympathy or generosity was impermissibility. Hon"ble Apex Court held that when an employee is found guilty of misappropriating a corporation's fund there is nothing wrong in the corporation losing confidence or faith in such an employee awarding punishment of dismissal. In such cases there is no place for generosity or misplaced sympathy on the part of judicial forums and interfering therefore with the quantum of punishment.

19. The Counsel for the respondents does not denied the letters dated 01.04.1997 and office order dated 19.02.1988 which have been quoted above in the body of the judgment.

It is apparent from the letter dated 01.04.1997 that Sri A.K. Srivastava was given temporary charge only for the purpose of smooth working of the workshop. The Managing Director does not interested him with any powers of punishing authority. Rather it have been made dear that Sri Srivastava will not have any legal and financial benefits of the post of punishing authority. Sri Srivastava cannot take any policy decision or such decision of serious nature such as major punishment or removal from the service of an employee. It is also apparent from the order dated 19.02.1988 quoted above by which the order of dismissal was set-aside by the appointing authority on the representation of the workman concerned in that episode whose service has been dismissed by a person holding charge of appointing authority or the punishing authority.

29. The law rendered by the Court in [Gurmukh Singh Vs. Union of India \(UOI\)](#), and also upon the judgment rendered in Nawab Hussain v. Sate of U.P. SRTC are now government employees hence are entitled the benefit of Article 311(1) of the Constitution.

21. The workman did not have on any occasion to challenged the authority or jurisdiction of the punishing authority as Sri A.K. Srivastava who was only a service manager holding charge of Regional Manager could not have removed the petitioner from service even otherwise there is no material on record that the petitioner was given opportunity of cross examination of witnesses or opportunity to produce witness on his behalf. The order of removal passed against the petitioner therefore is directly hit the Article 311(1) of the Constitution and against all bringing canals of principle of natural justice.

22. For these reasons the impugned order is liable to be set-aside. The writ petition is allowed. No order as to costs.