

(2002) 08 GAU CK 0030

Gauhati High Court

Case No: WP (C) No. 3815 of 2002

Siba Nath Deuri

APPELLANT

Vs

Assam State Transport
Corporation and Others

RESPONDENT

Date of Decision: Aug. 13, 2002

Citation: (2003) 96 FLR 921 : (2002) 3 GLR 553

Hon'ble Judges: N. Surjamani Singh, J

Bench: Single Bench

Advocate: Y.K. Phukan and D. Das, for the Appellant; U. Baruah, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

N. Surjamani Singh, J.

Heard Mr. D. Das, learned council for the petitioner, and Ms. U. Baruah, learned standing counsel for the ASTC and other respondents,

2. In this writ petition, the petitioner Sri Siba Nath Deuri, has questioned the validity of the impugned order bearing No. 606 dated 10.12.2001 as in Annexure-7 to the writ petition by contending, inter alia, that the order removing the petitioner from service with immediate effect vide order dated 10.12.2001 is illegal and disproportionate.

3. Mr. Das, learned counsel contended that thought there was allegation against the petitioner for allowing 17 ticketless passengers to travel upto their destination and realising bus-fare from them and converting the same for his personal gain ; there is no evidence on record to prove the said allegation and that apart the penalty so imposed upon the petitioner," namely, removal from service is disproportionate.

4. Ms. Barua, learned counsel for the respondents, contended that there is no infirmity in the impugned order of penalty and that the court should not interfere

with such order passed by the appropriate authority after due enquiry into the allegation.

5. I am in full agreement with Mr. Das, learned counsel for the petitioner, that the penalty of removal from service is disproportionate, if it is to be taken into consideration ex-facie indeed in the first instance. But there is ample evidence on record that the petitioner had been penalised three times earlier by the appropriate authority/respondents herein and was imposed penalty of warning, censor and withholding of increments, and this is his fourth offence thus, misappropriating the public money by allowing 17 passengers to travel upto their destination without ticket and converting the ticket money for this personal gain.

6. Now, the question arises as to whether this petitioner should be allowed to get reinstatement in service or not. The answer is "no". I made this observation keeping in view the words of My Lord and Jurist who gave decisions with reasonings on "common sense" and not on "non-common sense".

7. Lord Denning brought "common sense" to the interpretation of law, and in his book "Lord Denning's Biography, 2nd Edition, he highlighted the words of Justice Mr. Lucas who said and argued that a non-common sense decision is not more certain than one based on common sense and for the layman, law will be more predictable if based on common sense. Since laws apply to layman there is a good argument for the development of the law to be influenced by common sense as well as legal reasonings.

8. In the instant case, I apply my good common sense and give my reasoning not on non-common sense but on the basis of my good common sense.

9. The petitioner has been penalised three times earlier and imposed with penalty of censor, warning and withholding of increments. This is the fourth time when the petitioner misappropriated the public money, and if it was first instance then the court could have considered the penalty of removal from service imposed on the petitioner as disproportionate, but according to me it is proportionate. In fact the petitioner deserved the said penalty as imposed by the appropriate authority after due enquiry.

10. For the foregoing discussions, observations and reasons, I am of the view that the petitioner could not make out a case to justify interference with the impugned order of removal from service. According to me, it is a right decision taken by the appropriate authority, and there is no bias or mala fide on the part of the authority while removing the petitioner from service as the committed misconduct/wrong three times earlier and the petitioner was let off with some minor penalties, and this is his fourth offence of misappropriation of public money for his personal gain for which, according to me, the petitioner deserves to lose the job.

11. In the result, the writ petition stands dismissed. However, there shall be no order as to costs.