

Bhagwan Dass vs Union Territory Of J&K And on 7 September, 2022

Author: Sindhu Sharma

Bench: Sindhu Sharma

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No. 2501/2021
CM No. 8656/2021
in
WP(C) No. 2502/2021
WP(C) No. 2503/2021

Pronounced on: 07.09.2022

Bhagwan Dass

.... Petitioner/Appellant(s)

Through:- Mr. A. S. Bali, Advocate
V/s

Union Territory of J&K and
another

.....Respondent(s)

Through:- Mr. R. Koul, Adv. for R-2

CORAM : HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
JUDGMENT

01. In these petitions, identical issues have arisen for adjudication, as such, the same are taken up together for consideration and final disposal by this common judgment.

02. All the petitioners were working as Conductors in the Jammu & Kashmir State Road Transport Corporation and their services were terminated by three different impugned orders, all of dated 29.10.2021. The petitioners-Bhagwan Dass in Writ Petition No. 2501/2021, Nehru Lal in Writ Petition No. 2502/2021 and V. K. Salathia in Writ Petition No. 2503/2021 seek quashing of Order No. 008-JKRTC/GMA of 2021, Order No. 002-JKRTC/GMA of 2021 and Order No. 004-JKRTC/GMA of 2021 dated 29.10.2021 respectively vide which their services were terminated by the Corporation with immediate effect.

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03. All the petitioners were appointed as Conductors in the Corporation and were performing their duties uninterruptedly for the last almost three decades. It is contended that while they were discharging their duties diligently and uninterruptedly, a show-cause notice was issued to them on 10.09.2021 stating that as their activities were inimical and detrimental to the interest of the

Corporation and also in view of the seriousness of the offence committed, directed them to show cause before their case for termination of service is proceeded. The petitioners replied to the show-cause notice in detail on 16.09.2021 submitting that as they had served the Corporation for almost 30 years and have performed the duties assigned to them diligently and uninterruptedly and also they are on the verge of superannuation, therefore, the proceedings initiated against them be dropped.

04. The respondents found the reply of the petitioners as unsatisfactory and also considered that continuation of the services of the petitioners is inimical to the interest of the Corporation, as such, their services were terminated vide three different impugned orders dated 29.10.2021. Thereafter, services of all the three petitioners were terminated on the ground of multiple major offences committed by them and in the face of established rules guiding the field of negligence and permitting ticketless travelling.

05. The petitioners are aggrieved of all the these three impugned orders dated 29.10.2021, terminating their services, on the ground that the same are arbitrary, illegal and have been passed without any application of mind. It is urged that before passing the orders of termination, the 2502/2021 & 2503/2021 respondents ought to have afforded a reasonable opportunity of being heard to the petitioners. The termination of the petitioners' services was on the basis of offences attributed to them for the year 1990 and the last offence attributed to them was of dated 17.02.2014, i.e., almost five to seven years ago which also stood condoned by the respondents. The petitioners were performing their duties uninterruptedly and diligently and also there was not even a whisper of any allegation against them since the year 2014. Suddenly, the respondents terminated their service after serving a show cause notice to them without affording any opportunity of being heard to them. The respondents have also failed to indicate the reasons while passing the orders of termination, as for so many years after committing the offence alleged, the petitioners were even placed under suspension but the punishment of termination awarded to them is without affording an opportunity of being heard to them. The termination of the services of the petitioners is punitive in nature and, therefore, it was incumbent upon the respondents to hold an enquiry after framing charges and giving a reasonable opportunity of hearing to the petitioners to defend themselves. The impugned orders of termination are stigmatic in nature and have been passed at the fag end of their services. It is urged by the learned counsel for the petitioners that as the respondents have not followed the procedure as prescribed under Regulation-17 of the J&K SRTC (Discipline and Conduct Regulations, 2012 while passing the orders impugned, as such, the same needs to be quashed.

06. The respondents, in their objections submit that the petitioners were found indulging in misappropriation of Corporation revenue 2502/2021 & 2503/2021 repeatedly. They had committed as many as fifteen (15) offences of misappropriation of Corporation's revenue, thereby causing loss to the Corporation. The respondents had warned the petitioners number of times but of no avail. It is submitted that these acts of the petitioners called for immediate stern actions as despite warnings, they failed to mend their ways. They were, therefore, issued a show-cause notice dated 10.09.2021 and provided an opportunity of being heard to them and to explain their conduct. It is submitted that the conduct of the petitioners amounted to misconduct in terms of the J&K SRTC (Discipline and Conduct Regulations, 2012 as well as Service Rules and Regulations for causing loss to the

Corporation, as such, the respondents awarded the major penalty of dismissal/removal of service to the petitioners.

07. The respondents have placed a reliance on Regulation 17 of the J&K SRTC (Discipline and Conduct) Regulations, 2012 and the same was taken into account while imposing penalty as provided for offence. Regulation 17 of the J&K SRTC (Discipline and Conduct) Regulations, 2012, being relevant is reproduced below:

"17. Application of other Laws and Rules: For matters not specifically provided in these Regulation the J&K Government Employees (Conduct) Rules, 1971, the J&K Employees (Classification, Control and Appeal) Rules, 1956 shall, mutatis mutandis, apply to the employees of the J&K State Road Transport Corporation and without prejudice to these Regulations punishment shall be awarded for minor and major act of misbehavior, misconduct, indiscipline as shows in Annexure-II and III to these Regulations. The acts of misbehavior, misconduct, 2502/2021 & 2503/2021 indiscipline listed in these Annexures are only illustrative and not exhaustive;

Provided that in established case of ticketless travelling, the conductor shall be penalized as per multiplier formula i.e. offence amount multiplied by number of trips during the previous year divided by 2 or ten times the misappropriated amount, whichever is higher."

08. The J&K State Road Transport Corporation (Discipline and Conduct) Regulations, 2012, were notified on 28.04.2012. These Regulations illustrate the minor and major acts of the employees and their misconduct, misbehaviour and indiscipline as per Annexure-I & II but it does not provide the procedure prescribed for imposing penalty of dismissal from service.

09. As per these Regulations, the punishment to be awarded for minor and major acts of misbehavior, misconduct and indiscipline is shown in Annexure-II and III of the Regulations. In terms of Annexure-III of the Regulations, the offences of theft, dishonesty, fraud, forgery, misappropriation including cheating and non-issue of tickets after collecting fare for an amount exceeding Rs. 500/- falls within the major offences and quantum of punishment includes stoppage of retirement with effect from reducing to a lowest post of stage in the time scale, removal of dismissal. The respondents have awarded major penalty of termination of the services of the petitioners from the Corporation in terms of said Regulations but the respondents before terminating the services of the petitioners have not provided them with a reasonable opportunity of being heard which is against the mandate of principles of natural justice.

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10. The procedure as prescribed so far as imposing major and minor penalty is provided under the J&K State Road Transport Corporation Service conditions Rules, 1979. As per Rule-148, in case of minor penalty of dismissal of services, the petitioners ought to have been provided an opportunity of hearing by holding regular enquiry. Since the petitioners services were terminated at the fag end of

their services, therefore, their services could only be terminated by holding regular enquiry as envisaged under J&K State Road Transport Corporation (Discipline and Conduct) Regulations, 2012.

11. In terms of J&K Civil Services (CCA) Rules, 1956, the services of an employee can be terminated in terms of Rule 33 of the said Rules, which is reproduced as under:

"33. (1) Without- prejudice to provisions of the Public Servants Inquiries Act, 1977, no order (other than an order based on facts which had led to his conviction in a criminal court or by a court-martial) of dismissal, removal, or reduction in rank 1 [which includes reduction to a lower post and/or lower timescale, - and/or to a lower stage in time-scale] but excludes the reversion to a lower post of a person who is holding a higher post temporarily shall be passed on a person who is a member of a Civil service, or holds a Civil post under the State unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded and adequate opportunity of defending himself. The ground s on which it is proposed to take action shall be reduced in the form of a definite charge or charges which shall be communicated to the person charged, together with a statement of tile allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required, within a reasonable time, to put in a written statement of his defence and to state whether he desires to be head in person. If he so desires, or if 2502/2021 & 2503/2021 the authority concerned so directs, an oral inquiry shall be held in respect of such of the allegations as are not admitted. At that inquiry such oral evidence will be heard, as the inquiring officer considers necessary. The person charged shall be entitled to cross- examine the witnesses, to give evidence in person and to have such witnesses called as he may wish; provided that the officer conducting the inquiry may for sufficient reason to be recorded in writing refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and statement of the findings and the grounds thereof.

(2) The rule shall not apply where the person concerned has absconded, or where it is for other reasons impracticable to communicate with him, or where in the interest of the security of the State, it is considered not expedient to give to that person an opportunity of showing cause against the action proposed to be taken against him. All or any of the provisions of the rule may for sufficient reasons to be recorded in writing be waived, where there is difficulty in observing exactly the requirements of the rule and those requirements can in the opinion of the inquiring officer be waived without injustice to the person charged. (3) this shall also not apply where it is proposed to terminate the employment of a probationer whether during or at the end of the period of probation, or to dismiss, remove or reduce in rank a temporary government servant, for any specific fault or on account of his unsuitability for the service.

[(4) The competent authority may inquire into the charges itself or if it considers it necessary so to do, it may appoint an inquiry officer for the purpose.]"

12. Rule 34 is reproduced as under:

"34. after the inquiry against a government servant has been completed, and after the authority competent to impose penalty has arrived at provisional conclusions in regard to the penalty to be imposed, the government servant charged shall, if the penalty proposed is dismissal, removal or reduction in rank, be supplied with a copy of the proceedings prepared under rule 33 2502/2021 & 2503/2021 excluding the recommendations, if any, in regard to punishment, made by the officer conducting the inquiry and asked the show cause by a particular date with affords him reasonable time, why the proposed penalty should not be imposed on him."

13. The petitioners are all employees of the Corporation and were working for the last almost 35 years, their services have been terminated on the basis of a show-cause notice for the offences of misappropriation of the Corporation's revenue and serious breach of trust and these orders could not have been stigmatic and could also not have been passed without giving the petitioners an opportunity of being heard to defend themselves. This apart, the respondents have, by their own conduct, had condoned the misconduct of the petitioners and could not go back to terminate them after more than seven years from the date of commission of last offence.

14. The present case clearly envisages that the services of the petitioners have been terminated for the instances of misconduct as reflected in the show-cause notice dated 10.09.2021 which has not been inquired into and also no finding is recorded in this regard. The respondents should have taken a decision of dismissing the petitioners only after examining the overall conduct of the petitioners.

15. It is a well settled principle of law that an employee, against whom the order of termination is recorded, he must be afforded an opportunity of being heard but in the case in hand, this principle has not been adopted.

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16. The Hon'ble High Court of Madhya Pradesh in "Lal Audhraj Singh V. State of Madhya Pradesh", AIR (1967) MP 284, has held that once a master has condoned any misconduct which would have justified dismissal or a fine, he cannot, after such condonation, go back upon his election and claim a right to dismiss or to impose a fine or any other punishment in respect of the offence which has been condoned, therefore, in the present case, the respondents had condoned the conduct of the petitioners and, as such, they could not use it after a lapse of seven years to terminate the services of the petitioners.

17. The Hon'ble Supreme Court in "Ratnesh Kumar Choudhary V. Indira Gandhi Institute of Medical Sciences", (2015) 15 SCC 151, has held that:

"It is well settled in law, if an ex parte enquiry is held behind the back of the delinquent employee and there are stigmatic remarks that would constitute foundation and not the motive. Therefore, when the enquiry commenced and thereafter without framing of charges or without holding an enquiry the delinquent employee was dismissed, definitely, there is clear violation of principles of natural justice. It cannot be equated with a situation of dropping of the disciplinary proceedings and passing an order of termination simpliciter. In that event it would have been motive and could not have travelled to the realm of the foundation. We may hasten to add that had the appellant would have been visited with minor punishment, the matter possibly would have been totally different. That is not the case. It is also not the case that he was terminated solely on the ground of earlier punishment. In fact, he continued in service thereafter. As the report would reflect that there are many an allegation subsequent to the imposition of punishment relating to his conduct, misbehaviour and disobedience. The Vigilance Department, in fact, had conducted an enquiry behind the back of the appellant. The stigma has been cast in view of the 2502/2021 & 2503/2021 report received by the Central Vigilance Commission which was ex parte and when that was put to the delinquent employee, holding of a regular enquiry was imperative. It was not an enquiry only to find out that he did not possess the requisite qualification. Had that been so, the matter would have been altogether different. The allegations in the report of the Vigilance Department pertain to his misbehaviour, conduct and his dealing with the officers and the same also gets accentuated by the stand taken in the counter affidavit. Thus, by no stretch of imagination it can be accepted that it is termination simpliciter. The Division Bench has expressed the view that no departmental enquiry was required to be held as it was only an enquiry to find out the necessary qualification for the post of Chest Therapist. Had the factual score been so, the said analysis would have been treated as correct, but unfortunately the exposition of factual matrix is absolutely different. Under such circumstances, it is extremely difficult to concur with the view expressed by the Division Bench."

18. Similarly, the Hon ble Supreme Court in „Davinder Singh and others vs. State of Punjab and others', (2010) 13 SCC 88 has held that:

"28. The order terminating the services of the appellants specifically cites indiscipline at the Amritsar Railway Station as the cause for termination. Therefore, it is not a case where the appointing authority is discharging the services of the appellants on the ground that their services are not longer required but it s a case where their services are sought to be dispensed with on the ground of indiscipline, which would come within the meaning of the expression „Misconduct . In such a situation, the respondents cannot terminate the services of the appellants without following the procedure prescribed under Rule 27 of the Rules, the said rules, specifically deals with Discipline. It reads as under:

"Dismissed:- (1) Any officer may for misconduct or for absence without sufficient cause, be dismissed from service. Provided that an order of dismissal shall not be passed unless reason of dismissal are recorded in writing and the member 2502/2021 & 2503/2021 concerned has been given a reasonable opportunity of showing cause against the action proposed to be taken against him."

19. In view of the aforesaid position of law, it is not disputed that the respondent-Transport Corporation is set within the meaning of Article 12, the employee of the transport so enjoy status of protection of civil services within a meaning of Article 311 of the Constitution of India. The Service conditions of the contract are governed by Statue or Statutory Regulations, therefore, a writ petition is maintainable. The termination of the petitioners is arbitrary and in violation of Article 14 of Constitution of India which warrants interference by this Court, as the respondents had not proceeded with departmental enquiry, framing of charges and also not provided them an opportunity of being heard before terminating their services.

20. The first charge is only an accusation and the petitioners services have been terminated, they have been condemned unheard as their services are to be terminated, they are required to be given an opportunity by explaining their conduct by holding a regular enquiry.

21. For the reasons stated above, these writ petitions are allowed. The impugned orders dated 29.10.2021, passed by the respondents whereby the services of the petitioners have been terminated are quashed. The petitioners are relegated back to the same position and they shall be paid the salary and other emoluments attached to the post from the date, they have been removed from the service. The quashing of the impugned orders, however, will not prevent the Competent Authority to hold 2502/2021 & 2503/2021 departmental enquiry against the petitioners, if required, and pass appropriate orders.

22. These writ petitions are disposed of along with connected application(s), if any.

(Sindhua Sharma) Judge Jammu 07.09.2022 Michal Sharma Whether the Judgment is speaking : Yes Whether the Judgment is reportable : Yes