

Rajasthan High Court

Ghasi Khan vs Rajasthan State Road Transport ... on 4 April, 1995

Equivalent citations: (1997) IILLJ 74 Raj, 1996 (1) WLC 379, 1995 (1) WLN 588

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Bench: A Madan

JUDGMENT Arun Madan, J.

1. The petitioner who is an Ex-driver of the respondent Corporation i.e. Rajasthan State Road Transport Corporation (for short 'RSRTC'), filed this writ petition before this Court under Article 226 of the Constitution of India, in the matter of violation of his fundamental rights under Articles 16 and 21 of the Constitution of India and also in the matter of Rajasthan State Road Transport Corporation Workers and Work-shop Employees Standing Orders, 1965.

2. The facts of the case, briefly stated, are that the petitioner was appointed as Driver with the respondent Corporation vide order dated January 9, 1976 (Annex-1), In the year 1983, a mishap occurred resulting in head injury to the petitioner while performing official duties with the respondent- Corporation, as a result of which the petitioner was hospitalised. Consequently, on January 26, 1984, the petitioner had submitted an application to the Divisional Mechanical Engineer, Kota, praying therein that he may be relieved from duties as Driver vide Annex-2, on account of his failing health and he requested for being given lighter duties, since he was not able to discharge his duties as Driver efficiently on account of accident.

3. On January 26, 1984, the petitioner was charge-sheeted for his absence from duty w.e.f. January 26, 1984 following a Departmental Enquiry which was initiated vide order dated June 16, 1984 (Annex-3). The petitioner was, however, exonerated of the charge as a result of the enquiry conducted by Divisional Mechanical Engineer, Kota vide order dated December 22, 1984 (Annex-4). In the meanwhile, the petitioner had requested the Divisional Mechanical Engineer on September 15, 1984 (Annex-5) by an application for grant of lighter duties as per medical advice and the petitioner was given lighter duties by the respondents in the work-shop at Kota.

4. On May 10, 1988, the petitioner was served with a show-cause notice by the Divisional Manager, Kota whereby the petitioner was directed to reply as to why his services be not terminated under Section 2(oo) (c) of the Industrial Disputes Act, 1947 (hereinafter to be referred as 'the Act') to which the petitioner submitted his reply vide Annexure-7. Subsequently, the petitioner was served with a second show-cause notice on July 25, 1989, by the respondent-Corporation. Notwithstanding the fact that the petitioner had submitted his medical report given by the Medical Board which also found that the petitioner was not fit to discharge his duties as Driver, no heed was given to the same by the respondent-Corporation. The petitioner had also submitted his reply to the said second show-cause notice and had requested to be given lighter duties since he was not fit to perform the duties of a Driver but all to no avail. The Respondent No. 2, vide its order dated March 20, 1990 (Annex-11) terminated the services of the petitioner by taking shelter under Section 2(9)(c) of the Act holding that the petitioner is not fit for the job of Driver.

5. It has been contended in the writ petition that on the basis of a settlement which was arrived at between the AITUC (Workers Union) and the Corporation on February 21, 1979, drivers who were medically unfit to discharge their duties were allowed to perform lighter duties in the work-shop and they were to be paid the salary of the minimum of that post to which they were entitled as per rules. In view of this settlement, the order dated March 10, 1989 (Annex-12) was issued by the Respondent-Corporation giving necessary relief to the affected employees. The said settlement was arrived at during the course of conciliation proceedings and the terms of the aforesaid settlement continue to hold good even today and has a binding force as per Section 18 (1) of the Act. By way of illustration, the petitioner has referred to the identical cases of Hari Kishan and Babu Lal, both drivers of the Respondent- Corporation who were placed under similar circumstances like the petitioner and were absorbed by the Respondent-Corporation on the post of Helper and the benefits of settlement were given to them vide orders dated January 13, 1989 and January 21, 1989 (Annex-13 & 14 respectively) which are on the record. It has been further contended in the writ petition that the Doctor who was attending the petitioner from time to time had also recommended that the petitioner be given lighter duty as per medical certificate dated January 20, 1987 wherein he had so recommended and the petitioner was, therefore, not wholly incapacitated from discharging his duties on any suitable alternative job in which the petitioner could be absorbed by the Respondent-Corporation. Instead of helping the petitioner by adopting compassionate approach in view of the fact that the petitioner had rendered about 13 years of service as Driver, Respondent No. 2 passed the impugned order dated March 20, 1990 vide Annex-11, resulting in termination of his services in terms of Section 2(oo) (c) of the Act.

6. It is the above-stated impugned order of termination which the petitioner has challenged in the present writ petition on various grounds. I have heard the learned counsel for the parties at length, examined their rival claims and contentions and also perused the relevant documents on the record. During the course of hearing Shri Mathur, learned counsel for the petitioner has placed reliance on the judgment of the Apex Court in the matter of Anand Behari v. Rajasthan State Road Transport Corporation, Jaipur 1991 Lab. I.C. 494, wherein the question which had arisen before the Apex Court was as to whether the Corporation was justified in terminating the service of the drivers of the Corporation on the ground of weak eye-sight which was not of requisite standard for driving the vehicles of the Corporation. It was held by the Apex Court that the termination of the services of the Drivers as a result of weak eye-sight due to an accident during the course of their employment was not justified and was held illegal being in contravention of Section 25F of the Act. It was further held by the Apex Court that the aggrieved workman was entitled to retiral benefits as Driver, as if he had retired from service as Driver from the date of his employment as Helper. It was further held that the said workman was also entitled to reinstatement with backawages as Helper. In para 12 of the said judgement, the Apex Court has formulated certain guidelines to be followed by the Corporation which are reproduced as under :--

"(1) The Corporation shall in addition to giving each of the retired workmen his retirement benefits, offer him any other alternative job which may be available and which he is eligible to perform.

(2) In case no such alternative job is available, each of the workmen shall be paid along with his retirement benefits, an additional compensatory amount as follows:--

a) where the employee has put in 5 years or less than 5 years service, the amount of compensation shall be equivalent to 7 days salary per year of the balance of the service.

b) Where the employee has put in more than 5 years service but less than 10 years service the amount of compensation shall be equivalent to 15 days salary per year of the balance of his service.

c) Where the employee has put in more than 10 years of service, but less than 15 years service, the amount of compensation shall be equivalent to 21 days salary per year of the balance of his service.

(d) Where the employee has put in more than 15 years service but less than 20 years service, the amount of compensation shall be equivalent to one month's salary per year of the balance of his service.

e) Where the employee has put in more than 20 years service, the amount of compensation shall be equivalent to two month's salary per year of the balance of his service.

The salary will mean the total monthly emoluments that the workman was drawing on the date of his retirement.

3) If the alternative job is not available immediately but becomes available at a later date, the Corporation may offer it to the workman provided he refunds the proportionate compensatory amount.

c) The option to accept either of the two reliefs, if an alternative job is offered by the Corporation, shall be that of the workman."

7. The Apex Court while taking all the facts and circumstances of the case into consideration had made it optional for the aggrieved workmen either to accept reinstatement in service as helper with all arrears of backwages or in case, he opts for receiving compensatory amount under the scheme as so formulated above, he may do so for the period commencing from the date from which his services as a Helper were terminated.

8. During the course of hearing Shri Manish Bhandari, appearing on behalf of the Corporation, has contended at the Bar that the aforesaid judgment delivered by the Apex Court is binding on the Corporation and the Respondent-Corporation is ready and willing to abide by any direction which may be given by this Court in consonance with the aforesaid judgment of the Apex Court.

9. After hearing learned counsel for the parties and also after having examined claims and contentions as well as the documents placed on the record, I am of the considered opinion that the issues in controversy are squarely covered by the aforesaid judgment of the Apex Court and which is fully attracted to the facts of the present case.

10. In the result the writ petition succeeds and the impugned order dated January 20, 1990 (Annex-11) is quashed and set aside and the Respondents are directed either to absorb the petitioner

on the post of Helper by protecting his seniority, pay and allowances with effect from the date of terminating the petitioner's service i.e., March 20, 1990 with all consequential benefits and in the alternative, respondents are further directed to pay compensatory amount to the petitioner along with his retiral benefits to be computed from the date the petitioner was relieved from his job of Driver i.e. March 20, 1990 and the computation of the compensatory amount should be done by the Corporation in accordance with the directions of the Supreme Court, as referred to above. It is further directed that the option to accept either of two reliefs, i.e. the job of the Helper, if offered to the petitioner by the Corporation, or compensatory allowances including retiral benefits etc., as referred to above, shall be that of the petitioner. The respondents are further directed to comply with this order in the light of the directions of the Apex Court, as directed above, within a period of 90 days from today.

11. It is stated by Shri Manish Bhandari at the bar that the Corporation will ensure compliance of the order passed by this Court by duly communicating to the petitioner in this regard before the expiry of 90 days from today and in the event of default the Corporation shall be liable to pay penal interest to the petitioner @ 18% in the event of non-payment of the same within a period of 30 days from today.

12. The writ petition is allowed as indicated above. The parties are left to bear their own costs.