

U.P. State Road Tpt. Corpn.

Vs

Mohd. Ismail

Civil Appeals Nos.1756-59 of 1991

(K. Jagannatha Shetty, J. S. Verma, V. Ramaswami JJ)

11.04.1991

JUDGEMENT

K. JAGANNATHA SHETTY, J.:-

1. We grant special leave and proceed to dispose of these appeals.
2. These appeals preferred against the decision of the Allahabad High Court raise common questions as to the scope of Regns. 17(2) and 17(3) of the U. P. State Road Transport Corporation Employees (Other Than Officers) Service Regulations, 1981 ('the Regulations').
3. The respondents were appointed as drivers in the erstwhile U. P. Government Roadways. Upon the formation of the U. P. State Road Transport Corporation ('Corporation') they were absorbed in the services of the Corporation. The Corporation has framed the Regulations inter alia prescribing medical test to drivers every year for the purpose of assessing their suitability for the job. Pursuant to these Regulations, the Managing Director of the Corporation issued a circular dated December 19, 1986 stating that all drivers should be medically examined and those found unsuitable either because of ill-health or poor eye-sight, be not given duty and their services be dispensed with. This was followed by another circular dated March 12, 1987 by which the Managing Director directed the Regional Managers to terminate the services of the drivers who are medically found unfit to drive the vehicles. It was also directed in the circular that such employees whose services are dispensed with should be paid benefits like retrenchment compensation under S. 6(N) of the U. P. Industrial Disputes, Act.
4. In the beginning of 1987, all the respondents were subjected to medical examination and it was found that their eye-sights were defective. In view of the medical report, the Corporation discharged them with immediate effect by paying them one month salary in lieu of notice and also retrenchment compensation under the Industrial Disputes Act.
5. The respondents challenged their retrenchment by means of writ petitions before the Allahabad High Court. The High Court has allowed the writ petitions directing the Corporation to offer alternative jobs to the respondents.
6. The Corporation being aggrieved by the decision of the High Court has appealed to this Court.
7. Regulations 17(2) and 17(3) read as follows:

"17(2) A person, appointed to the post of driver, will be required to undergo medical

test, particularly vision test, every year or at such intervals as may be prescribed by the General Manager from time to time.

17(3). The service of a person who fails to pass the fitness test, referred to in the sub-regulation (2), may be dispensed with:

Provided that the persons, whose services are so dispensed with may, in the discretion of the Corporation, be offered alternative job."

8. Regulation 17(2) requires that the drivers have to undergo medical test particularly vision test every year, or at such intervals as may be prescribed by the General Manager of the Corporation. Regulation 17(3) has two branches. The first branch provides power to the Corporation to remove the driver from the service who fails to pass the medical test. The second branch of Regn. 17(3) though styled as proviso also appears to be an independent branch. It is not proviso. The proviso ordinarily carves out an exception from the general rule enacted in the main provision. However, sometimes the insertion of a proviso by the draftsman is not strictly adhered to its legitimate use and it may be in substance a substantive provision adding to and not merely excepting something @page-SC1103 thing out of or qualifying what goes before it. The proviso with which we are concerned in Regn. 17(3) does not carve out an exception from the general rule contained in the first branch. It is an independent and substantive provision providing discretion to the Corporation to offer an alternative job to the retrenched driver. This offer is to be made after the exercise of power under the first branch of Regulation 17(3). There is, therefore, no doubt that the second branch of Regn. 17(3) is a substantive provision and not in the nature of a proviso to first branch thereof.

9. The first branch of Regn. 17(3) appears to be in the public interest. The driver who is found medically unfit to drive the vehicle on the public road certainly cannot be permitted to continue as a driver. His driving licence is liable to be revoked. His continuance as driver would perhaps be perilous to the interests of passengers and pedestrians. The Corporation, therefore, has been empowered to remove, him from service as driver. At the same time, the second branch to Regn. 17(3) shows concern for the person who has been removed from service for want of medical fitness. It confers discretion on the Corporation to offer him an alternative job.

10. What does this mean in practical terms? Does it mean that the retrenched driver has a statutory right to get an alternative job? Is it obligatory for the Corporation to offer an alternative job to the driver who is certified to be medically unfit for the driver's job? The High Court has expressed the view that the Corporation before terminating the service of a driver who fails to satisfy the medical test is obliged to offer him an alternative job and that offer shall be in writing. In other words, the High Court seems to be of the opinion that the proviso to Regn. 17(3) imposes an obligation on the Corporation to offer an alternative job to all those who are found medically unfit to carry on their duties in the existing jobs.

10A. The view taken by the High Court appears to be fallacious. The discretion conferred. By Regn. 1,7(3) confers no vested right on the retrenched workmen to get an alternative job in the Corporation. Like all other statutory discretion in the administrative law, Regn. 17(3) creates no legal right in favour of a person in respect of whom the discretion is required to be exercised - other than a right to have his case honestly, considered. for an alternative job by the Corporation.

11. The High Court was equally in error in directing the Corporation to offer alternative job to drivers Who are found to be medically unfit before dispensing with their services. The Court cannot

dictate the decision of the statutory authority that ought to be made in the exercise of discretion in a given case. The Court cannot direct the statutory authority to exercise the discretion in a particular manner not expressly required by law. The Court could only command the statutory authority by a writ of mandamus to perform its duty by exercising the discretion according to law. Whether alternative job is to be offered or not is a matter left to the discretion of the competent authority of the Corporation and the Corporation has to exercise the discretion in individual cases. The Court cannot command the Corporation to exercise discretion in a particular manner and in favour of a particular person. That would, be beyond the jurisdiction of the Court.

12. In the instant case, the Corporation has denied itself the discretion to offer an alternative job which the regulation requires it to exercise in individual cases of retrenchment. As earlier stated, the Managing Director has issued two circulars: (i) dated December 19, 1986 and (ii) dated March 12, 1987 directing the Regional Managers to dispense with the services of the drivers who are found to be medically unfit to drive the vehicles. It is directed in the circulars that such drivers should be paid benefits like retrenchment compensation which they are entitled to under the U. P. Industrial Disputes Act. The circulars thus leave no scope for exercising discretion to consider the individual cases of retrenched drivers for any alternative job. It may be stated that the statutory discretion cannot be fettered by self created rules or policy. Although it is open to @page-SC1104 an authority to which discretion has been entrusted to lay down the norms or rules to regulate exercise of discretion it cannot, however, deny itself the, discretion which the statute requires it to exercise in individual cases. The concerned authority of the Corporation, therefore, notwithstanding, the said circulars are required to consider the cases of retrenched drivers for alternative jobs.

13. Counsel for the respondents argued that the object of Regd. 17(3) was to rehabilitate the drivers who are found to be medically unfit to drive vehicles and it is, therefore, obligatory for the authority or Officer of the Corporation to exercise discretion in favour of such drivers by offering them alternative jobs. But counsel for the Corporation considers that it is an absolute discretion of the Corporation to offer or not to offer an alternative job to such drivers and there is no compulsion in the matter.

14. These are, in our opinion, extreme contentions which are not sustainable under law. There are two aspects to be borne in mind in exercising the discretion. Firstly, there are constraints within which the Corporation has to exercise its discretion. The Corporation is a public utility organisation where mediating motion is efficiency and effectiveness of public service. Efficiency and effectiveness of public service are the basic concepts which cannot be sacrificed in public administration by any statutory corporation. The Corporation has to render this public service within the resource use and allocation. It is within these constraints the Corporation has to exercise its discretion and perform its task. The second aspect relates to the manner in which the statutory discretion is to be exercised. The discretion allowed by the statute to the holder of an office, as Lord Haisbury observed in *Sharp v. Wakefield*, 1891 AC 173 at p. 179, is intended to be exercised "according to the rules of reason and justice, not according to private opinion; according to law and not humour. It is to be, no arbitrary, vague and fanciful but legal and regular. And it must be exercised within the limits to which an honest man competent to the discharge of his office ought to confine himself." Every discretion conferred by statute on a holder of public office must be exercised in furtherance of accomplishment of purpose of the power. The purpose of discretionary decision making under Regn. 17(3) was intended to rehabilitate the disabled drivers to the extent possible and within the above said constraints. The Corporation, therefore, cannot act mechanically, The discretion should not be exercised according to whim, caprice or ritual. The discretion should be exercised reasonably and rationally. It should be exercised faithfully and impartially. There

should be proper value judgment with fairness and equity. Those drivers would have served the Corporation till their superannuation but for their unfortunate medical unfitness to carry on the driver's job. Therefore, it would not be improper if the discretion is exercised with greater concern for and sympathetic outlook to the disabled drivers subject of course to the paramount consideration of good and efficient administration. These are some of the relevant factors to be borne in mind in exercising the discretion vested in the Corporation under Regn. 17(3).

15. In the result we allow the appeals. In reversal of the judgment of the High Court, we direct the Corporation to consider the cases of respondents in the light of the observations made.

16. In the circumstances of the case, however, we make no order as to costs.

Appeals allowed.

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