SUPREME COURT OF INDIA

U.P. State Road Transport Corporation

Vs.

Mahesh Kumar Mishra

(S. Saghir Ahmad and D.P. Wadhwa, JJ.)

Civil Appeal No. 2125 of 2000 (Arising out of SLP(C)

No.10718 of 1998).

15.03.2000

JUDGMENT

S. Saghir Ahmad, J. - Leave granted.

2. Respondent No.1 (hereinafter referred to as `respondent') was appointed on 28.5.1965 in the U.P. State Road Transport Corporation as Conductor on which post he was confirmed on 1.4.1972.

3. On 11.2.1981, while the respondent was on duty on Bus No. UTY 1918, it was checked by the Transport Inspector and 11 passengers were found to have been issued short distance tickets. On 12.2.1981, the Transport Inspector submitted his report which was followed by a preliminary enquiry. A charge-sheet was issued to the respondent on 6th of June, 1981 on the basis of which a regular departmental enquiry was held under U.P. State Road Transport Corporation Employees (Other Than Officers) Services Regulation, 1981. After enquiry, the services of the respondent were terminated by order dated 29.3.1982. This order was challenged in a departmental appeal, filed by the respondent, which was rejected on 4th of April, 1983. The respondent, thereafter, approached the U.P. State Public Services Tribunal (for short, `the Tribunal') for quashing of the termination order on a number of grounds including that the enquiry was not properly held, but the Tribual, by its judgment dated 24.1.1994, dismissed the claim petition. This order was challenged by the respondent in a Writ Petition in the Allahabad High Court which, by its judgment dated 12th of February, 1998, partly allowed the Writ Petition and directed that the respondent shall be reinstated in service but he would be paid 25 per cent of the back wages only. It is against this judgment that the present appeal has been filed.

4. The principal contention raised by the learned counsel for the appellants is that it having been found by the U.P. State Public Services Tribunal as also by the High Court that the enquiry held by

the appellants was proper, there was no occasion for the High Court to interfere on the quantum of punishment. This proposition is seriously contested by the counsel for the respondent who submitted that the whole matter had to be examined in the background of the entire facts and since the High Court considered the totality of the circumstances and came to the conclusion that the punishment, inflicted upon the respondent, was disproportionate to the nature of charge against him, it was justified in ordering reinstatement and though the respondent, in the circumstances of the case, should have been allowed at least 75 per cent of back wages, he was allowed back wages only to the extent of 25 per cent.

5. The Bus which was checked by the Transport Inspector was meant to ply within the District of Allahabad and was not a long distance Bus. The allegation against the respondent was that though the passengers had boarded the Bus at the "High Court" for "Manauri" for which they should have been charged Rs. 1.80, they were issued tickets from "Zero Road" to "Manauri" and they were charged only Rs. 1.50. The only evidence on the basis of which the respondent was punished was the way bill and the tickets which had not been punched. The passengers were not examined at the trial nor was the statement of any passenger recorded at the time when the Bus was checked so that it could be ascertained whether they had boarded the Bus at the "High Court" or at "Zero Road". Reliance was placed by the Disciplinary Authority and the Tribunal on the report of the Transport Inspector which also bears the signature of the respondent. This document was relied upon by the Disciplinary Authority as also by the Tribunal on the ground that if the contents of the report were not correct, the respondent ought not to have signed the report and he should have protested then and there. Since this was not done, the inference drawn by the Disciplinary Authority as also by the Tribunal was that whatever was written in the report was correct and it was on that basis that the respondent was held to be guilty.

6. It was in the background of these circumstances that the High Court exercised its discretion under Article 226 of the Constitution and interfered with the quantum of punishment inflicted by the Disciplinary Authority. It may be that the order of dismissal was held to be valid and proper by the U.P. State Public Services Tribunal but the Tribunal also overlooked the fact that though sufficient evidence could have been collected at the spot to indicate that the passengers to whom tickets were issued by the respondent had boarded the But at the "High Court" and not at "Zero Road" but this was not done. It was a Bus plied in the city itself and, therefore, the passengers, who were available in the Bus, being local passengers, could have been approached at the spot for stating whether they had boarded the Bus at the "High Court" or at "Zero Road". Learned counsel for the appellants has placed reliance upon an unreported decision of this Court in ***Civil Appeal No. 9754 of 1995, arising out of SLP(C) No.***

1960 of 1994, U.P. State Road Transport Corporation & Anr. v. Om Prakash Pandey, in which the order of the High Court, by which interference was made with the punishment inflicted upon the delinquent employee of the Corporation, was set aside. This case is clearly distinguishable on the ground that a number of passengers were allowed to travel without tickets and, therefore, the misconduct imputed to the employee was serious. This is not the case here as the respondent had issued tickets to all the passengers, who were found travelling in the Bus, but the dispute was only with regard to the spot or place at which they had boarded the Bus. To put it differently, the dispute was whether they had boarded the Bus at "Zero Road" or at the "High Court". In these circumstances, the High Court was justified in interfering with the quantum of punishment.

7. A Three-Judge Bench of this Court in ***B.C. Chaturvedi v. Union of India & Ors., (1995)6 SCC 749 : 1996(1) SCT 617 (SC)*** laid down as under :-

> "A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court\Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court\Tribunal, it would appropriately mould the relief, either directing the disciplinary\appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

8. This will show that not only this Court but also the High Court can interfere with the punishment inflicted upon the delinquent employee if, that penalty shocks that conscience of the Court. The law, therefore, is not, as contended by the learned counsel for the appellants, that the High Court can, in no circumstances, interfere with the quantum of punishment imposed upon a delinquent employees after disciplinary proceedings.

9. Another Three-Judge Bench of this Court in ***Colour-Chem Ltd. v. A.L. Alaspurkar and others, (1998)3 SCC 192 : 1998(1) SCT 757 (SC)***, has also laid down the same proposition and held that if the punishment imposed is shockingly disproportionate to the charges

held proved against the employee, it will be open to the Court to interfere.

10. As pointed out earlier, the order of the High Court though extremely brief, must have been based on overall consideration of the facts of the case and it must have exercised its jurisdiction only when it was shocked to notice that though all the passengers had been issued tickets, the only dispute was with regard to the point at which they had boarded the Bus for which the punishment of dismissal from service was highly disproportionate.

11. We have already noticed above that instead of charging a fare of Rs. 1.80, the respondent had charged a fare of Rs. 1.50 from the passengers. While the appellants maintained that the passengers had boarded the Bus at the "High Court" and were to alight at "Manauri", the respondent contended that the passengers had boarded the Bus at "Zero Road" and were to get down at "Manauri" and, therefore, he had rightly charged Rs. 1.50 from those passengers. This fact could have been established beyond doubt if any of those passengers was examined at the domestic enquiry, or the Transport Inspector, who checked the Bus, could have recorded their statement at the spot. This was not done and the reliance was placed only upon the report of the Transport Inspector which was signed by the respondent also. It was not a case where the passengers were allowed to travel without tickets so that the amount of fare charged from the passengers could be pocketed by him.

12. Under these circumstances, we do not agree with the contention of the counsel for the appellants, that the High Court should not have interfered with the quantum of punishment inflicted upon the respondent. The appeal is, therefore, dismissed but without any order as to costs.

Appeal dismissed.