

SUPREME COURT OF INDIA

U.P. State Road Transport Corporation

Vs.

Mohan Lal Gupta

(S.B. Majmudar and U.C. Banerjee JJ.)

04.04.2000

ORDER

1. The U.P. State Road Transport Corporation is in appeal against the summary rejection of the petition under Article 226 of the Constitution filed by the Corporation. The respondent No. 1 being an employee of U.P. State Road Transport Corporation moved the Labour Court against an order of termination and the Labour Court though sustained the charges of misconduct of the respondent No. 1 but retracted the said order of termination and imposed a minor penalty in regard to gross acts of misdemeanor. Unfortunately, however, by reason of the summary rejection of the writ petition, no reason whatsoever is available on record and as such it would be convenient to advert to the factual details at this juncture to appreciate the contentions raised in the matter.

2. On the factual score, it appears that the respondent No. 1 was appointed in the U.P. State Road Transport Corporation in the post of Assistant Storekeeper in the year 1980. In early October, the aforesaid respondent No. 1 was transferred to the post of Store-keeper in Kashi Depot of the appelland-Corporation. Whilst posted at Kashi, respondent No. 1 was, however, found guilty of misappropriating the property of Corporation by reason of sale of 170 litres of mobile oil and a drum illegally. The records depict that the Corporation, in accordance with the Service and Conduct Rules, did conduct an inquiry in the matter and at the conclusion of inquiry, the Inquiry Officer came to a finding of guilt of the delinquent employee. Needless to record that the respondent No. 1 submitted his explanation and was offered personal hearing as well, but there is existing no dispute as regards the shortage of oil and the missing drum whilst the same was in custody of the respondent No. 1. Whereas the respondent No. 1 in his explanation pleaded no mala fide motive but some negligence, the Inquiry Officer found it to be a deliberate act and as such, recommended for termination of service. Such a recommendation was accepted by the Corporation and an order of termination was passed against the delinquent employee upon consideration of the entire materials on record.

3. The factual score further depicts that the respondent No. 1 raised an industrial. dispute against the order of dismissal and the Deputy Labour Commissioner, Varanasi, in terms of his order, dated 16th April, 1993 referred the dispute to the Labour Court for adjudication. The dispute being, "Whether the action of employers to terminate the services of their workman, Shri Mohan Lal Gupta, s/o Shri Bechan Prasad Gupta, w.e.f. 4.8.89 is proper and valid? If not, then to what relief the concerned workman is entitled and with what further details?"

4. On receipt of the notice from the Labour Court, the respondent No. 1 being a workman, filed the

written statement wherein he has stated that the employer always wanted to get the work done contrary to rules and there was a transfer voucher for bringing a drum to Kashi Depot and after bringing the same he had made entry to the effect. The defence of respondent No. 1 centers round principally, however, the stand that a large quantity of mobile leaked out of the drum during transit and as such there was a shortfall. The delinquent employee is supposed to have brought 170 litres of mobile oil on top of a public bus in a drum which was leaking and hence the shortage. The proceedings of the Labour Court depict that when asked as to why he has brought the drum containing a hole, the employee had no answer whatsoever. During the course of inquiry as it appears from the Labour Court's order, the workman admitted that 141 litres of mobile oil were short. There is no explanation as to why empty drum was not found at the time of verification and by reason therefore, the Labour Court in its order recorded that the workman has accepted all these charges and there is no doubt about the validity of the inquiry proceedings. In line on this aspect, the Labour Court concluded:

Therefore the charges against him are fully proved.

5. The Labour Court, however, took a very lenient view about the charge and recorded that as regards the question of punishment by termination of service, the same is highly excessive. The Labour Court found that since recovery has already been made as to the cost of the mobile oil and the drum, the question of termination would not be in consonance with the concept of justice and it would thus be proper to reinstate him, awarding minor punishment of stopping four increments with cumulative effect. The Labour Court, however, suggested reinstatement from the date of taking charge without any arrears of salary and without any further grant of monetary benefit except, however, the subsistence allowance during the period of suspension. It is this order which is under challenge by the appellant-Corporation before the High Court and the High Court summarily rejected the same recording therein, "Considering the facts and circumstances of the case, I do not find it a fit case for interference under Article 226 of the Constitution, petition is accordingly rejected". The Corporation not, however, being satisfied with the order of the High Court moved this Court in appeal by the grant of special leave.

6. The learned advocate appearing in support of the appeal mainly contended on two counts. On the first, it has been very strenuously contended as to whether the Labour Court can alter the punishment awarded to the respondent No. 1 workman, upon recording a finding that the charges have duly been proved and secondly, it has been contended as to whether the employee who has admittedly misappropriated the property of the employer-Corporation can be allowed to be retained in service.

7. These two issues are undoubtedly of some importance. The concerned workman, during the course of inquiry, in no uncertain terms, admitted his guilt though, however, he has stated that the same amounted to mere negligence and not a deliberate act. But the Labour Court, being the fact finding court, came to the conclusion that the charges stood proved and we are not in a position to reassess the factual situation at this stage of the proceedings under Article 136 of the Constitution. The finding as regards the proof of charges shall have to be taken as accepted and we do not see any perversity therein, having regard to the state of facts more so by reason of acceptance of the charge by the delinquent employee.

8. On the wake of the situation as above, we are of opinion that the question of award of any minor punishment in the facts of the matter under consideration does not and cannot arise and neither the

Labour Court could alter the punishment of termination of service having regard to its assessment of facts and the contentions as regards the validity of the Inquiry proceedings. The employee has been found to be guilty of misappropriation and in such an event if the appellant-Corporation loses its confidence vis-is the employee, it will be neither proper nor fair on the part of the Court to substitute the finding and confidence of the employer with that of its own in allowing reinstatement. The misconduct stands proved and in such a situation, by reason of the gravity of the offence, the Labour Court cannot exercise its discretion and alter the punishment.

9. In that view of the matter the High Court is in error in rejecting the writ petition. The appeal is thus allowed. The order of the High Court is set aside and so is the order of the Labour Court. The termination order as passed by the appellant-Corporation stands restored. No costs.