

B. Rajender Vs. TSRTC, Rep. by its MD. and Others

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Court : Andhra Pradesh

Decided On : Jan-19-2016

Judge : R. Kantha Rao

Appeal No. : Writ Petition No. 21724 of 2015

Appellant : B. Rajender

Respondent : TSRTC, Rep. by its MD. and Others

Judgement :

1. This writ petition is filed by the petitioner, who is a conductor in the respondents-Telangana State Road Transport Corporation (the Corporation, for short), for a Writ of mandamus declaring the show cause notice of termination from service issued by the 3rd respondent in proceedings dated 01-7-2015 received by the petitioner on 07-7-2015 as illegal, unjust, contrary to law, arbitrary and in violation of principles of natural justice which also amounts to unfair labour practice and to set aside the same.

2. The petitioner was selected for the post of conductor in the respondents-Corporation and joined the service on 13-4-2009. His services were regularised by proceedings dated 10-02-2011 with effect from 01-01-2011 and his name is found at serial No.33. While so, the 3rd respondent issued charge-sheet dated 11-02-2015 alleging that the petitioner produced fake Secondary School Certificate (SSC Certificate) bearing roll No.577445 with grand total marks 441 (405+36) and

secured the job of conductor on the basis of the said marks in Warangal Region during the selections by cheating the authorities, which constitutes misconduct in terms of Regulation 28 of the APSRTC Employees(Conduct) Regulations, 1963 (the 1963 Regulations, for short). The respondents-Corporation called upon the petitioner to submit his explanation. The petitioner submitted an explanation dated 07-3-2015 requesting the 3rd respondent to furnish the copies of certain documents mentioned therein but the 3rd respondent failed to furnish the copies of documents. The version of the petitioner is that it was not possible for him to submit any effective explanation without the said documents and non-furnishing of the said documents caused prejudice to him for submitting a detailed explanation. Thereafter, the 3rd respondent appointed an Enquiry Officer and the petitioner was issued with enquiry notice dated 04-3-2015 directing him to appear on 13-3-2015 and accordingly he appeared before the Enquiry Officer. Again on 16-3-2015, he submitted a representation to the 2nd respondent bringing it to his notice that in spite of his request, the 3rd respondent failed to furnish copies of documents required by him. It is further stated by him that the 3rd respondent did not pass any orders keeping him under suspension but without any authority of law preventing him from discharging his duties with effect from 11-02-2015 and requested the 2nd respondent to direct the 3rd respondent to allow him to discharge his duties and arrange for payment of salary forthwith. As his request was not considered, he filed W.P.No.10380 of 2015 seeking a direction to the respondents-Corporation to pay him salary from 11-02-2015 and permit him to discharge his duties as conductor. The learned single Judge disposed of the writ petition by order dated 20-4-2015 directing the 2nd respondent to pass orders on the representation submitted by the petitioner within a period of 10 days but no orders have been passed in spite of the directions issued in the said writ petition. The petitioner, however, submitted his explanation to the charge-sheet on 24-4-2015 specifically stating therein that in spite of the direction issued by the High Court, the 2nd respondent did not pass any orders.

3. It is further stated by the petitioner that he did not receive any notice of enquiry and the Enquiry Officer conducted an ex parte enquiry without giving any reasonable opportunity to him to participate in the enquiry and submit his version. Ultimately, the 3rd respondent issued a notice dated 15-5-2015 duly enclosing the

findings of the Enquiry Officer calling upon his objections to the enquiry report. Accordingly, the petitioner submitted his objections on 22-5-2015 but the 3rd respondent failed to take into consideration his explanation and without there being any suspension order, did not allow the petitioner to perform his duties. It is submitted by the petitioner that the findings recorded by the Enquiry Officer in an ex parte enquiry are not tenable in law and that the show cause notice of termination only is an empty formality. It is, under these circumstances, he filed the present writ petition to set aside the show cause notice of termination dated 01-7-2015 issued to the petitioner on the ground that it is arbitrary, illegal, in violation of principles of natural justice and also violative of Articles 14, 16 and 21 of the Constitution of India.

4. In the counter affidavit, the respondents-Corporation contended, inter alia, as follows:

(a) The notice of termination from service was issued to the petitioner duly following the procedure as it is proved that he has secured the job fraudulently by producing bogus SSC Certificate. The selection of the petitioner to the post of conductor in the respondents-Corporation is based on the marks secured by him in the SSC examination excluding the marks secured in Hindi and the weightage given towards the age of the candidates. In the recruitment conducted in the year 2009, the petitioner produced SSC Marks Memo bearing No.345222 in proof of his SSC qualification. As per the Marks Memo produced by the petitioner, he secured 405 marks excluding the marks in Hindi. As such, the petitioner secured 81% as per the Marks Memo submitted by him. The Selection Committee added 6 marks towards weightage regarding the age. Thus he secured total marks of 87. The cut-off mark for the SC candidates is 84 and the petitioner was selected on the ground that he secured 87 marks. The Marks Memo submitted by the petitioner was sent to the Director, Government Examinations for verification to find out the genuineness of the Certificate. The Additional Joint Secretary to the Director of Government Examinations, Telangana, Hyderabad, through letter dated 05-01-2015 informed that the SSC Marks Memo bearing No.577443, year of pass March, 1998 with grand total of 405 + 36 marks was not issued by their office and the marks were not tallying. The charge-sheet was issued basing on the letter dated

05-01-2015 of Additional Joint Secretary to the Director of Examinations, Government of Telangana.

(b) At the request of the respondents-Corporation, the Head Master, ZPSSS, Ghanpur (Station), Warangal district got verified the records and issued a Certificate dated 25-7-2015 furnishing the marks secured by the petitioner confirming that the petitioner studied in their school and passed SSC in March, 1998 with Hall Ticket bearing No.577443 with Memo No.YZ 1357251 and got grand total marks of 245 + 36 i.e. 281 out of 600 marks.

(c) The petitioner failed to prove that the Certificate produced by him at the time of his selection is genuine. He avoided to attend the enquiry as he very well knew that the certificate produced by him at the time of selection is a fabricated one. In his entire affidavit at any stage in any paras of the Affidavit, the petitioner did not assert that the Certificate produced by him at the time of his selection is genuine.

(d) The contention that the petitioner was not served with notices is denied by the respondents-Corporation. According to them, he received the notices dated 16-3-2015 and 31-3-2015 sent under Registered Post with Acknowledgment Due to his house address furnished by him and the 1st notice was received by him. As the petitioner knows that the Certificate produced by him at the time of recruitment is fake and he is not having any evidence to prove that the Certificate is genuine, he avoided to attend the enquiry and therefore, the Enquiry Officer conducted enquiry in his absence. Thus, according to the respondents-Corporation, the petitioner produced the fake SSC Marks Memo at the time of recruitment and secured the job of conductor duly cheating the Corporation and also by depriving the genuine candidate from securing the job.

The respondents-Corporation therefore submitted that the writ petition is devoid of any merit and is liable to be dismissed as the petitioner is not entitled for any relief prayed for by him in the writ petition.

5. In the Reply Affidavit, the main contention advanced by the petitioner is that there was no proper service of notices on him to attend the enquiry. The respondents-Corporation deliberately put a wrong address and sent the notices to

him with a view to deprive him of attending the enquiry. It is stated that the petitioner never submitted Marks Memo showing that he secured 81% of marks after excluding the marks in Hindi. The Selection Committee never informed him that he was selected for the post of conductor only on the basis that he secured 81% of marks in the SSC examination. If really he was informed of the said fact, he would have immediately made a statement to the respondents-Corporation that the Marks Memo is totally incorrect. He was kept in dark all these days. He admitted that the Certificate issued by the Head Master, ZPSSS, Ghanpur, Warangal to the effect that he secured 281 out of 600 marks is correct and it is the real fact. Thus the petitioner's main contention in the Reply Affidavit is to the effect that the respondents-Corporation deliberately sent the notices to a wrong address which were returned undelivered to the petitioner. Thus, according to the petitioner, there is no valid service of notice on him which vitiates the entire enquiry and therefore, the show cause notice issued to him proposing the termination from service is liable to be set aside.

6. I have heard Sri A.K. Jayaprakash Rao, learned counsel appearing for the petitioner and Sri B.Mayur Reddy, learned Standing Counsel for the respondents-Corporation.

7. The crucial aspect which requires consideration in this case is that the petitioner accepted that he secured 281 out of 600 marks in SSC examination which he passed in March, 1998. He specifically mentioned in the Reply Affidavit that the Certificate issued by the Head Master, ZPSSS, Ghanpur, Warangal to that effect is correct. The version of the respondents-Corporation is that the petitioner produced a Marks Memo at the time of his selection according to which, he secured 81% marks, 6 marks were added towards the weightage regarding his age and he was selected for the post of conductor on the basis that he secured more marks (87%) than the minimum qualifying marks prescribed (84%) for the SC candidates. Thereafter, the respondents-Corporation sent the Certificate for verification and in their enquiry, it was found that the Marks Memo submitted by the petitioner is not genuine.

8. From the averments of the Affidavit filed by the petitioner, it can be understood that he never submitted a Marks Memo showing that he secured 81% of marks including Hindi. If really the petitioner submitted a Marks Memo showing that he secured 81% of marks and if his selection is based on the fact that he got marks more than the cut-off marks prescribed for the SC candidates, his selection is liable to be set aside and he is liable for termination. However, this question has to be thoroughly examined in the enquiry which was conducted against the petitioner.

9. The crucial question which is raised by the petitioner in the present writ petition is that there was no proper notice to him, the respondents-Corporation deliberately sent the notices to a wrong address of the petitioner and then resorted to conduct an ex parte enquiry. Therefore, the notice issued pursuant to the said enquiry has to be set aside in the present writ petition.

10. In support of his contention, the learned counsel appearing for the petitioner relied on **UNION OF INDIA and ORS. V. DINANATH S. KAREKAR and ORS.** (1998 II CLR 849) and **MOHD. YOUSUF v. DG OF FIRE SERVICES** (2013) 4 SCC 265). In the judgment in **DINANATH S. KAREKAR** (1 supra), it has been laid down that where the cover returned with postal endorsement not found ?, cannot be legally treated to have been served and further proceedings pursuant to the said unserved notice are not valid. In the judgment in **MOHD. YOUSUF** (2 supra) relied on by the learned counsel appearing for the petitioner, it is held that the High Court went wrong in holding that an ex parte enquiry as well as non-supply of enquiry report were justified since whereabouts of the appellant were not known, the High Court overlooked the fact that the notice with regard to departmental enquiry was sent at House No.147 but correct address of the appellant was House No.177 and therefore, there is no valid service of notice.

11. It is true that to enable the respondents-Corporation to proceed with ex parte enquiry, there must be valid service of notice on the delinquent-employee. In the instant case, however, the respondents-Corporation specifically contended in their counter affidavit that the petitioner was served with notice dated 04-3-2015 on 07-3-2015 and two other notices dated 16-3-2015 and 31-3-2015 which were sent under RPAD to the petitioner to his house address were refused. Thus, in the

instant case, the service of notice on the petitioner is a disputed question, which cannot be decided in the present writ petition. The petitioner challenged the show cause notice issued to him proposing the termination from service. The challenge is not to any order passed by the Disciplinary Authority at the conclusion of the enquiry. Normally, this Court in exercise of jurisdiction under Article 226 of the Constitution would not be inclined to interfere at the stage when a show cause notice was issued to the charged-employee proposing punishment. In the considered opinion of this Court, this is not the stage whereat this Court would exercise the power of judicial review. The specific contention of the respondents-Corporation is that knowing fully well that he produced a fake SSC Marks Memo, the petitioner has been intentionally avoiding to attend the enquiry which was proposed against him. He, however, submitted the explanation to the charges. According to the respondents-Corporation, since then the petitioner has been avoiding to face enquiry on one ground or the other. All these questions can be examined in exercise of powers of judicial review only when a final order is passed by the Disciplinary Authority. This Court, therefore, is not inclined to interfere with the proceedings before the Disciplinary Authority at the stage when it has issued a notice proposing punishment to the petitioner.

12. For the foregoing reasons, the writ petition is dismissed. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

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