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M.L.L. Kumar Vs. the Divisional Manager, A.P.S.R.T.C. Cuddappah and anr.

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Court : Andhra Pradesh

Decided On : Jun-22-1989

Reported in : [1989(59)FLR597]; (1990)IILLJ23AP

Judge : M. Jagannadha Rao, J.

Acts : Andhra Pradesh State Road Transport Corporation Employees (Conduct) Regulations, 1963 - Regulation 8

Appeal No. : Writ Petition No. 9929/1986

Appellant : M.L.L. Kumar

Respondent : The Divisional Manager, A.P.S.R.T.C. Cuddappah and anr.

Judgement :
ORDER

1. The petitioner is working as a driver in A.P. State Road Transport Corporation. Adoni Dept in Kurnool district. The petitioner was suspended and chargesheeted in respect of three charges. The charges are as follows :

Charge No. 1. For having maintained irregular attendence from January 1984 to March, 1984 to an extent of 154 days which is a serious offence which constitutes misconduct under Regulation 8(xxxi) of the Andhra Pradesh State Road Transport Corporation Employees (Conduct) Regulations. 1963.

Charge No. 2. For having caused inconvenience to the travelling public and consequential loss which constitutes misconduct under Regulation 8(xxxii) of the Andhra Pradesh State Road Transport Corporation Employees (Conduct) Regulations, 1963.

Charge No. 3. For having rudely behaved with the Divisional Manager, Kurnool, when you are counselled by him, which constitutes misconduct under Regulation 8(xxxii) of Andhra Pradesh Road Transport Corporation Employees (Conduct) Regulations, 1963.

A charge memo was served on 20th March, 1985 by the Depot Manager, Adoni and an explanation was submitted by the petitioner denying the charges on 15th April, 1985. An enquiry was conducted and enquiry report was submitted by the Depot Manager. At that stage the proceedings were transferred to the Divisional Manager, Cuddapah by the orders of the Regional Manager, Cuddapah dated 7th September 1985. Thereafter the Divisional Manager, Cuddapah passed an order of removal on 20th November, 1985 and on appeal before the Regional Manager, Cuddapah it was rejected on 23rd June, 1986. The writ petition was preferred against the said order.

2. In this writ petition, it is contended by Sri G. Bikshapati representing Sri G. Prabhkar Rao, that the Divisional Manager, Kurnool was the complainant in that case, particularly in regard to charge No. 3, and that in as much as the Chief Inspector, Kurnool, his immediate subordinate, conducted enquiry and held that the charges were proved, the entire proceedings were vitiated. According to him the appointment of the Chief Inspector, Kurnool as the Enquiry Officer and his framing the charges and conducting the enquiry is bad. The Divisional Manager, Kurnool to whom the Enquiry Officer was subordinate was a witness in that case and had deposed against the officer. The mistake was realised by the Department at a late stage and the matter was placed before the Regional Manager, Cuddapah. According to the counsel the Regional Manager should have scrapped the entire enquiry and started a de novo enquiry instead of merely ordering transfer of the file at that stage to the Divisional Manager, Cuddapah for issuing the second show cause notice. It is also contended that charge Nos. 1 to 3 do not

come within the particular misconduct attributed to the petitioner under the A.P.S.R.T.C. (Conduct) Regulations, 1963.

3. The learned counsel for the Corporation has, however, contended that the first question relating to violation of principles of natural justice was not specifically raised in the writ petition and that the second question relating to the misconduct did not come within the provisions quoted in the charge memo. At the most, it amounted to a wrong reference to a statutory provision and did not prejudice the case of the petitioner.

4. So far as the first contention is concerned. I have gone through the entire record of the case and also the depositions of the witnesses. Two witnesses were examined for the department. The second witness for the department for proving the charge is the Divisional Manager, Kurnool whom the petitioner is said to have abused. The evidence is to the effect that in as much as the petitioner was frequently absenting himself the Divisional Manager, Kurnool called him. It is in the evidence of the very same Divisional Manager that he admittedly gave a paper to the petitioner and asked him to write an undertaking that in the event of the petitioner absenting from duty in future, he would himself resign from office. The petitioner to whom the above undertaking was being dictated started writing the undertaking in his own handwriting and after writing a few words, realised what he was asked to write and refused. Here there is a slight variation in the versions of the petitioner and of the Divisional Manager. While the petitioner's case is that he was asked to write down that in view of this absenteeism he was agreeing to resign straightway it is the version of the Divisional Manager, Kurnool that the merely wanted the employee to write down that in the event of his future absenteeism he would resign from service. Be that as it may even accepting the version of the Divisional Manager. I may say that no employer can compel an employee to agree to resign in future. When naturally an employee is so asked, he is bound to get a little provocation. In fact even according to the Divisional Manager in his evidence, the witness merely stated to him 'you may do whatever you may like. I am not going to give the undertaking' Surely the provocation came from the Divisional Manager himself. The point that arises here is whether the Chief Inspector who conducted the enquiry was competent to conduct the inquiry.

When the person who gave the complaint and the person who gave evidence before him was an officer immediately superior to him, I am clear in my mind that the enquiry should not have been conducted by the officer who was subordinate to the complainant himself and particularly when the superior officer is also a witness in the case. The principle that justice must not only be done but must be seen to be done is applicable to judicial as well as domestic proceedings. The principles of natural justice as applicable to domestic proceedings, have been held to include within them a right to the employee to have a fair trial.

5. The contention that the point was not raised in the writ petition cannot be accepted. In paragraph 5 of the writ petition it is clearly stated 'It may incidentally be mentioned that the Chief Inspector of Enquiries, is part and parcel of the office of the Divisional Manager, Kurnool. The petitioner clearly implied an allegation of violation of principles of natural justice by the above pleading.

6. It is true the petitioner did not raise the objection in the enquiry. But there is no material to show that the petitioner was aware that he could raise such an objection at the enquiry and that the enquiry was vitiated. Though the plea of bias could be waived there must be evidence that there was such a waiver by conscious understanding of the situation and particularly awareness that the employee was entitled to raise the objection vide R. V. Essex Justices ex B. P. Perklns (1972) CK. B. 475 (quoted in Wade Administration Law, 5th Edition, page 430). I therefore, hold the enquiry to be vitiated.

7. So far as the second contention is concerned the same is also well founded. Charge No. 1 relating to irregular attendance and absence from duty is referable to Regulation 8(xxvii) but not to Regulation 8(xxxi). The later Regulation merely deals with 'any other act not specifically mentioned above but which is prima facie detrimental to the interests of the Corporation.' The facts of the case cannot come under 'any other act not specifically mentioned' in the other clauses of the Regulation, for Regulation 8(xxvii) relates to habitual late attendence, irregular attendence, absence without leave and without reasonable cause and absence without permission and wasting time or loitering while on duty. Likewise so far as charge Nos. 2 and 3 are concerned though the residuary clause of the Regulation

namely Regulation 8(xxxii) is quoted. There is no reference to the violation of any other specific rule or instructions of the Corporation in force. It will be noted that Regulation 8(xxxii) would apply only if the misconduct was one of violating of any other specific rule or instruction of the Corporation in force.

8. It is no doubt argued by the learned counsel for the respondent Sri K. Harinath that the mere quoting of the wrong provision of law does not affect the enquiry so long as no prejudice is caused to the petitioner. I am unable to agree. The principle that wrong provision being quoted does not vitiate any order or proceeding is applicable in exercise of powers and jurisdiction by a Court, Tribunal or administrative authority so long as the power otherwise exists, in other words, the mere mention of a wrong provision does not vitiate the proceeding or order. The said principle is not, in my opinion, applicable to question of fact. It may be applicable to questions of exercise of power and jurisdiction but does not apply to allegations of fact. If a wrong misconduct is quoted while adverting to a particular set of facts, it is no answer to say that the matter comes within another type of enumerated misconduct. Therefore, it must be held that the charges are defective.

9. For the aforesaid reasons, the impugned orders passed by the appellate authority as well as the disciplinary authority are liable to be quashed.

10. The learned counsel for the Corporation Sri K. Harinath, has, however, stated that instead of sending back the matter and directing payment of backwages, it is a fit case where the petitioner could be directed to be reinstated without back wages. The learned counsel mentioned, having regard to the long delay which has taken place on account of the mistakes committed by the department, instead of ordering a de novo enquiry and the framing of charges, the learned counsel felt that it was more in the interests of administration to take back the petitioner without backwages. The petitioner's counsel has no objection to this course.

11. For the aforesaid reasons, the impugned orders of the first and second respondents are quashed and the petitioner is directed to be reinstated to duty without backwages within one month of the date or receipt of this order. The W.P. is allowed. No order as to costs.

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