

Sadhu Singh Vs. Haryana State Through the Secretary, State Transport and Transport Controller Commissioner and anr.

Sadhu Singh Vs. Haryana State Through the Secretary, State Transport and Transport Controller Commissioner and anr.

SooperKanoon Citation : sooperkanoon.com/628088

Court : Punjab and Haryana

Decided On : Aug-31-2005

Reported in : (2006)142PLR109

Judge : M.M. Kumar, J.

Acts : Punjab Civil Services (Punishment and Appeal) Rules, 1952; ;[Code of Civil Procedure \(CPC\) , 1908](#) - Sections 100

Appeal No. : Regular Second Appeal No. 1189 of 1994

Appellant : Sadhu Singh

Respondent : Haryana State Through the Secretary, State Transport and Transport Controller Commissioner and anr.

Advocate for Def. : Ajay Gulati, A.A.G.

Advocate for Pet/Ap. : Pritam Saini, Adv.

Disposition : Appeal dismissed

Judgement :

M.M. Kumar, J.

1. The unsuccessful plaintiff who was working as driver with the State Transport has approached this Court by filing instant appeal Under Section 100 of the Code of Civil Procedure, 1908 (for brevity 'the Code'), challenging concurrent findings of fact recorded by both the Courts below.

2. Plaintiff-appellant joined the Haryana Roadways as driver in April, 1976. He was terminated from service on 23.7.1986. It has been proved on record that a regular departmental enquiry was held against him on the allegation that on 15.10.1985 when he was driving Bus No. HYL-1243 on Karnal-Kaithal route because he caused accident when it collided with another Bus No. 2326 on Kaithal Depot. The other bus suffered damage, which could be repaired by incurring expenditure of Rs.3,600/-. In the departmental enquiry the charges levelled against the plaintiff-appellant was found to be proved and the explanation submitted by the plaintiff-appellant was considered unsatisfactory. Thereafter, a show cause notice (Ex.DW1/C) was issued proposing to terminate his services. He was not to be given any additional amount except the subsistence allowance paid to him during the suspension period. After considering the reply submitted by the plaintiff-appellant (Ex.DW1/D) both the Courts have recorded the finding that the plaintiff-appellant was given full opportunity to cross-examine the witnesses on behalf of the department during the course of enquiry. He was also granted permission to adduce evidence in defence in enquiry proceedings and also granted opportunity of personal hearing. The aforementioned factual position has been brought out on record by the statement made by DW1. Thereafter the order terminating his services was passed. The trial Court as well as the learned lower Appellate Court did not find any illegality or irregularity either in the enquiry proceedings or in the order of punishment dated 23.7.1986 terminating the services of the plaintiff-appellant. The argument of the plaintiff-appellant that the punishment is not commensurate with the misconduct proved to have been committed by him, has been rejected by both the Courts below. The other argument that the enquiry proceedings were vitiated has also not found favour with either of the two Courts.

3. Mr. Pritam Saini, learned counsel for the plaintiff-appellant has made an attempt to persuade me to accept his submission to the effect that the enquiry proceedings have been vitiated as the charges have not been proved. He has also submitted

that the negligence of the plaintiff-appellant has to be considered minor in view of the fact that the loss caused to the defendant-respondent is only to the tune of Rs.3,600/- approximately. In support of his submission, learned counsel has placed reliance on a Judgment of the Supreme Court in the case of Kailash Nath Gupta v. Allahabad Bank, 2003(3) R.S.J. 476. He has also placed reliance on paragraph 47 of the Division Bench Judgment of the Himachal Pradesh High Court in the case of Kiran Aggarwal v. Chief Secretary to the Government of Himachal Pradesh and Ors., 2002(1) S.L.R. 176, and a Judgment of this Court in the case of Ganesh Kumar v. State of Haryana and Ors., 2002(4) R.S.J. 736.

4. Mr. Ajay Gulati, learned State counsel has opposed the submissions made by the learned counsel for the appellant and has argued that there are concurrent findings of fact proving grant of reasonable opportunity to the plaintiff-appellant in the departmental enquiry. He has submitted that no rule has been shown which might have-been contravened warranting the conclusion that any prejudice was caused to the plaintiff-appellant. In support of his submission he has placed reliance on the Judgment of the Supreme Court in the case of R.C. Sharma v. Union of India and Ors., 1976(2) S.L.R. 265.

5. Having heard learned counsel for the parties, perusing the Judgments of both the Courts below and the record of this case, I am of the considered view that no interference of this Court in the concurrent findings of fact is warranted. It has been concurrently found that the plaintiff-appellant was working as a driver in the Haryana Roadways. It has also been found that Bus No.HYL-1243 which he was driving on 15.12.1985, had met with an accident. There were passengers in the bus as well as offending vehicle bearing Bus No.2326 of the Haryana Roadways. The other bus of the Haryana Roadways was damaged in the accident and Rs. 3,600/- approximately have to be incurred on the repair. Both the Courts have concurrently found that an enquiry was held in which the plaintiff-appellant was granted reasonable opportunity of hearing as per the rules. There is nothing on the record to infer that the plaintiff-appellant suffered any prejudice during enquiry or there was violation of any procedural safeguards resulting in prejudice as provided in the Punjab Civil Services (Punishment & Appeal) Rules, 1952 (as applicable to Haryana) (for brevity 'Rules'). In the absence of any violation of the mandatory

provisions of the aforementioned 'Rules', no fault in the disciplinary proceedings could be found, which may constitute a basis for interfering in the findings recorded by the Enquiry Officer. Similarly there is no legal infirmity in passing of subsequent order by the punishing authority/appellate authority. It is well settled that the Civil Court or the High Court cannot act as a Court of Appeal over and above the findings recorded by the Enquiry Officer, which have been duly accepted by the punishing authority as well as by the appellate authority.

6. The argument of the learned counsel based on the Judgment of the Supreme Court in Kailash Nath Gupta's case (supra) would not require any detailed examination because in that case the finding recorded by the Supreme Court is that the Manager of the bank was at best guilty of some procedural irregularity and the same could not be termed to be negligence attracting the extreme punishment of dismissal from service. It is in these circumstances that their Lordships were pleased to direct the High Court to re-consider the quantum of punishment. However, in the instant case it is established on record that a bus, which is a powerful vehicle, was being driven by the plaintiff-appellant, which had rammed into another bus. It has also been proved that damage was caused to the other bus. The repair cost is Rs. 3,600/- approximately. The punishing authority terminated the services of the plaintiff-appellant and he was found negligent. The discretion exercised by the punishing authority cannot be considered arbitrary or unreasonable because no reasonable person would take the risk of providing another opportunity to such a driver who had already caused an accident. The consequences of accident are horrible and irreparable when considered in terms of loss of life apart from the monetary loss, which is caused to the owner of the vehicle. The view of the authorities to terminate such a driver can not be considered to suffer from any unreasonableness or arbitrariness. In the case of Apparel Export Promotion Council v. A.K. Chopra, : (1999)ILLJ962SC , it has been observed that in departmental proceedings, disciplinary authority or the appellate authority only has the power and jurisdiction to re-appreciate evidence and come to its own conclusion. With regard to quantum of punishment, it has been laid down that ordinarily the High Court should not interfere unless the punishment is impermissible or it shocks the conscience of the High Court. This view has been expressed in para 16 of the said Judgment, which reads as under:-

'16. The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the Court, in exercise of the power of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process....

(Emphasis added)

The other two Judgments in Kiran Aggarwal's case (supra) passed by a Division Bench of Himachal Pradesh High Court and in Ganesh Kumar's case (supra) delivered by a Single Bench of this Court would also not help the plaintiff-

appellant. In the case of Ganesh Kumar (supra) the past conduct of the delinquent employee for awarding the punishment of removal from service has been considered and there was no show cause notice issued in that regard. Similarly, the comments of the Director, Consolidation of Holdings were obtained at the back of the delinquent officer, which constituted the basis for rejection of his appeal. On account of the aforementioned fault committed by the Enquiry Officer, punishing authority and the appellate authority, this Court has opined that the punishment of removal from service would be unwarranted. Obviously, there is no parity of reasoning of Ganesh Kumar's case (supra) and that of the case in hand. In Kiran Aggarwal's case (supra) the delinquent officer was working as District and Sessions Judge. She did not co-operate with the Enquiry Officer and allowed him to proceed ex parte. She also failed to send two case files out of 22 files as civil appeals in which conciliation efforts were going on. She was alleged to have disobeyed the orders of her superior on two occasions. She was dismissed from service. The Division Bench in para 50 recorded a categorical finding that the order imposing the punishment of dismissal was disproportionate and unreasonable. The order of dismissal was quashed and the case was sent back to the disciplinary authority. Whereas in the instant case the facts are entirely differently. No finding could be recorded that penalty of termination from service is disproportionate to the misconduct. Therefore, no assistance can be rendered by the aforementioned Judgments and the argument raised by the learned counsel for the plaintiff-appellant is rejected.

For the reasons aforementioned, this appeal fails and the same is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com