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A.B. Culvert and anr. Vs. the General Manager, S.E. Rly. and anr.

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Court : Kolkata

Decided On : Aug-06-1968

Reported in : AIR1970Cal501

Judge : A.K. Sinha, J.

Acts : [Constitution of India](#) - Articles 310 to 311(2); ;Railway Establishment Code - Rule 1719(1)

Appeal No. : C.R. Nos. 1125-1126 (W) of 1964

Appellant : A.B. Culvert and anr.

Respondent : The General Manager, S.E. Rly. and anr.

Advocate for Def. : A.K. Basu, Adv.

Advocate for Pet/Ap. : P.K. Banerjee, Adv.

Disposition : Petitions dismissed

Judgement :

ORDER

A.K. Sinha, J.

1. These two rules were issued at the instance of the petitioners inter alia for quashing the orders of dismissal from their services on the ground of criminal

conviction.

2. The facts which are substantially the same in both the petitions are as follows:--

The petitioners at the material time were working as Railway Guards under the South Eastern Railway. On or about 11th July, 1959, a complaint was made by the Railway Protection Force Havildar alleging theft of certain goods which were entrusted to the petitioners. It was alleged that petitioner L. E. Foran, in fact, committed the offence and the petitioner A. B. Culvert abetted him. Thereafter, the petitioner L. E. Foran was charged under Sections 409/100 and A. B. Culvert under Section 409, Indian Penal Code and tried by the Judge Special Court, Midnapore. On conclusion of trial each of the petitioners was convicted and sentenced to three months' rigorous imprisonment and a fine of Rs. 100/-. Both the petitioners preferred appeals to this Court against their conviction which were admitted and petitioners were enlarged on bail. This was communicated to the respondents who thereafter directed the petitioners to send them copies of the orders made by this Court for their perusal. In spite of this the respondent No. 1 without giving the petitioners reasonable opportunity to show cause dismissed them with effect from 26th July, 1964 by his orders dated 24th July, 1964. The petitioners thus felt aggrieved and came upto this Court and obtained the above rules.

3. The main grievance of the petitioners is that during the pendency of the above appeals the petitioners could not be dismissed on conviction by Criminal Court. It was contended that although there were convictions by Criminal Court they had not yet been final as appeals against such convictions which are really continuation of their trial held by the Criminal Court are yet pending. Unless, therefore, these appeals were finally disposed of, the orders of dismissal of the petitioners on the ground of conviction by Criminal Court could not be made. In support of the above contention, Mr. P. K. Banerjee, learned Advocate ' for the petitioners, relied on a decision of a single Judge of Allahabad High Court, reported in : AIR1960 All538 to show that a proceeding could not be said to have led to their conviction within the meaning of Article 311(2) proviso, Clause (a) if it had not resulted ultimately in conviction or as a consequence of appeal, had

ended in an acquittal and thus the dismissal orders against certain Railway employees passed when appeals against their convictions under the Penal Code by the trial Court were pending before the appellate Court which ultimately allowed the case of the employees, were not covered by the above proviso to that Article. Reliance was also placed on several other decisions reported in : (1961)ILLJ147All to show that these decisions also took the same view.

4. Mr. Ajoy Kumar Basu learned Advocate for the respondents sought to repel this contention on the ground that under the relevant rule a Government servant would be liable to be dismissed as soon as he was convicted on a criminal charge on conclusion of a trial by a criminal court. Merely because the appeal against such conviction is pending, the order of dismissal could not be treated as invalid or made without jurisdiction. He also pointed out that each of the above decisions related to a case where the appeal ended in acquittal. In the instant case that stage has not yet come. Mr. Basu relied on an unreported decision of this Court by D. N. Sinha, J., (as his Lordship then was) in C. R. No. 22R3 of 1952 (Cal) and contended that it was open to the Disciplinary Authority to dismiss Railway servant on conviction by criminal Court. In this case, I find that the first question really was whether after the appeal ended in acquittal of the delinquent servant the disciplinary authority would be bound to reinstate him. In answering this question it was also held that under Rule 1706-R volume (1) page 179 a Railway servant was liable to be dismissed from service upon conviction by criminal court. Mr. Banerjee however, pointed out that in this case the old rule was being considered. There has been a drastic change in this rule which is contained in Rule 1719 (1) of the amended rule of the Rail-way Establishment Code. Therefore, according to him, this case has no application to the facts of the present case. I cannot agree. The change that has been effected is merely one of form and not of substance. The language of Article 311(2) proviso has been incorporated in the present rule. In the above decision of this Court also this Article 311(2) with the proviso was also interpreted as having the same meaning with the consequential rule 1707 (f) of Railway Establishment Code which provides that no formal inquiry is necessary when the order of dismissal was passed on the strength of facts or conclusion arrived at by judicial trial. It was clearly held that the very fact that he was convicted of a criminal offence entitled the Railway Company to dismiss the

delinquent servant without taking note of any further facts. I respectfully agree with the above view of the matter taken in the above decision. It also seems to me that at least on the above point the views taken by other High Courts in above decisions do not militate against the view taken by Calcutta High Court.

5. That being the position in law, it is unnecessary for the purpose of the present case to enter into the other question, namely, as to whether even after the disposal of the appeal ending in acquittal, the petitioner will be entitled to be reinstated by the disciplinary authority and I do not express any opinion on the point. Suffice it to say that under the provisions of both the past and present Rule 1719 (1) of the Railway Establishment Code read with Article 311(2) proviso (a) thereof the disciplinary authority of the South Eastern Rly. was fully entitled to dismiss the petitioners, immediately after they were convicted by the criminal Court.

6. The other question raised is[^] that even assuming that the petitioners were liable to be dismissed without being given any opportunity because of their convictions in criminal court they were still entitled to challenge the validity of the orders on the ground that no reason was recorded for dispensing with the enquiry as required under Article 311(3) of the Constitution. Mr. Banerjee relied on a decision of this Court reported in : (1963)IILLJ161Cal and contended that reasons for dispensing with the enquiry proceedings have to be recorded in all the three cases mentioned in Clauses (a), (b) and (c) of proviso of Article 311(2). I do not feel inclined to enter into this question as I find that no proper averments were made in the petition nor even any ground was taken. Even assuming that such reasons are to be recorded in writing I have great doubt if they also must appear on the face of the order of dismissal. It is not known whether reasons were recorded in fact by the disciplinary authority before the dismissal orders were served on the petitioners. For all these, I cannot allow Mr. Banerjee to agitate this point at the hearing.

7. The result is, both the petitions fail. The rules are discharged. But there will be no order as to costs.