

Jage Ram Vs. Dtc

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Court : Delhi

Decided On : Feb-13-2013

Judge : Mukta Gupta

Appellant : Jage Ram

Respondent : Dtc

Advocate for Def. : Ms. Arati Mahajan Shedha

Advocate for Pet/Ap. : Mr. Rajesh Manchanda, Mr. Rajat Manchanda

Judgement :

* + IN THE HIGH COURT OF DELHI AT NEW DELHI W.P. (C) No. 1883/1996
Reserved on:

7. h December, 2012 Decided on:

13. h February, 2013 % JAGE RAM Through: Petitioner Mr. Rajesh Manchanda with Mr. Rajat Manchanda, Advs. versus DTC Through: Respondent Ms. Arati Mahajan Shedha, Adv. Coram: HON'BLE MS. JUSTICE MUKTA GUPTA 1 By the present petition the Petitioner impugns the award dated 31st January, 1996 whereby the dismissal of the Petitioner on account of his conviction for offence under Section 279/304A Indian Penal Code, 1860 was held to be justified. It was also held that punishment of removal was not disproportionate to the misconduct attributed as due to the rash and negligent driving of the Petitioner, 5 persons lost their lives and 17 others were seriously

injured..

2. Learned counsel for the Petitioner states that the services of the Petitioner were illegally terminated without any departmental enquiry. Section 2(oo) of the Industrial Disputes Act (in short the ID Act) states that termination pursuant to disciplinary action would not amount to retrenchment. In the present case since no disciplinary enquiry was conducted, the termination was in violation of Section 25F and admittedly the benefits under Section 25F of ID Act having not been given the termination was illegal and liable to be set aside. Though in the appeal before the learned Additional Sessions Judge the conviction of the Petitioner was upheld, however he had filed a revision petition which was pending before the Punjab and Haryana High Court and thus the proceedings in the criminal trial had not culminated to a logical conclusion. The ID Act is the principal Act and any rules of the Respondent made ARE supplementary to it. Thus, this Court is required to look into whether the Respondent could remove the Petitioner from services under Clause 15(2) of the Delhi Road Transport Authority (Conditions of Appointment and Services) Regulations, 1952 (in short DRTA Regulations) read with Section 4(e) of The Delhi Road Transport Laws (Amendment) Act, 1971 by order dated 12th October, 1988 in view of the conviction by the Criminal Court. A show cause notice dated 29th August, 1988 was received by the Petitioner on 11th October, 1988 wherein only 72 hours were granted to him to inform about the outcome of the appeal in the criminal case. However, without any reply from the Petitioner, his services were terminated. The proceedings in a Criminal Court and disciplinary enquiry are different and since the Petitioner has been denied the defence qua the disciplinary enquiry, he is liable to be reinstated. Further office order No.201 of the Respondent dated 24th November, 1954 states that departmental action against the employee convicted by the Court will be taken up only after the employees appeal has been decided by the Appellate Court. Reliance is placed on Telecom District Manager & Ors. Vs. Keshab Deb (2008) 8 SCC 402. In an identical situation where bus driver Bhajan Lal was convicted, no action of removal was taken by the Respondent. Thus, the Respondent has discriminated against the Petitioner in violation of Article 14 of the Constitution of India. The Petitioner has since passed away on 5th September, 2007 and thus no relief of reinstatement is being prayed, however the legal heirs of the Petitioner are entitled to

consequential monetary relief including back wages, interest etc.

3. Learned counsel for the Respondent on the other hand contends that show cause notice was given to the Petitioner in June to which the Petitioner replied vide his letter dated 7th June, 1982. The letter dated 29th August, 1988 was not a show cause notice and was sent to the Petitioner asking him to inform about the status of the appeal. Since the Petitioner did not inform about the status of the appeal, the management found out the judgment and as the conviction of the Petitioner was upheld by the learned Additional Sessions Judge, Karnal, his services were terminated. Clause 15(2) of the DRTA Regulations provides for the penalties which could be awarded for a misconduct and removal/dismissal from the service are part thereof. Further Section 4(e) of The Delhi Road Transport Laws (Amendment) Act, 1971 (in short the Act) provide that all rules, regulations, appointments, notifications, bye-laws, schemes, orders etc., made under the DRTA Act or the Delhi Municipal Act, 1957 and in force immediately before such establishment, will be deemed to continue unless and until they are superseded by regulations made under that Sections. Section 95(2) provides that no officer or employee shall be punished unless he has been given a reasonable opportunity of showing cause against the action proposed provided that the sub-Section shall not apply where an officer or employee is removed or dismissed on the ground of conduct which had led to his conviction on criminal charge. Thus, on the conviction by the Criminal Court for offence under Section 279/304A Indian Penal Code, 1860 which has been upheld in appeal by the learned Sessions Judge, the management was not required to conduct any further disciplinary enquiry and was justified in removing the Petitioner from service on this ground. The Petitioner cannot claim any equality with Bhajan Lal who was convicted but his services were not terminated as the right to equality is for a legal right and not for a wrong. There is no infirmity in the impugned award. Hence the petition be dismissed.

4. I have heard learned counsel for the parties. Briefly, the facts giving rise to the filing of the present petition are that on 27th July, 1983 a chargesheet was issued to the Petitioner on the allegations that on 31 st March, 1983 while he was on duty with bus No. DLP-1052 on Hoshiyarpur-Delhi route, when the bus reached near village Mehrauli, a trolley was parked on the left side of the road with some

persons sitting on it and a tempo No. DHL-8186 was coming from the opposite side when the bus being driven by the Petitioner collided with the trolley and dragged the trolley 36 feet from the place of accident. The bus also collided with the tempo and dragged the tempo for 65 feet from the place of incident. The body of the tempo was entirely damaged and as a result 5 persons died on the spot and 17 persons got seriously injured and heavy damage to the bus was caused due to the Petitioner's rash and negligent driving. The Petitioner was given time to render explanation pursuant to which a show cause notice was given on 27th May, 1988 as to why he should not be removed from service to which he replied vide his letter dated 7th June, 1988. A further letter was sent to the Petitioner on 28th September, 1988 asking him to inform about the outcome of the appeal against the conviction and punishment awarded by the learned Trial Court. W.P.(C) 1883/1996 dismissal of the appeal of the Petitioner and hence the order dated 12th October, 1988 was passed removing the Petitioner from services of the Corporation with effect from 13th October, 1988 under Clause 15(2) of the DRTA Regulations read with Section 4(e) of the Act. The Petitioner raised an industrial dispute on which a reference was sent for adjudication on the following terms: Whether the removal from service of Shri Jage Ram is illegal and/ or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect? 5. In the statement of claim filed by the Petitioner he stated that he was appointed as a driver with the Respondent, posted at Sarojini Nagar Depot since 15th June, 1964 and his services were terminated illegally on 13th October, 1988 without any proper enquiry on the charges leveled against him. A show cause notice dated 28th September, 1988 was delivered to him on 11th October, 1988 wherein he was asked to submit his explanation in 72 hours and before the expiry of the notice period his service was terminated by the management vide letter dated 12th October, 1988. The provisions of Industrial Dispute Act were not complied with. In the written statement filed by the Respondent besides preliminary objections being taken, it was stated that pending departmental action the workman was convicted by the Court of judicial Magistrate- I Class, Panipat vide its judgment dated 23rd November, 1987 and he was sentenced to undergo rigorous imprisonment of two years and also to pay a fine of Rs. 1000/-. This judgment was upheld by the Appellate Court of Additional Sessions Judge, Karnal.

As regards the compliance of one months wage it was stated that since the punishment was based on judgment passed by the Court, the management is not under any obligation to pay the same. On the basis of pleadings of the parties, the following issues were framed:

1. Whether the enquiry conducted by the management is fair and proper? If so its effects. 2.As per the terms of reference.

6. Since no enquiry was conducted on the basis of the statement of the authorized representative of the Respondent, issue no. 1 was deleted and the case was fixed for evidence. Since none appeared for the Respondent/ management, they were proceeded ex-parte. In the affidavit filed by the Petitioner besides reiterating the statement of claim an affidavit of one Bhajan Lal was also filed who stated that he was convicted for offence under Section 279/304A Indian Penal Code, 1860 and despite his conviction and serving a period of imprisonment he was not removed from service. After considering the evidence on record, the learned Trial Court held that in view of the conviction recorded and the gravity of misconduct of the Petitioner, the punishment of removal from service was not at all disproportionate. Hence the present petition.

7. The main thrust of the argument of the learned counsel for the Petitioner is that in the absence of disciplinary proceedings being conducted the termination of the Petitioner amounted to retrenchment under Section 2(oo) of the ID Act. The same being illegal, the punishment could not have been awarded and the Petitioner was entitled to reinstatement and back wages. Section 2(oo) of the ID Act reads as under:

2. (oo) Retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include (a) Voluntary retirement of the workman; or (b) Retirement of the workman on reaching the age of Superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or [(bb) Termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of

such contract being terminated under a stipulation in that behalf contained therein; or] (c) Termination of the service of a workman on the ground of continued ill-health;] 8. Disciplinary action under Section 2(oo) does not mean a regular disciplinary enquiry only. It is a term of wider connotation. Section 4(e) of the Act provides that all rules, regulations, appointments, notifications, byelaws, schemes, orders, standing orders and forms relating to transport services, whether made under the Delhi Road Transport Authority Act, 1950 or under the Delhi Municipal Corporation act, 1957 and in force immediately before such establishment, shall, insofar as they are not inconsistent with the provisions of this Act, continue to be in force and be deemed to be regulations made by the new Corporation under Section 45 of the Road Transport Corporation Act, 1950 unless and until they are superseded by regulations made under that section. Further Section 95 of the DMC Act, 1957 provides:- 95. Punishment for municipal officers and other employees: (1) Every municipal officer or other municipal employee shall be liable to have his increments or promotion withheld or to be ensured, reduced in rank, compulsorily retired, removed or dismissed for any breach of any departmental regulations or of discipline or for carelessness, unfitness, neglect of duty or other misconduct by such authority as may be prescribed by regulations : Provided that no such officer or other employee as aforesaid shall be reduced in rank, compulsorily retired, removed or dismissed by any authority subordinate to that by which he was appointed : Provided further that the Corporation may by regulations provide that municipal employees belonging to such classes or categories as may be specified in the regulations shall be liable also to be fined by such authority as may be specified therein. (2) No such officer or other employee shall be punished under sub-section (1) unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him : Provided that this sub-section shall not apply (a) where an officer or other employee is removed or dismissed on the ground of conduct which had led to his conviction on a criminal charge; or (b) where the authority empowered to remove or dismiss such officer or other employee is satisfied that for some reason to be recorded by that authority, it is not reasonably practicable to give that person an opportunity of showing cause.

9. A perusal of Section 95 DMC Act would show that the employee cannot be punished except by giving him a reasonable opportunity of showing cause, except when the misconduct of such employee has led to his conviction on a criminal charge. Clause (a) of sub-Section (2) to Section 95 DMC Act is an exception to the general rule that the employee shall not be punished unless he has been given a reasonable opportunity to present his case. By virtue of this clause, the requirement of giving an opportunity to present his case has been done away with in a case where the employee has been convicted in a criminal case. Thus once a criminal charge is proved, there is no need of a separate regular departmental enquiry.

10. The Petitioner does not dispute his conviction for offence under Section 279/304A Indian Penal Code, 1860 and the dismissal of the appeal by the learned Sessions Judge. His case is that the revision was still pending. On a specific query put by this Court, the Petitioner has not been able to reply about the outcome of the revision pending before the Punjab and Haryana High Court. Thus, the Respondent/ management was justified in removing the Petitioner on the proven misconduct by way of a criminal trial.

11. As regards the contention of the learned counsel for the Petitioner that in view of the office order No. 201 no punishment should have been awarded on the first conviction, the Honble Supreme Court in State of Haryana & Anr. Vs. Rattan Singh (1997) 2 SCC 49. has held that non-compliance of the departmental instructions that the statements of the passengers should be recorded is a rule of prudence and is not a rule that binds or vitiates for violation. In the present case, the misconduct of the Petitioner is very serious. The Petitioner was highly rash and negligent in driving inasmuch as due to the accident 5 lives were lost and 17 persons were injured. Each case has to be considered in the light of the facts therein.

12. In Telecom District Manager & Ors. Vs. Keshab Deb (2008) 8 SCC 40. the Honble Supreme Court while dealing with a case of a casual labour on daily wages who misbehaved with the senior officers, misused and damaged the Government vehicle, was arrested and directed to undergo simple imprisonment

for 8 days and pay a fine of Rs. 30 for offence under Section 34(6) of the Police Act held that the employee being a daily-wager, the termination was stigmatic. It is in the light of this fact the Honble Supreme Court held that the management ought to have conducted the enquiry. The said decision has no relevance to the facts of the present case as in the present case the regulations of the Petitioner permit removal on a conviction recorded in a criminal case without conducting an enquiry.

13. In view of the discussion aforesaid, I find no merit in the present petition. Petition is dismissed. (MUKTA GUPTA) FEBRUARY 13 2013 ga

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