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DELHI TRANSPORT UNDERTAKING

v.

BALBIR SARAN GOEL

February 23, 1970

B [J. C. SHAH, K. S. HEGDE AND A. N. GROVER, JJ.]

Delhi Road Transport Authority Act, 1950—*Conditions of Appointment and Service Regulations,* 1952, *Reg.* 9, 15 & 17—*Employee unsuccessfully approaching Court, without exhausting departmental remedies—Simpliciter order terminating services as no longer required—Whether by way of Punishment.*

C Regulation 9 of the Delhi Road Transport Authority Act (Conditions of Appointment and Service Regulations), 1952 provides for termination of services in two modes. The first is by its clause (a) by which services may be terminated without any notice or pay in lieu of notice. This can be done among other reasons for misconduct. The second mode is by clause (b) by which the services may be terminated owing to reduction of establishment or in circumstances other than those mentioned in clause (a) which relate to termination without notice. When termination is D made under clause (b) one month's notice or pay in lieu thereof is to be given to the employee. Regulation 15 says that a breach of the standing order will amount to misconduct, and one of the penalties imposed for misconduct is dismissal. It also prohibits an order of dismissal, removal or other punishment except censure unless the procedure laid down in clause (c) of Regulation 15 is followed. The standing order 17 enjoins that no employee should have recourse to a court of law without first re- E sorting to the normal official channels of redress.

The respondent, an employee of the appellant-Undertaking established under the Delhi Transport Authority Act, was demoted. He challenged the demotion by filing a petition under Art. 226 of the Constitution. Thereafter the appellant-undertaking passed an order terminating the respondent's services, stating only that his services were no longer required and that one month's salary in lieu of notice would be paid. The respon- F dent filed a suit claiming that the order was illegal. On the questions, (i) whether the respondent's services could be terminated under Regulation 9(b) without complying with the procedure prescribed by Regulation 15, and (ii) whether although the order was made in perfectly harmless and innocuous terms and purporting to be within Regulation 9(b) it was a mere camouflage for inflicting punishment for breach of standing order 17, as the respondent had approached the High Court without exhausting the Departmental remedies, this Court,

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HELD : (i) Even if it be assumed that the law is the same as would be applicable to a case governed by Art. 311, it was difficult to say that the services of the respondent were not merely terminated in accordance with Regulation 9(b) which governed the conditions of his employment. It may be that the motive for termination of his services was the breach of Standing Order 17 *i.e.* of filing a writ petition in the High Court against the demotion without exhausting departmental remedies but the question H of motive is immaterial. No charge-sheet was preferred under Regulation 15 nor was any enquiry held in accordance therewith before the order under Regulation 9(b) was made. It may be that if the respondent had successfully pleaded and proved *malafides* on the part of the authority

terminating his services the impugned order could be legitimately challenged but no foundation was laid in that behalf in the plaint nor was the question of *malafides* investigated by the courts below. [763 E-G]

(ii) As regards the punishment having been inflicted for misconduct the order being a mere camouflage no such question could arise in the present case. Regulation 9(b) clearly empowered the authorities to terminate the services after giving one month's notice or pay in lieu of notice. The order was unequivocally made in terms of that Regulation. Even if the employers of the respondent thought that he was a cantankerous person and it was not desirable to retain him in service it was open to them to terminate his services in terms of Regulation 9(b) and it was not necessary to dismiss him by way of punishment for misconduct. If the employer chooses to terminate the services in accordance with clause (b) of Regulation 9 after giving one month's notice or pay in lieu thereof it cannot amount to termination of service for misconduct within the meaning of clause (a). It is only when some punishment is inflicted of the nature specified in Regulation 15 for misconduct that the procedure laid down therein for an inquiry etc., becomes applicable. [763 H]

S. R. Tewari v. *District Board Agra & Another*, [1964] 3 S.C.R. 55, *State of Punjab* v. *Shri Sukhraj Bahadur*, [1968] 3 S.C.R. 244, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2266 of 1968.

Appeal by special leave from the judgment and decree dated August 4, 1967 of the Delhi High Court in Letters Patent Appeal No. 68-D of 1965.

Niren De, Attorney-General, D. D. Chaudhuri and *G. K. Sharma*, for the appellant.

H. R. Gokhale and *S. K. Gambhir*, for the respondent.

The Judgment of the Court was delivered by

Grover, J. This is an appeal by special leave in which the sole question for determination is whether the services of the respondent who was an employee of the appellant could be terminated under Regulation 9(b) without complying with the procedure prescribed by Regulation 15 of the D.R.T.A. (Conditions of Appointment and Service Regulations), 1952, as amended which were framed under s. 53 sub-ss. (1) and (2)(c) of the Delhi Road Transport Authority Act 1950.

The respondent was originally appointed as a booking agent under the Gwalior Northern India Transport Company. He was promoted to the rank of Travelling Ticket Examiner in 1947. In 1948 the Government of India, Ministry of Transport, took over the aforesaid company. On March 7, 1950 the Delhi Road Transport Authority Act was passed. The services of the respondent were transferred to the said Authority. In March 1952 the

A respondent was demoted from the rank of Travelling Ticket Examiner to that of a Conductor. He filed a writ petition in the Circuit Bench of the Punjab High Court at Delhi in April 1953. The writ petition was dismissed and thereafter his services were terminated on November 11, 1953. The order of termination which was passed by the Manager of the Delhi Road Transport B Authority was in the following terms :

> "Your services will not be required by this organisation with effect from November 12, 1953. You will be paid one month's salary in lieu of notice."

There were certain proceedings before the Conciliation Officer C and in answer to a query made by that officer the General Manager wrote a letter on August 14, 1956 in which it was stated, *inter alia,* that the respondent had approached the High Court when he had been demoted at the previous stage without exhausting the normal official channel of redress and without putting in his representation before the Appellate Authority as provided in the Ser- D vice Rules. His services were therefore terminated under Regulation 9(b) after paying one month's salary in lieu of notice. It may be mentioned that the Service Rule of which the breach was alleged to have been committed by the respondent was Standing Order No. 17 which enjoined that no employee should have recourse to a court of law without first resorting to the normal offi- E cial channels of redress.

The suit out of which the present appeal has arisen was filed by the respondent containing all the above facts in which it was alleged that the order dated November 11, 1953 was one of dismissal and had been passed as a measure of punishment, the pro- F cedure prescribed by Regulation 15 not having been followed. In para 29 of the plaint the sole allegation relating to *mala fides* was made in these terms :

> ".....It was *mala fide* on the part of General Manager, D.R.T.A. to terminate the services of the plaintiff without assigning any reason."

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A declaration was sought that the order of dismissal was illegal, *mala fide* etc. and that the plaintiff continued to remain in the employment of the appellant without any interruption of rights. A claim for certain amount was also made on account of salary etc. The only two issues framed on the merits were :

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> "(1) Whether the order dated 11-11-53 terminating the services of the plaintiff is illegal and *ultra vires* as alleged ?

(2) Whether the plaintiff is entitled to the recovery of any amount by way of consequential relief? If so, at what rate and for what period?" A

The trial court held that the order terminating the services of the respondent was not covered by Regulation 9(b) but was an order of dismissal from service under Regulation 15(2) clause (7) and therefore the order of termination was nothing short of dismissal. It was held that the dismissal of the respondent was illegal and that he was entitled to the pay and allowances in the sum of Rs. 4500. B

An appeal was taken to the District Court which confirmed the decree of the trial court. A learnd Single Judge of the High Court who disposed of the second appeal preferred by the present appellant affirmed the decree of the courts below but on different grounds. It was held by him that Regulation 9(b) did not confer any power on the Authority to terminate the employment of its employees. A division bench which heard the appeal under the Letters Patent affirmed the decisions of the courts below but on different grounds. It was held that the real reason for dispensing with the services of the respondent was one given by the General Manager in his letter to the Conciliation Officer. It was the alleged breach of the Service Rules. A breach of the Standing Order amounted to misconduct as provided by Regulation 15(1). One of the penalties prescribed by Regulation 15(2) was dismissal. That though the order of termination of services of the respondent did not on its face, contain the reason for the non-requirement of his services the real reason was the misconduct of the respondent in that he had committed a breach of the Standing Order. The procedure laid down in Regulation 15(2)(c) of enquiry etc. not having been followed the impugned order was void and illegal. In fact that order had been made by way of punishment. C D E F

Regulation 9, to the extent it is material, is as follows :

"9. Termination of Service.—(a) Except as otherwise specified in the appointment orders, the services of an employee of the Authority may be terminated without any notice or pay in lieu of notice— G

(i) during the period of probation and without assigning any reasons therefor.

(ii) for misconduct, H

(iii) on the completion of specific period of appointment,

A (iv) In the case of employees engaged on contract for a specific period, on the expiration of such period in accordance with the terms of appointment.

(b) Where the termination is made due to reduction of establishment or in circumstances other than
B those mentioned at (a) above, one month notice or pay in lieu thereof will be given to all categories of employees.

(c) ....."

Regulation 15 says that a breach of the Standing Order issued
C from time to time by the Delhi Road Transport Authority will amount to misconduct. The penalties which can be imposed for misconduct are enumerated out of which dismissal is one. It is provided that no order of dismissal, removal or other punishment except censure shall be passed unless the procedure laid down in clause (c) is followed. That clause outlines the
D steps which must be taken in the matter of affording an opportunity to the delinquent employee and of an inquiry which is to be conducted in the matter.

Now Regulation 9 clearly provides for termination of services in two modes; the first is where the services may be terminated without any notice or pay in lieu of notice. This can
E be done among other reasons for misconduct. The second mode is of terminating the services owing to reduction of establishment or in circumstances other than those mentioned in clause (a) which relate to termination without notice. When termination is made under clause (b) one month's notice or pay in lieu thereof is to be given to the employee. Thus it is clear that if the employer
F chooses to terminate the services in accordance with clause (b) after giving one month's notice or pay in lieu thereof it cannot amount to termination of service for misconduct within the meaning of clause (a). It is only when some punishment is inflicted of the nature specified in Regulation 15 for misconduct that the procedure laid down therein for an inquiry etc. becomes applicable.
G The contention which appears to have prevailed with the High Court and which has been pressed before us is that although the order was made in perfectly harmless and innocuous terms and purported to be within Regulation 9(b) it was a mere camouflage for inflicting puinshment for breach of Standing Order 17 inasmuch as the respondent had approached the High Court under Art. 226 of the Constitution without exhausting the departmental remedies.
H The High Court relied on the observations in *S. R. Tewari* v. *District Board Agra & Another*(1) that the form of the order under

(1) [1964] 3 S.C.R. 55.

which the employment of a servant was determined was not conclusive of the true nature of the order. The form might be merely to camouflage an order of dismissal for misconduct and it was always open to the court before which the order was challenged to go behind the form and ascertain the true character of the order. In that case it was held that the employment was terminated by giving a notice in accordance with the rules and it was not a case of dismissal.

The learned Attorney General for the appellant has sought to distinguish cases which fall under Art. 311 and those which are governed by statutory provisions or rules containing provisions analogous to Art. 311. According to his submission the concept of punishment is not relevant when the employer chooses to terminate the employment of an employee in accordance with the conditions of service. All that has to be seen is whether the order made by him is in conformity with the statutory powers. He has further submitted that where the master chooses to follow the mode of terminating the services prescribed by Regulation 9(b) no stigma attaches to such termination and no question of the employee having been punished can arise nor can it be examined in such a case whether the order made was a mere camouflage or cloak for dismissing an employee by way of punishment for misconduct. It has further been emphasised that what has to be seen is the situation obtaining on the date the order was made and no notice should or ought to be taken of any subsequent facts emreging out of correspondence or pleadings in a court of law in reply to the allegations in the plaint of *mala fide* and the like.

It does not appear necessary to refer to numerous decisions which have been given by the Court in cases arising under Art. 311 of the Constitution on the points debated before us by counsel for both sides. In *State of Punjab* v. *Shri Subhraj Bahadur*(1) most of these cases have been discussed. By a conspectus of those cases, it was stated, the following propositions clearly emerge :

> "1. The services of a temporary servant or a probationer can be terminated under the rules of his employment and such termination without anything more would not attract the operation of Art. 311 of the Constitution.
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> 2. The circumstances preceding or attendant on the order of termination of service have to be examined in each case, the motive behind it being immaterial.

(1) 1968) 3, S.C.R. 234 at p. 244.

A 3. If the order visits the public servant with any evil consequences or casts an aspersion against his character or integrity, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or a temporary servant.

B 4. An order of termination of service in unexceptionable form preceded by an inquiry launched by the superior authorities only to ascertain whether the public servant should be retained in service, does not attract the operation of Art. 311 of the Constitution.

C 5. If there be a full-scale departmental enquiry envisaged by Art. 311 *i.e.* an Enquiry Officer is appointed, a charge sheet submitted, explanation called for and considered, any order of termination of service made thereafter will attract the operation of the said article."

D In that case the departmental enquiry did not proceed beyond the stage of submission of charge-sheet followed by the respondent's explanation thereto. The enquiry was not proceeded with, there were no sittings of any Inquiry Officer, no evidence was recorded and no conclusions arrived at on the enquiry. It was, therefore, held that the services had been terminated *simpliciter* under the rules of employment and Art. 311 was not attracted. In the E present case even if it is assumed that the law is the same as would be applicable to a case governed by Art. 311 it is difficult to say on the principles laid down in the above case that the services of the respondent were not merely terminated in accordance with Regulation 9(b) which governed the conditions of his employment. It may be that the motive for termination of his services was the breach of Standing Order 17 *i.e.,* of filing a writ petition in the F High Court against the demotion without exhausting departmental remedies but the question of motive is immaterial. No charge-sheet was preferred under Regulation 15 nor was any enquiry held in accordance therewith before the order under Regulation 9(b) was made. It may be that if the respondent had successfully pleaded and proved *mala fides* on the part of the authority terminating G his services the impugned order could be legitimately challanged but no foundation was laid in that behalf in the plaint nor was the question of *mala fides* investigated by the courts below.

As regards the punishment having been inflicted for misconduct the order being a mere camouflage we are unable to endorse the H view that any such question could arise in the present case. Regulation 9(b) clearly empowered the authorities to terminate the services after giving one month's notice or pay in lieu of notice. The order was unequivocally made in terms of that Regulation. Even

if the employers of the respondent thought that he was a cantankerous person and it was not desirable to retain him in service it was open to them to terminate his services in terms of Regulation 9(b) and it was not necessary to dismiss him by way of punishment for misconduct. A

The appeal is consequently allowed and the decree granted by the courts below is set aside. In view of this court's order dated November 1, 1968, the appellant will pay the costs of the respondent. B

Y.P. *Appeal allowed.*