

CIVIL MISCELLANEOUS

*Before Prem Chand Jain, J.*GURANDITTA MAL,—*Petitioner**versus*THE STATE OF HARYANA AND OTHERS,—*Respondents***Civil Writ 45 of 1968**

November 22, 1968

Constitution of India (1950)—Article 311—Punishing authority terminating the services of a Government servant—Appeal therefrom rejected—Orders of the punishing and the appellate authorities—Whether to be 'speaking orders'.

Held, that although there may not be any rules prescribing the procedure as to in what manner the orders of dismissal of a Government servant and the order in appeal therefrom should be passed, yet in order to understand the approach of the punishing authority and also the mind of the appellate authority and the grounds on which such orders have been passed, it is necessary that the orders should be 'speaking orders'. They should give the grounds on which they have been passed. If the orders are not speaking orders, they must be struck down for the reason that there is no indication in them of the manner in which the conclusion adverse to the Government servant had been arrived at nor is it indicated if the entire material against him was considered. (Para 7)

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the impugned orders, dated 22nd July, 1964; 2nd March, 1965; nil; and 20th April, 1967 (Annexure 'A', 'B', 'C' and 'R-4') of respondents and directing the Department that the petitioner remains employed as a conductor as if his services were never terminated and further praying that the petitioner be declared to be entitled to all pays and allowances from the date of the termination of his service.

B. S. SHANT, ADVOCATE, for the Petitioner.

B. S. GUPTA, ADVOCATE, FOR ADVOCATE-GENERAL (HARYANA), for Respondents 1 to 5.

JUDGMENT

JAIN, J.—Guranditta Mal has filed this petition under Articles 226 and 227 of the Constitution of India for the issuance of a writ of *certiorari* quashing the impugned orders Annexures A, B, C, and R-4.

(2) The facts as stated in the petition are that the petitioner joined as a Conductor in the erstwhile Punjab Roadways, Ambala, on 15th June, 1960. He worked efficiently but due to some local faction, his services were illegally terminated by respondent No. 5, after a departmental enquiry,— *vide* order No. 953/E, dated 22nd July, 1964 (Annexure 'A'). An appeal was filed but the same was rejected by respondent No. 2,—*vide* office memo No. A (99)-64/EA-3/3364/N, dated 2nd March, 1965 (Annexure 'B'). It is further stated that a second appeal before the Government was also filed but no decision was taken on that appeal and hence the petitioner sought a personal interview with the then Transport Minister of the State of Haryana (respondent No. 6) and submitted a representation to him which was passed on to respondent No. 2 for favourable consideration. It is averred that having received no reply on the appeal or to the representation made by the petitioner, personal interview was sought and the entire background was explained to the then Transport Minister who had a telephonic talk with respondent No. 3 and advised the latter that written order be passed for the reinstatement of the petitioner giving reference to his (respondent No. 6) verbal orders. In compliance with the direction of respondent No. 6, written orders were issued by respondent No. 3 to respondent No. 5 to reinstate the petitioner, but reply was received that there was no vacancy on which written orders were issued to respondent No. 5 to employ the petitioner. It was under these circumstances that the petitioner was asked to report for duty on 3rd March, 1967.

(3) It is alleged that during the general elections in February, 1967, respondent No. 6 was defeated after which respondent No. 2,—*vide* memo No. A(99)64/1431/EA-3/N, dated nil (Annexure 'C'), passed order saying that the representation of the petitioner was considered and had been filed. Subsequently on 19th April, 1967, respondent No. 4 called the petitioner and told him that his services were being terminated and told the Transport Clerk not to give any duty to the petitioner, with effect from 20th April, 1967. On the grounds as mentioned in the petition, the orders Annexures A, B, C, and R-4 have been challenged to be illegal, *ultra vires*, unconstitutional, *mala fide*, unjust and void.

(4) Two returns have been filed, one jointly on behalf of respondent Nos. 1 to 5 and the other on behalf of respondent No. 3. All the allegations in the petition have been controverted and it

has been averred that the petitioner was re-employed by respondent No 4, with effect from 3rd March, 1967, against a temporary vacancy and since it was specifically indicated in the appointment letter that his services could be terminated at any time without any notice/ assigning any reason, the petitioner's services were not extended beyond 18th April, 1967.

(5) The only submission made by Mr. B. S. Shant, learned counsel appearing on behalf of the petitioner, was that the order terminating the services of the petitioners (Annexure 'A') and the order rejecting the appeal (Annexure 'B') were not speaking orders. From these orders it could safely be inferred that the authorities had not applied their mind and hence the orders were without jurisdiction. It was also contended that the petitioner was entitled to a personal hearing before the dismissal of the appeal. Reliance was placed on the decisions of this Court in *Mohinder Singh v. The State of Punjab and others* (1), *Balbir Singh v. Union of India and others* (2), and *Hari Singh and others v. The Additional Director, Consolidation of Holdings and others* (3).

(6) On the other hand, Mr. B. S. Gupta, learned counsel appearing on behalf of respondents, contended that it was not necessary to pass any speaking order. It was also contended that the petition was liable to be dismissed on the ground of acquiescence as the petitioner had accepted the order of termination to be correct by accepting re-employment as a Conductor on 3rd March, 1967. The learned counsel also submitted that the petition was liable to be dismissed on the ground of delay.

(7) After considering the respective contentions of the learned counsel for the parties, and the law cited at the Bar, I am of the view that this petition deserves to be allowed. Mr. B. S. Gupta very fairly conceded that the orders Annexures 'A' and 'B' were not speaking orders but contended that it was not necessary to pass speaking orders. I am afraid this contention of the learned counsel is not tenable. After the order of termination was passed, the petitioner filed an appeal in which many grounds were alleged pleading that the enquiry conducted against him was illegal, and

(1) I.L.R. (1969) 1 Pb. and Hrya. 1=1968 Cur. L.J. (Pb. & Hyna), 476.

(2) 1968 Curr. L.J. (Pb. & Hyna.) 134.

(3) 1968 Cur. L.J. (Pb. & Hyna.) 501.

in violation of the rules of natural justice and that he had been a victim of vengeance of the higher authorities. It was also specifically pleaded that he was not given an adequate opportunity for defence as provided under Article 311 of the Constitution of India. In the petition the impugned orders Annexures 'A' and 'B' have been challenged on the ground that they were not speaking orders and the same had been passed without applying mind to the facts of the case. From the perusal of the orders Annexures 'A' and 'B', it is clear that the order of dismissal passed against the petitioner as well as the order rejecting his appeal, do not at all refer to the material on which they are based nor do they disclose the reasons for making the same. The order Annexure 'A' just says, "having been found guilty of the charges of misappropriation,—vide charge sheet No. 9/TC, dated 15th April, 1964, Shri G. D. Mall, Adda Conductor No. 17, is removed from service" while the order Annexure 'B' is only a communication to the petitioner that the appellate authority has carefully considered the appeal under reference submitted by him against the order of the termination of his services as Conductor by the General Manager, Punjab Roadways, Gurgaon, and has rejected it. It is not indicated in these orders that all the relevant material was considered by the authorities. It was contended by the learned counsel for the State that there are no rules prescribing the procedure as to in what manner the order of dismissal and the order in appeal should be passed. According to the learned counsel, it is nowhere provided that the order has to be a speaking order. It may be so but to understand the approach of the punishing authority and also the mind of the appellate authority and the grounds on which the impugned orders have been passed, it is necessary that the order should be a speaking order and should give the grounds on which it has been passed. The way in which the appellate authority has disposed of the appeal, amounts to no consideration of the appeal at all. The view I am taking is fully supported by the decision of this Court in *Mohinder Singh's case* (1), and in *Ram Sahai v. The General Manager, Northern Railway and others* (4). In this view of the matter I hold that the impugned orders Annexures 'A' and 'B' must be struck down for the reason that there is no indication in them of the manner in which the conclusion adverse to the petitioner had been arrived at nor is it indicated if the entire material against him was considered.

(4) 1967 Cur. L.J. (Pb. & Hyna.) 296.

(8) It was next contended by the learned counsel for the State that the petitioner is debarred from filing this petition as he has accepted the order of dismissal by seeking re-employment. I am afraid there is no substance in this contention. There is no evidence on the record to show that the petitioner had accepted the impugned orders Annexures 'A' and 'B' to be correct. The circumstances under which the petitioner accepted the post on 3rd March, 1967, as stated in the petition, although controverted in the return, show that the petitioner had been all the time thinking that under the orders of the then Transport Minister, he had been reinstated and it was not a case of re-employment. The petitioner has all along been challenging the validity and legality of the termination order and the petition cannot be dismissed on the ground of acquiescence.

(9) The contention of the learned counsel that the petition should be dismissed as it suffers from laches too is not tenable. The circumstances as explained in the petition clearly show that the petitioner was not guilty of laches because he had been pursuing his further remedy and by the then Transport Minister, he was given to understand that some relief was going to be given to him. Otherwise also in the view which I have taken on the merits, I am not going to dismiss this petition on the ground of laches.

(10) No other point has been urged.

(11) In this view of the matter I allow this petition and quash the orders Annexures 'A' and 'B'. I further direct that the petitioner remains employed as a Conductor in the Department as if his services were not terminated. The petitioner will have his costs from the respondents.

K. S. K.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

MANI RAM AND OTHERS,—Petitioners

versus

FINANCIAL COMMISSIONER, HARYANA, AND ANOTHER,—Respondents

Civil Writ 1077 of 1967

November 25, 1968

Punjab Security of Land Tenures Act (X of 1953)—Section 2(3)—Displaced person allotted less than fifty standard acres of land—Such land—Whether to be re-evaluated for declaring any part of it as surplus.