

## BIHAR STATE ROAD TRANSPORT CORPORATION

v.

## STATE OF BIHAR &amp; ORS.

February 19, 1970

[J. M. SHELAT AND G. K. MITTER, JJ.]

*Industrial Dispute—Termination of service for misconduct—Principles of natural justice—Duty to conform to—Corporation taking over employees “on the rolls” of the departmental undertaking—Includes those who are deemed to be in service—Taking over power and functions of undertaking includes regulation of conditions of service of employees and disciplinary action—Labour Court—Jurisdiction to go behind language of order of termination—Certiorari—Finding of Labour Court that order of termination punitive neither unreasonable or perverse—High Court will not be justified in interfering.*

The third respondent was a Head Clerk in the Rajya Transport Authority, a departmental undertaking of the respondent State Government. His appointment was temporary terminable without notice and without assigning any reason. By an order dated February 18, 1959 he was discharged from service. On April 20, 1959, the State Government, in exercise of the power conferred under the Road Transport Corporation Act, 1950, set up the appellant corporation and under the notification the corporation was to “exercise all the powers and perform all the functions” till then exercised and performed by the Rajya Transport Authority. In February 1961 the State Government referred the question of termination of the third respondent’s services to the Labour Court. The Labour Court held that he was a workman, that the termination of service was punitive in nature in view of the Corporation’s letter addressed to the Conciliation Officer that the third respondent had committed various irregularities in the discharge of his duties, and that the appellant Corporation was the successor in title to the Rajya Transport Authority. The Labour Court, therefore, held the termination illegal and directed the Corporation to reinstate the third respondent in its service. A writ petition in the High Court for quashing the award was dismissed. In the appeal to this Court, it was contended that (1) the third respondent was not a workman as defined in s. 2(s) of the Industrial Disputes Act; (ii) the order terminating his service was an order of termination *simpliciter* and (iii) even assuming the order was illegal his remedy was against the State Government and not against the Corporation. Dismissing the appeal,

**HELD :** (i) *Prima facie* the third respondent was neither an officer nor a member of the office staff in the administrative offices. The standing orders, therefore, were applicable to him. The definition of workman in s. 2(s) of the Industrial Disputes Act being a comprehensive one, the third respondent must be held to be a workman within the meaning of s. 2(s) whose conditions of service were governed by the standing orders, [712 B]

(ii) The standing orders do not provide any procedure for dealing with an employee guilty of misconduct enumerated therein, but it is well-established that termination of service on the ground of misconduct could only be done in conformity with the principles of natural justice. Even though the order of termination may be couched in terms of an order of termination *simpliciter* the Labour Court is entitled to go behind the

A apparent language of the order and consider whether the order is termination *simpliciter* or is imposed by way of punishment. The conclusion of the Labour Court that the termination of service of respondent 3 was not one of termination *simpliciter* but was by way of penalty for irregularities committed in the discharge of duties was neither unreasonable nor perverse and the High Court rightly refused to interfere with such a finding in a writ of *certiorari*. [712F-713C]

B (iii) Employment of staff and regulating their condition of service, including disciplinary action, was clearly one of the powers and functions of the Rajya Transport Authority and this was also to be exercised and performed by the appellant corporation under the notification. The averment of the Corporation that it had taken over such employees of the Rajya Transport Authority as were "on the rolls" of the Authority only meant those employees who were in the service of the Authority and because that termination of service of the third respondent was held to be illegal he was deemed to be continuing in the service of the Authority and hence on its rolls. The appellant corporation must therefore be deemed to have taken over the services of respondent 3. [713 H-714 E]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1065 of 1966.

D Appeal by special leave from the judgment and order dated September 17, 1965 of the Patna High Court in Misc. Judicial Case No. 217 of 1962.

*Sarjoo Prasad, R. P. Srivastava, Saranjit Singh Jauhar and K. K. Sinha*, for the appellant.

E *D. Goburdhun*, for respondent No. 1.

The Judgment of the Court was delivered by

F *Shelat, J.* This appeal, by special leave, is against the order of the High Court of Patna dismissing a writ petition under Arts. 226 and 227 of the Constitution challenging the award passed by the Labour Court on a reference to it of an industrial dispute under s. 10(1) of the Industrial Disputes Act, 1947.

G The reference arose from the following facts : Prior to April 20, 1959 the Government of Bihar was conducting through one of its departments, called the Rajya Transport Authority, an undertaking of road transport in the State. The said Authority appointed respondent 3 as a Head Clerk in the office of the Divisional Manager, Rajya Transport, Bhagalpur, as from July 27, 1956. The order appointing him stated that the appointment was purely temporary and was terminable without notice and without assigning any reasons. By an order dated February 18, 1959, issued by the State Transport Commissioner, Rajya Transport, he was discharged from service with immediate effect. On April 20, 1959, the State Government, in exercise of the power conferred by s. 3 of the Road Transport Corporation Act, 64 of

1950, set up as from May 1, 1959, the appellant corporation. The notification issued under s. 3 *inter alia* stated that "The said Corporation shall, with effect from the said date, exercise all the powers and perform all the functions which are at present being exercised and performed by the Rajya Transport, Bihar". In the meantime the question of the termination of services of respondent 3 was espoused by respondent 4 before the Assistant Labour Commissioner. The conciliation proceedings having failed, the State Government referred the dispute to the Labour Court by an order dated February 24, 1961.

The Labour Court found: (a) That respondent 3 was a workman within the definition of that term in the Industrial Disputes Act and the Standing Orders governing the appellant corporation, and that though appointed a head clerk, there was no evidence to show that his work as such head clerk was managerial or supervisory, (b) That the order dated February 18, 1959 terminating the services of respondent 3 was not termination of service *simpliciter*, but was punitive in nature. The Labour Court relied on a letter dated January 30, 1960 addressed by the appellant corporation to the said conciliation officer that the services of respondent 3 had been terminated because "in the course of certain enquiries the Rajya Transport Department had found that Shri Sheo Prasad Sinha had committed various irregularities of the various nature in the discharge of his duties". The Labour Court held that the said alleged irregularities amounted to misconduct as defined by the said standing orders, and that therefore, the services of respondent 3 could not be terminated on the ground of those irregularities without holding a disciplinary enquiry and giving to respondent 3 therein an opportunity of being heard. No such enquiry having admittedly been held, the Labour Court held that the said order was not justified as it was not in *bona fide* exercise of the power to terminate the services of respondent 3. No evidence was led by the appellant corporation before the Labour Court either to prove the said irregularities or to establish that the said order was justified. The Labour Court consequently held that the said order being invalid, and therefore, inoperative, respondent 3 would be deemed to have continued to be in service. It further held that the appellant corporation was the successor-in-title of the said Rajya Transport and having taken over the erstwhile employees of the Rajya Transport, respondent 3 was deemed to be continuing in service of the appellant corporation. On these findings, the Labour Court concluded that the said order of termination was invalid, that respondent 3 was deemed to have continued in the service of Rajya Transport and thereafter of the appellant corporation, and on the basis directed the appellant

- A corporation to reinstate respondent 3 in its service and pay compensation for the period from February to September 1959.

- The appellant corporation thereupon filed a writ petition in the High Court for quashing the said award. In support of the writ petition three questions were raised before the High Court :
- B (1) That the services of respondent 3 were terminated before the appellant corporation was set up, and consequently, the remedy of respondent 3 was against the State Government and not against the corporation. The Labour Court had, therefore, no jurisdiction to direct the corporation to reinstate him or to pay compensation,
- C (2) That respondent 3 was engaged in clerical work and was, therefore, not a workman as defined by the Act, (3) That the termination of the services of respondent 3 was in conformity with the terms of the contract of service, and there was, therefore, no question of the principles of natural justice being applicable to such termination. The High Court rejected all the three contentions, refused to quash the order of the Labour Court and dismissed the writ petition holding that the appellant corporation
- D had failed to establish that there was any error of law apparent on the face of the record.

- Counsel for the appellant corporation urged before us :
- E (a) that the respondent was a temporary employee engaged as a head clerk and was, therefore, not a workman as defined by s. 2(s) of the Industrial Disputes Act, (b) that the order terminating his services was an order of termination *simpliciter* and the Labour Court was, therefore, not entitled to interfere with or set aside such an order, and (c) that the order having been passed by the Rajya Transport Authority long before the corporation
- F came into being, even assuming that the said order was illegal, the remedy of respondent 3 was against the State Government and not against the corporation.

- There can be no doubt that the Rajya Transport Authority, prior to the setting up of the appellant corporation, was carrying on the undertaking of transport had standing orders regulating the conditions of service of its employees. The Rajya Transport, having been sanctioned by the Government on a temporary basis, as is apparent from standing order 3, its employees fell into two categories, namely, temporary and casual. Standing order 2(d) defined an "employee" to mean any person employed by the
- G Rajya Transport Authority to do any skilled or unskilled, manual or clerical labour on hire or for reward. There can be no doubt that respondent 3 was an employee of the Rajya Transport Authority. Standing order 1.
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however, provides that the said standing orders were to apply only to workmen of the Rajya Transport other than officers and office staff employed in the administrative offices and sections. The order appointing respondent 3 shows that he was posted at the office of the Divisional Manager at Bhagalpur. *Prima facie*, respondent 3 was neither an officer nor a member of the office staff in the administrative offices or sections. The standing orders, therefore, were applicable to him. No evidence was led by the corporation that respondent 3, as a head clerk, was concerned with or doing managerial or supervisory duties. The definition of a 'workman' in s. 2(s) of the Industrial Dispute Act being a comprehensive one, respondent 3 must be held to be a workman within the meaning of s. 2(s), whose conditions of service were governed by the said standing orders. Standing order 17 deals with the power of termination of employment of the Rajya Transport Authority. That standing order provides that the Authority has under the terms of employment the right to terminate the services of an employee with 15 days' notice or payment of 15 days' wages in lieu of such notice subject to the provisions of the Industrial Disputes (Amendment) Act, 1953. It further provides that the employment of such employees as are found guilty of misconduct may be terminated in accordance with the provisions of the relevant standing orders. The relevant standing order is standing order 18 which lays down certain acts or omissions amounting to misconduct. Cls. (j) and (l), thereof, lay down that habitual or gross neglect of work or habitual or gross negligence or neglect of duty resulting in loss to the Rajya Transport would be misconduct. But the standing orders do not provide any procedure for dealing with an employee guilty of such misconduct. It is well established that if the Rajya Transport Authority were to terminate the services of an employee on the ground of any misconduct enumerated in standing order 18, it could do so only in conformity with the principles of natural justice. The Authority in such a case would have, therefore, to furnish to the concerned employee charges alleged against him and would have to afford to him an opportunity to be heard. The letter of the General Manager of the appellant corporation dated January 30, 1960 earlier referred to make it clear that the reason for terminating the services of respondent 3 was that he had been found to have committed irregularities of a serious nature in the discharge of his duties. That being so, the termination of services of respondent 3 was on account of the aforesaid irregularities in the discharge of his duties and *prima facie* was by way of punishment and not termination *simpliciter*. As is well established, even though the order of termination may be couched in terms of an order of termination *simpliciter*, a Labour Court to which an industrial dispute is referred to for adjudication is entitled to go

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A behind the apparent language of the order in question and consider whether the order is termination *simpliciter* or is imposed by way of punishment. The Labour Court, with which also the High Court agreed, came to the conclusion that the order was not one of termination of services *simpliciter*, but was by way of penalty imposed upon respondent 3 for the aforesaid irregularities. There is nothing to show that the said conclusion was either unreasonable or perverse, and consequently, the High Court would not be entitled to interfere with such a finding in a writ for *certiorari*. The High Court was, therefore, right in refusing to interfere with the finding of the Labour Court in exercise of its prerogative jurisdiction.

C It is quite clear from the record that the cause of respondent 3 was taken over and espoused by the respondent union before the conciliation officer. The dispute, therefore, was an industrial dispute referable under s. 10(1) of the Industrial Disputes Act by the Government of Bihar and the reference was a competent one.

D The next question is whether the appellant corporation was the successor-in-title of the said Rajya Transport Authority, and therefore, the obligations and liabilities of the said Authority devolved on the appellant corporation. The contention was that it was not such a successor-in-title and that once the Rajya Transport Authority ceased to carry on the said undertaking, the relationship of master and servant between that Authority and respondent 3 ceased, and therefore, whatever remedy respondent 3 had would be against that Authority and not against the appellant corporation. It was also contended that under the terms of the notification by which the appellant corporation was set up the corporation took over only the powers and functions of the said Authority and not its obligations and liabilities. Consequently, the order of reinstatement and compensation was contrary to law.

G The appellant corporation, as aforesaid, was set up by means of the Notification dated April 20, 1959 issued under s. 3 of the Road Transport Corporations Act, 1950. Under cl. 2 of that notification the appellant corporation was empowered to exercise all the powers and perform all the functions which were till then exercised and performed by the Rajya Transport Authority. It is manifest that the powers and functions of the Rajya Transport Authority were to carry on and conduct the transport undertaking. For that purpose its principal function would be the administration and management of that undertaking which would necessitate the employment of an adequate staff of employees. Employment of such a staff and regulating their conditions of service, including disciplinary action, would clearly be one of the powers

or functions of the Rajya Transport Authority, which power or function was also to be exercised and performed by the appellant corporation under the said notification. Furthermore, in para 5 of the writ petition filed by the appellant corporation in the High Court, the corporation in clear terms averred that it had taken over as from May 1, 1959 such of the employees of the Rajya Transport Authority into its service who were on the rolls of the said Authority on the date it came into existence. As rightly observed by the High Court, on a proper construction of the said averment, if the termination of the services of respondent 3 was invalid, it never became operative and respondent 3, therefore, would be deemed to be continuing in the service of the Rajya Transport Authority on May 1, 1959, and therefore, on its rolls. In that view, the appellant corporation must be deemed to have taken over the services of respondent 3. The argument, however, was that the true meaning of the said averment was that only those of the employees of the Rajya Transport Authority who were actually on its rolls were taken over and not those who were deemed to be on its rolls. It is difficult to understand the distinction sought to be made between those whose names were actually on the rolls and those whose names, though not physically on the rolls, were deemed in law to be on the rolls. If respondent 3 continued in law to be in the service, it makes little difference whether his name actually figured in the rolls or not. The expression "on the rolls" must mean those who were on May 1, 1959 in the service of the Rajya Transport Authority. By reason of the order discharging him from service being illegal, respondent 3 was and must be regarded to be in the service of the said Authority, and therefore, he would be one of those whose services were taken over by the appellant corporation.

Apart, therefore, from the question of the appellant corporation being the successor-in-title of the said Authority, respondent 3, in the absence of any valid termination of his services, continued and still continues to be in the service of the appellant corporation since May 1, 1959, and therefore, the corporation was bound to pay his wages including all the emoluments to which he was entitled as from May 1, 1959. For the period from February to April the Rajya Transport Authority was liable to pay his wages and other emoluments, if any, to which he was entitled. The corporation, as successor-in-title of the said Authority, became liable to pay the said wages for the said period and not from February to September 1959 as directed by the Labour Court.

The proper order, therefore, would be that respondent 3 is deemed to be in the service of the appellant corporation from

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- A** May 1, 1959, and therefore, the corporation is liable to pay his wages and emoluments as from May 1, 1959. As the successor-in-title of the said Authority, it became also liable to pay his wages and emoluments for the months of February to April 1959. Except for this modification of the order passed by the Labour Court the award stands. The appeal fails and is dismissed with costs, such costs being one hearing fee only.
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Y.P.

*Appeal dismissed.*