



**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

S.B. Civil Second Appeal No. 565/1999

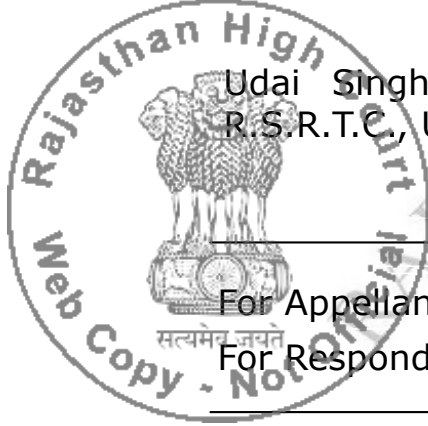
1. Rajasthan State Road Transport Corporation Through Its Managing Director, Parivahan Marg, Chomu House, Jaipur
2. Regional Manager, Rajasthan State Road Transport Corporation, Udaipur
3. General Manager Traffic, RSRTC, Jaipur

----Appellants

Versus

Udai Singh Kumawat S/o Shri Jabbar Singh Ex-Conductor,  
R.S.R.T.C., Udaipur

----Respondent



For Appellant(s) : Mr. Jai Lodha  
For Respondent(s) : None

**HON'BLE MR. JUSTICE SUDESH BANSAL**

**Judgment**

**JUDGMENT RESERVED ON : 15/03/2022**  
**JUDGMENT PRONOUNCED ON : March 22<sup>nd</sup>, 2022**  
**BY THE COURT:**

1. Appellant-defendant Rajasthan State Road Transport Corporation (hereinafter referred as "RSRTC") has preferred this second appeal under Section 100 CPC, assailing judgment and decree dated 7.7.1999 in Appeal No.271/1996 passed by Additional District Judge, No.8, Jaipur City, Jaipur affirming the judgment and decree dated 5.4.1991 passed by Munsif and Judicial Magistrate No.3, Jaipur City, in Civil Suit No.842/1987 whereby while termination order of respondent plaintiff (hereinafter "plaintiff") was declared as illegal, void and violative to principles of natural justice, he has also been declared entitle for back wages and monetary benefits from date of termination i.e. 21.07.1983.



2. The facts of case are that plaintiff was appointed on the post of Conductor, after following regular mode of recruitment process but later on his services were terminated by defendant RSRTC vide order dated 21.07.1983 during his probation period. The termination was made on account of remarks against plaintiff that he was carrying nine passengers and 240 Kg luggage without tickets. Plaintiff preferred an appeal against termination order to Appellate Authority who dismissed the appeal on 28.7.1984. Plaintiff filed a civil suit for declaration, challenging termination order dated 21.07.1983 as also order of Appellate Authority dated 28.7.1984, alleging inter alia that his termination is stigmatic and he has been terminated from service without conducting any proper enquiry as also without giving any opportunity of hearing on alleged charges of carrying passengers and luggage without tickets. Plaintiff prayed for declaring termination order and order of Appellate Authority as illegal and void and claimed for his reinstatement with all consequential benefits and monetary benefits.

3. The RSRTC failed to file written statement despite several opportunities. However, opposed the suit of plaintiff claiming that plaintiff was a probationer and no enquiry was required to be conducted before removal of plaintiff. Other objections as to the Civil Court does not have jurisdiction, were also raised.

4. The trial Court recorded evidence of both parties. Plaintiff appeared as witness and produced documents to prove that his termination was made illegally. He stated that his termination is stigmatic and was passed without conducting enquiry and without giving any opportunity of hearing, therefore, termination is ex



facie illegal and in violation to principles of natural justice. In rebuttal RSRTC examined Dw.1 Umesh Chand Bhatt.

5. The trial Court after appreciation of evidence on record concluded that the termination of plaintiff from service is not simpliciter, but because of stigmatic remark. It was found that on 29.6.1983, while plaintiff was on duty as Conductor, the bus was inspected and during inspection stigmatic remarks were made, on the basis of which the plaintiff's services were terminated. The plea of RSRTC that it is not a case of removal of plaintiff from service, but is a simple case of non confirmation of plaintiff due to his non satisfactory service during probation period, was not found valid. The Trial Court relied upon that the clause 13 of the Standing Orders of RSRTC, regarding removal of probationer without enquiry has been held as ultra vires by Full Bench of this High Court in case of **Bhanwar Lal Vs. RSRTC [1984 RLR 619]**. Thus, the trial Court observed that since termination of plaintiff is stigmatic and no enquiry was conducted, no opportunity of hearing was provided, no principle of natural justice was followed, thus, impugned termination order is illegal and void. Accordingly, the trial Court allowed plaintiff's suit declaring the termination order and order of Appellate Authority as illegal and void. The trial Court directed to give monetary benefits to plaintiff from the date of his termination.

6. Defendants preferred first appeal against judgment and decree of trial Court dated 5.4.1991, which was decided by Appellate Court vide judgment dated 7.7.1999 and upheld the judgment passed by the trial court. Hence, the RSRTC is in second appeal.



7. Learned counsel for appellant-defendant has argued that plaintiff was not a permanent employee, but was a probationer, therefore, no enquiry was necessary before his termination. He has argued that Civil court has no jurisdiction to hear the suit.

8. This court on 12-7-2006 framed the substantial question of law "Whether, the Civil Court has jurisdiction to entertain the suit filed by the respondent/ plaintiff?".

9. Heard learned counsel for defendant and perused impugned judgment passed by the trial court as affirmed by the first appellate court, as also record of the case.

10. As far as nature of termination as simpliciter or stigmatic is concerned, both Courts have concurrently held on the strength of oral or documentary evidence that the termination was stigmatic. The services of regular appointed employee, though on probation, cannot be terminated without enquiry and without providing an opportunity of hearing and explain the charges against him. The fact finding of two courts below are based on appreciation of evidence and no illegality or perversity has been pointed out in such fact findings, so as to give rise any question of law much less substantial question of law.

11. As far as the question of law that civil court has jurisdiction to entertain the suit is concerned, such issue has been considered and decided by the Apex Court in **Rajasthan State Road Transport Corporation Vs. Bal Mukund Bairwa [(2009)4 SCC 299]** and it has been held that where no enquiry has been conducted, there would be violation statutory Regulations as also right of equality as contained in Article 14 of the Constitution of India. In such a situation a civil suit will be maintainable for the





purpose of declaration that termination of service was illegal and consequences flowing therefrom. Therefore, the question of law relating to maintainability of suit is answered in negative.

12. There is no substance in question of law as raised by defendant. The Hon'ble Apex Court has held in case of **Kondiba Dagadun Kadam Vs. Savitribai Sopan Gujar [(1999)3 SCC 722]** that question of law which has already been decided by a larger Bench of the High Court concerned, or by the Privy Council, or by the Federal Court or by the Supreme Court, mere wrong application on facts of a particular case does not create another substantial question of law. In such view of the matter there is no substantial question of law in instant matter.

13. Similarly the question of law relating to entitlement of plaintiff for backwages from the date of his termination is also valid in view of the judgment of the Apex Court in case of **Bal Mukund Bairwa (supra)**. In the opinion of this court, both courts have not committed any illegality or jurisdictional error in awarding backwages to plaintiff from the date of his termination order and decreeing plaintiff's suit as a whole. Thus, this question of law is also answered in negative.

14. In case of **Umerkhan Vs. Bismillabi [(2011)9 SCC 684]** Hon'ble Supreme Court has propounded that if a second appeal is admitted on substantial question of law, while hearing second appeal finally, can re-frame substantial question of law or can frame substantial question of law afresh or even can hold that no substantial question of law involved, but the High Court cannot exercise its jurisdiction of Section 100 CPC without formulating substantial question of law.



15. In the present case substantial questions of law as framed have been considered and this court is of the opinion that all are essentially either question of facts or have already been settled by way of judicial precedents. Thus, in this second appeal, no substantial question of law involved. Accordingly, the second appeal is not liable to succeed. Consequently, the same is hereby dismissed.

16. Any other pending application(s), if any, also stand(s) disposed of.

17. Record of courts below be sent back forthwith.

(SUDESH BANSAL),J

Am/82

