

[IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

The Hon'ble Justice Tapabrata Chakraborty
And
The Hon'ble Justice Partha Pratim Roy

FMA 288 of 2019
Sri Jiwan Bahadur Thapa
Vs.
Calcutta State Transport Corporation & Ors.

For the Appellant	:Mr. Manas Kumar Ghosh, Adv., Ms. Susmita Dey (Basu), Adv., Mr. Kaustav Ghosh, Adv., Mr. Antarik Dawn, Adv.
For the Respondents	:Mr. Ayan Banerjee, Adv., Ms. Debasree Dhamali, Adv.
Heard on	: 22.09.2026.
Judgment delivered on	: 07.10.2026

Partha Pratim Roy, J.:

1. The instant appeal has been preferred challenging an order dated 07.12.2018 passed by the learned Single Judge in the writ petition being WP 13769 (W) of 2010.

2. Shorn of unnecessary details the facts are that the writ petitioner, namely, Jiwan Bahadur Thapa (in short, Jiwan) was engaged as a Trainee

Route Driver-cum-Conductor *vide* memo dated 13.09.2000 issued by the respondent no.4 in the Calcutta State Transport Corporation (hereinafter referred to as CSTC). Upon satisfactory completion of training, Jiwan was appointed provisionally as Route Driver-cum-Conductor *vide* memo dated 18.10.2004 issued by the respondent no. 5 and was allotted batch no. 4936 stating *inter alia* that he would be on probation initially for a period of one year which may be extended by one year and '*will be deemed to be confirmed in service on satisfactory completion of probationary period*'. Such service was thereafter confirmed and his appointment with effect from 18.10.2004 and his retirement with effect from 30.04.2024 was certified *vide* memo dated 23.08.2005 issued by the Administrative and Personnel Officer. About six years thereafter Jiwan was terminated from service *vide* memo dated 07.04.2010 issued by the respondent no. 5 in terms of a memo dated 06.04.2010 issued by the respondent no. 4 and in the statutory appeal preferred by Jiwan, the termination order was confirmed and the order was communicated *vide* memo dated 18.05.2010. Challenging *inter alia* the termination order and the order passed by the Appellate Authority and seeking a direction towards reinstatement and back wages, Jiwan preferred the writ petition.

3. Upon contested hearing, the learned Single Judge disposed of the writ application by an order dated 07.12.2018 directing the respondents to pass a reasoned order furnishing full and comprehensive grounds as to why Jiwan was found unsuitable after granting an opportunity of hearing and allowing

him to furnish documents in support of his stand. However, the learned Single Judge was not inclined to interfere with the order of termination.

4. Mr. Ghosh, learned advocate appearing for the appellant submits that Jiwan was appointed to the post of Route Driver-cum-Conductor under CSTC and in the letter of appointment, it was categorically mentioned that his service would be guided by CSTC Employees' Service Regulations (hereinafter referred to as the Regulations). Upon successful completion of the maximum probationary period of two years, Jiwan became a permanent employee in terms of Regulation 17 A of the said Regulations which categorically provides that *'An employee who successfully completed the period of probation referred to in Regulation 17, shall be deemed to be a permanent employee'*. Such permanent appointment of Jiwan could not have been interfered with without following the provisions of Regulation 39 of the said regulations, which *inter alia* provides that no order of dismissal shall be passed unless the employee is informed in writing, of the grounds on which it is proposed to take action and such grounds shall be reduced to the form of definite charges and shall be communicated to the employee together with statement of allegations and he shall be permitted to put in a written statement and shall also be granted an opportunity of hearing.

5. He argues that the procedure prescribed in Regulation 39 is mandatory and it may not be followed only when the employee has absconded. The order of termination has been passed without following the said procedure and is thus not sustainable in law. The Regulations have to be strictly construed and

no direction can be issued in contravention of the provisions of the Regulations. At this juncture, it would be profitable to refer to the well-known proposition of law that the Corporation has no power to do anything; unless those powers are conferred on it by the statutes, which creates it.

6. He submits that prior to issuance of the order of termination neither the charges were communicated nor any opportunity of hearing was afforded to Jiwan. For non-compliance of the mandatory conditions, the steps taken by the respondents/authorities for terminating the service of Jiwan is void in the eyes of law.

7. He argues that Jiwan has been deprived of knowing the reasons which may have weighed with the Appellate Authority to approve the order of termination. The manner in which the approval has been granted leaves much to be desired. Reasons introduce clarity in an order. On plainest consideration of justice, the Appellate Authority ought to have set forth its reasons, howsoever brief, in its order. The absence of reasons has rendered the order unsustainable.

8. He contends that though the learned Single Judge directed the authorities to comply with the provisions of natural justice but refused to set aside the order of termination itself on the rudiments of a purported observation that *‘as the nationality of the petitioner is itself disputed, this court is not inclined to interfere with the order of termination’* being oblivious of the proposition that suspicion, however high may be, can under no circumstances be held to be a substitute for legal proof. Such arguments, as advanced, were

glossed over by the learned Single Judge and no finding was returned on the same and such infirmities warrant interference in the present appeal.

9. Mr. Banerjee, learned advocate appearing for the respondents submits that from the appointment letter dated 18.10.2004 issued by the respondent no.5 and the memo issued prior thereto on 16.10.2004 by the respondent no.4 it would appear that the appointment was subject to police verification of his antecedents and character. Regulation 16 categorically provides that a candidate shall ordinarily be appointed after verification of his character or antecedents and where such verification cannot be completed before a candidate is appointed, he shall be appointed subject to such verification. In view of such conditions in the contract between the authorities and Jiwan, the provisions of Regulation 17A would not be applicable.

10. Drawing the attention of this Court to a memo dated 02.12.2010 issued by the Special Superintendent of Police to the respondent no.4, Mr. Banerjee submits that upon verification of Jiwan's educational qualification and date of birth it could not be substantiated as no records in the name of the candidate were available at the concerned school and that his national status remained questionable and the matter was referred to the Assistant Secretary to the Government of West Bengal, Home (Poll) Department, who in turn *vide* memo dated 16.11.2009 observed '*Government consider Shri Jiwan Bahadur Thapa UNSUITABLE*' and accordingly the order of termination was issued and there is no error in such decision making process.

11. We have heard the learned advocates appearing for the parties at length and we have given our anxious consideration to the facts and circumstances of the case.

12. The primary issues that can be culled out from the adversarial arguments advanced are as to whether Jiwan could have been terminated without complying with the provisions of Regulation 39 and as to whether such termination could have been effected treating Jiwan as an un-confirmed employee in spite of the provisions under Regulation 17A and as to whether the period prescribed for verification can continue indefinitely.

13. Indisputably, Jiwan earned the status of a permanent employee in terms of Regulation 17A upon successful completion of training and the probationary period of two years. Such status was also accepted by the respondents as would be explicit from the memo dated 23.08.2005 issued by the Administrative & Personnel Officer Garia Depot. certifying *inter alia* that ‘Sri Jiwan Bahadur Thapa, Driver No. 4936 is an employee of Garia Depot under the establishment of CSTC since his appointment as Driver with effect from 18.10.2004’ and that ‘as per office records he will be superannuated from service on attaining the age of 60 years with effect from 30.04.2024’. Such a permanent employee can only be terminated following the provisions of Regulation 39. Such procedure was not followed by the respondents and in the absence thereof, Jiwan could not have been terminated about four years after completion of the probationary period of two years on the basis of a suspicion expressed in a verification report issued by the Special Superintendent of

Police, which is six years after Jiwan's initial appointment in the year 2004. No grounds were assigned and no documents were provided to Jiwan based on which such suspicion arose. The decision towards termination was adopted without even grant of any opportunity of hearing.

14. The argument of Mr. Banerjee that as a police verification was pending, Jiwan cannot seek protection on the basis of the provisions of Regulation 17A, is not acceptable to this Court since such verification cannot proceed for an indefinite period of time and that too without any explanation as to why such purported verification continued beyond a period of more than four years after completion of the probationary period moreso when the learned Single Judge arrived at a finding that *'there are no two opinions on the question that there is deemed confirmation in the facts of the case'*.

15. The learned Single Judge was also of the opinion that *'A delay of six years in verifying antecedents and a subsequent termination without a lawful enquiry is indeed in violation of Article 311 of the Constitution of India.'* However, surprisingly, the order of termination was not interfered with and the matter was relegated to the respondents for consideration on the rudiments of a suspicion as regards Jiwan's nationality and schooling. The learned Single Judge erroneously proceeded being oblivious of the proposition that an order of remand by the Court in writ jurisdiction effectively nullifies and supersedes the original order, as it requires a subordinate authority to rehear and re-examine the matter afresh.

16. For the reasons discussed above, the order dated 07.12.2018 passed by the learned Single Judge in the writ petition being WP 13769 (W) of 2010, the orders of termination dated 06.04.2010 and 07.04.2010 issued by the respondent nos. 4 and 5 respectively and the order passed by the Appellate Authority dated 13.05.2010 communicated *vide* memo dated 18.05.2010 are set aside.

17. For more than fifteen years Jiwan had remained trapped in a purgatorial legal rigmarole, moving back and forth between the learned High Court and the respondents. The order of termination was passed on 06.04.2010 and during pendency of the litigation Jiwan attained the age of retirement on 30.04.2024. He has been out of employment for more than fifteen years, which on its own merit, is a matter of great suffering, agony and ignominy. This is an appropriate case for this Court to soothe the wounds and agonies by putting an end to the already protracted legal proceedings.

18. In the totality of the facts and circumstances of the case, it would not be proper for us to grant back wages to Jiwan for the period during which he has not worked. However, to serve the ends of justice we direct the respondents to reinstate Jiwan from the date of termination and to provide notionally the benefit of continuity of service till the date of his retirement. The said period shall be counted for calculating the pensionary benefits and disbursement of the same along with the actual arrears of pension and other consequential

benefits in favour of Jiwan within a period of eight (8) weeks from the date of communication of this order.

19. There shall, however, be no order as to costs.

20. Urgent certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Partha Pratim Roy, J.)

(Tapabrata Chakraborty, J.)