
(2015) 03 UK CK 0035

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 1620 of 2004

B.K. Bansal

APPELLANT

Vs

Uttaranchal Road Transport Corporation and Others

RESPONDENT

Date of Decision : 11-03-2015

Acts Referred:

Citation : (2015) LabIC 2354 : (2016) 1 SCT 316

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Lalit Belwal, for the Appellant; K.P. Upadhyay, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Sudhanshu Dhulia, J.

1. Mr. Lalit Belwal, Advocate, present for the petitioner. Mr. K.P. Upadhyay, Advocate, present for the respondents.

2. This writ petition was dismissed for non prosecution vide order dated 06.12.2012. Now an application (CLMA No. 885 of 2015) for recall of the order dated 06.12.2012 and restoration has been filed by the petitioner along with an application for condonation of delay in filing the restoration application.

3. On the grounds urged and in the interest of justice, the application for condonation of delay (CLMA No. 885 of 2015) in filing the recall application is allowed. Delay in filing the recall application is condoned. The recall application (MCC No. 64 of 2015) is also allowed. Order dated 06.12.2012 is hereby recalled. The writ petition is restored to its original number.

4. Heard the learned counsel for the parties on the merit of writ petition.

5. The petitioner was a cashier in Uttarakhand Road Transport Corporation, who was posted at Rudrapur Depot. The disciplinary proceedings were initiated against him. Inter alia, there were as many as three charges, such as he had

received security money from 29 contractual conductor @ Rs. 2000/- for each of the contractual conductor, a total sum of Rs. 58,000/-, which was to be deposited in the bank but the petitioner has not deposited it in the bank in time and this amount was used for his personal purpose. There were other similar charges of the same nature against the petitioner.

6. After determination in the inquiry, the punishment proposed against the petitioner was his removal from the service, however, after the reply of the petitioner against this punishment, the appointing authority, considering the long period of service of the petitioner, took a lenient view in the matter and gave a punishment reverting him to the lowest scale on the post of Cashier for a period of five years and also directed to recover the amount of Rs. 58,000/- from the petitioner. Aggrieved, the petitioner has filed the present writ petition.

7. Learned counsel for the respondents Mr. K.P. Upadhyay has defended the order of punishment and submits that already lenient view has been taken in the matter, as all the charges were proved. The learned counsel for the petitioner Mr. J.C. Belwal, on the other hand, contends that firstly as far as the amount is concerned, the same is illegally being recovered from the petitioner, as admittedly the department has not been at loss. Assuming, for the sake of argument (though it is not admitted) that the amount was temporarily withheld by the petitioner, but it was ultimately deposited with the Corporation and, therefore, there is no monetary loss to the Corporation. The second argument of the petitioner is that a major penalty has been imposed against him. Out of the three major penalties, which can be imposed under Regulation 63(5) of the Uttar Pradesh State Road Transport Corporation Employees (Other than Officers) Service Regulations, 1981 reads as under:--

"63. Penalties.--The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on an employee, namely--

Minor Penalties

(1).....

(2).....

(3).....

(4).....

Major Penalties

(5) Reduction to a lower grade or post or to a lower stage in a time scale;

(6) Removal from service which shall not be a disqualification for future appointment;

(7) Dismissal from service which shall be disqualification for future appointment.

8. The penalty which is provided in clause (5) of Regulation 63 of the Uttar

Pradesh State Road Transport Corporation Employees (Other than Officers) Service Regulations, 1981 has been imposed against the petitioner which is reduction to a lower grade or lower stage in a time scale.

9. The submission of the learned counsel for the petitioner is that the Regulations itself says that one can be posted to a lower stage in a time scale, therefore, at the most the petitioner could have been reduced to the next lower scale whereas in the present case the petitioner has been reduced to a lowest pay-scale. To strengthen his argument, he placed reliance to administrative orders, firstly order dated 30th July, 1993, which is of the Managing Director wherein it has been stated that the reduction to the lowest pay-scale should not be done and thereafter another order is 6th November, 2006 reiterating the order dated 30th July, 1993.

10. In view of this Court, the administrative instructions has no legal force. These are Regulations which are absolutely clear that one can be reduced to a lower pay-scale, which does not mean only to the next lower scale. In view thereof, if an employee is reduced to the lowest pay-scale of the post, there is no anomaly in the same and such a penalty can be imposed, as such penalty is provided in the Regulations itself. Therefore, the reliance on the administrative orders is totally misplaced and the petitioner shall get no benefit out of it.

11. The charges against the petitioner were found proved. There is no anomaly in the procedure or any violation of the natural justice or fair play. No interference therefore on the findings can be made by this Court.

12. As regards the quantum of punishment, it is also not disproportionate to the charges. However, on the petitioner being asked to deposit Rs. 58,000/-, this Court is in agreement with the learned counsel for the petitioner that there is no monetary loss to the Corporation, as it is admitted that the amount was deposited by the petitioner, though keeping of the amount amounts to a temporary embezzlement. As far as the recovery against the petitioner is concerned, since the petitioner was already punished, therefore, it was not proper to recover the amount of Rs. 58,000/- from the petitioner.

13. In view thereof, in case the amount has not been recovered from the petitioner then it shall not be recovered, however, if it has already been done, then the amount recovered from the petitioner will be returned to him within a period of four weeks from the date of presentation of a certified copy of this order before the authority concerned. In view of the above observations and direction, the writ petition stands disposed. No order as to costs.