
(1992) 05 AHC CK 0004

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 17804 of 1990

Ganga Deen

APPELLANT

Vs

U.P. State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 01-05-1992

Acts Referred:

Citation : (1992) 3 AWC 1484 : (1992) 2 UPLBEC 1065

Hon'ble Judges : M. Katju, J

Bench : Single Bench

Advocate : O.P. Kulshrestha, for the Appellant; S.K. Sharma, for the Respondent

Judgement

M. Katju, J.—The Petitioner was a Bus Conductor in the service of U.P. State Road Transport Corporation. He was earlier charge-sheeted vide charge-sheet dated 28-2-1985. Thereafter he was reinstated vide order dated 8-7-87 by the Regional Manager, U.P. State Road Transport Corporation, Meerut vide annexure-2 to the writ petition. In this order it has been stated that the Petitioner has given assurance that he will not claim salary for the period of his unemployment, and taking a lenient view he was reinstated by the said order. Subsequently, the Petitioner was again charge-sheeted vide charge-sheet dated 4-7-1988. In this charge-sheet the charges levelled were that the Petitioner during the course of performing his duty on 1-3-1988 while traveling between Shamli-Baraut lost tickets valuing Rs. 7,671.00, and on 28-2-85 and 8-2-88 was carrying passengers without tickets respectively. A true copy of the charge-sheet dated 4-7-1988 is annexure-1 to the writ petition. The Petitioner submitted his reply in which he stated that as regards the incident of 28-2-1985 he had already been forgiven by order dated 8-7-87. As regards the charge of loss of tickets of the value of Rs. 7671/- the Petitioner stated that while he was conducting the Bus between Shamli-Baraut, when he arrived at Baraut Bus Station, he put his bag containing tickets of the value of Rs. 7671/- near the seat of the Driver and went to get the Bus entered in the Station, and on his return he found his bag missing. He immediately informed the Senior Station Incharge about this, and lodged a

first information report, true copy of which is annexure-3 to the writ petition.

2. An enquiry was held against the Petitioner, true copies of the enquiry reports are annexures-4 and 5 to the writ petition. Subsequently a show-cause notice dated 12-2-90, annexure-6 to the writ petition was given to the Petitioner to which he submitted a reply (annexure-7 to the writ petition). Thereafter the impugned order of removal dated 5-5-1990 (annexure-8 to the writ petition) was passed against which the present writ petition has been filed.

3. Counsel for the Petitioner has contended that he cannot be punished in respect of the incident of 1985 for which he has already been forgiven. This argument is correct in law. If the employer chooses to forgive an employee for some misconduct which he has committed, then subsequently the employer cannot punish him for that incident. I have now to see whether the removal order can be supported on the basis of the alleged misconducts committed in 1988. As regards the loss of Bus tickets, it appears that the Petitioner immediately lodged a first information report at the police station. No doubt this was a serious lapse on the part of the Petitioner, but it was not so serious that his service should be terminated. It was a human error and any human being can commit it. As regards the allegation that on 8-2-1988 the Petitioner was carrying 8 passengers without tickets, it appears that no witnesses were produced by the Corporation in the enquiry held against the Petitioner. Counsel for the Corporation, however, argued that the Petitioner has himself admitted his guilt. This contention is not correct. A perusal of the enquiry report (annexure-5 to the writ petition) shows that the Petitioner has explained in what circumstances there were 8 passengers without tickets. No doubt this was a lapse on the part of the Petitioner, but, in the absence of any evidence against him, I am not inclined to accept that he had deliberately carried passengers without tickets. Hence though I agree that the Petitioner was guilty of negligence the punishment is disproportionate to the offence.

4. Considering the totality of the circumstances I quash the impugned removal order dated 5-5-1990 on the ground that the punishment is disproportionate to the offence. As held by the Hon"ble Supreme Court in *Sardar Singh v. Union of India* AIR 1992 SC 417, the punishment must be proportionate to the offence. Under the circumstances, while quashing the removal order dated 5-5-1990 I direct that the Petitioner will be reinstated within six weeks of production of a certified copy of this order before the Respondent No. 2, but I uphold the finding that the Petitioner was negligent, and hence the Petitioner will not get any back wages until the date of reinstatement, and he is further given the punishment of withdrawal of two increments and a warning that he must act properly in future.

5. With these observations the writ petition is disposed of finally. There is no order as to costs.