
(2004) 05 AHC CK 0152
In the Allahabad High Court
Case No : C.M.W.P. No. 14347 of 1990

Hari Har Narayan Lal

APPELLANT

Vs

Presiding Officer (Peethasin Adhikari), Labour Court and
Others

RESPONDENT

Date of Decision : 11-05-2004

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 10, 4K

Citation : (2004) 4 AWC 3460 : (2004) 102 FLR 797

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Ashok Bhatnagar and S.B.L. Srivastava, for the Appellant; Sameer Sharma, S.C., for the Respondent

Final Decision : Allowed

Judgement

Arun Tandon, J.—Heard Sri Ashok Bhatnagar on behalf of the petitioner and Sri Sameer Sharma on behalf of the respondent Corporation as well as standing counsel on behalf of the respondent No. 1.

2. This writ petition has been filed by Sri H. Lai, who was working as Conductor in the employment of U. P. State Road Transport Corporation at the relevant time.

3. By means of an order dated 23rd May, 1975 the name of the petitioner was scored out from the list of waiting candidates and as a consequent thereto the petitioner was refused to work w.e.f. 25th May, 1975.

4. Feeling aggrieved by the aforesaid action of the employers, the workman raised an industrial dispute. The State Government, in exercise of power u/s 4K of the U. P. Industrial Disputes Act, vide notification dated 23rd April, 1985 referred the dispute for adjudication to the labour court, Varanasi. The dispute as referred reads as follows :

^^D;k lsok;kstdksa }kjk vius Jfed gfggj ukjk;.k yky iq= Jh lsdBk yky ifjpkvd dh

Isok;aas fnukad 23-5-1975 Is lekIr fd;k tkuk rFkk@vFkok oS/kkfud gS A ;fn ugha
rks IEcfU/kr Jfed D;k ykHk@vuqrks" k ikus dk vf/kdkjh gS rFkk fdl vU; fooj.k lfgR
A**

5. The labour court, after affording opportunity of hearing to the parties, by means of the award dated 12th July, 1988 held that the dispute as raised by the workman was legally not justified and the workman is not entitled to any relief whatsoever. Hence, the present writ petition.

6. On behalf of the petitioner It is contended that before the labour court it was specifically stated that the name of persons junior to petitioner have been maintained in the waiting list, while his name has been scored out as a result whereof he was refused employment. Such an action of the respondents is wholly arbitrary.

7. In reply to the said contention raised by the workman, it was alleged by the employers U. P. State Road Transport Corporation that since the work and conduct of the petitioner, while discharging his duties as Conductor, was not satisfactory specifically in view of the fact that on 7.8.1974 when a surprise checking was carried out, of the vehicle, In which the petitioner was travelling as Conductor, it was found that two persons were sitting on the roof of the vehicle without any passenger ticket having been issued In their favour and further goods to the extent of 5.5. man was being carried in the said vehicle without any luggage ticket having been issued. On the basis of the aforesaid incident the employers justified their action of removing the name of petitioner from the waiting list.

8. It is contended before this Court on behalf of the workman that since his name has admittedly been removed from the wait list depriving him of his rights from employment like any other candidate of wait list only because of the alleged charges pertaining to the incident which has took place on 7th August, 1974, such an action could not be taken without holding any inquiry against the petitioner and without affording opportunity of hearing.

9. On behalf of the respondent employers it is contended that the reference as made by the State Government was confined to the effect as to whether the services of the workman were legally terminated on 23.5.1975 or not. Since It has been admitted by the workman before the labour court that he worked upto 25.5.1975, the reference became bad and the labour court was not competent to adjudicate upon the said reference in view of the admitted position that the workman has worked subsequent to 23.5.1975. It is stated that the labour court cannot travel beyond the scope of the reference. In support of the said contention the respondent has placed reliance upon the judgment of the Hon"ble Supreme Court in Firestone Tyre and Rubber Company of India (P) Ltd. Vs. Workmen Employed, represented by Firestone Tyre Employees" Union, as also upon the judgment of this Court in M/s. Sahakari Ganna Vikas Limited v. Presiding Officer 1993 (66) FLR 744 . In the alternative it is contended that even

if it is presumed that the labour court has jurisdiction to try the dispute in the facts of the case, the award of the labour court is legal and valid inasmuch as it is not necessary to hold any enquiry in respect of the conduct of the petitioner before scoring out his name from the wait list. Inasmuch as he was only a temporary employee and since the order issued against him did not contain any stigma, in view of the judgment of the Hon''ble Supreme Court in *Dhananjay Vs. Chief Executive Officer, Zila Parishad, Jalna, and Union of India (UOI) and Others Vs. A.P. Bajpai and Others*, . The judgment of the Hon''ble Supreme Court in the case of A. P. Bajpai is being relied upon for the proposition that if the order of termination is simplicitor, the allegations made In the counter- affidavit cannot be looked Into by the Court for Inferring that the termination order was stigmatic.

10. The contention raised on behalf of the petitioner has force. The background in which the name of the petitioner has been scored out from the wait list, while retaining the names of persons junior to petitioner is that on particular date when surprise checking was carried out of the vehicle, in which the petitioner was travelling, as conductor certain misconducts have been noticed. Admittedly, in respect of the said charges no inquiry has taken place. Since the aforesaid charge was the foundation for passing the order striking of the name of petitioner from the wait list, it was mandatory for the employers to have held an enquiry and to have come to the conclusion after free and fair opportunity to the workman concerned that the said misconduct was proved for the purposes of justifying their action. The judgment relied upon by the employers, in *Dhananjay Vs. Chief Executive Officer, Zila Parishad, Jalna, ,* more or less supports the aforesaid contention raised on behalf of the petitioner.

11. The Hon''ble Supreme Court has specifically held that in the cases where misconduct of the employee was not the foundation for passing the termination order, inquiry is not necessary. Since this Court has already recorded a finding, referred to above, that the foundation for removing the name of the petitioner from the wait list was the misconduct attributed to him in respect of the incident which has taken place on 7th August, 1975, the respondents cannot take any punitive action against petitioner without holding any enquiry.

12. The judgment relied upon by the petitioner employer, in *Union of India (UOI) and Others Vs. A.P. Bajpai and Others*, , is also clearly distinguishable inasmuch as before the labour court the respondents had justified their action only on the basis of the said incident, no other facts were pleaded nor have been established by the employers. In such circumstances, it is established beyond doubt that the sole basis for the adverse action taken against the petitioner was the misconduct which is said to have been committed by him in respect of the incident referred to above.

13. In view of the aforesaid, the action of the respondent employers, removing the name of the petitioner from the wail list, was punitive in nature. The foundation for the adverse action is the misconduct. Such an action could not have been taken without holding an enquiry into the charge. The order as such,

cannot be legally sustained.

14. The contention raised on behalf of the respondent employers that it is admitted by the workman that he had worked subsequent to 23.5.1975. i.e., the date beyond the date mentioned in the reference order, the reference itself has become bad in view of the judgment of the Hon"ble Supreme Court, referred to above, is also not correct inasmuch as from the evidence, which have been brought before the labour court It is established beyond doubt that the name of the petitioner was scored out from the wait list on 23rd May, 1975, which is foundation for refusing work to petitioner after gap of only two days thereafter, i.e., with effect from 25th May, 1975.

15. In the circumstances when the State Government made reference with regard to action taken by the employers on 23.5.1975, it was within the competence of the labour court to decide the issue as to whether striking off the name of petitioner w.e.f. 23.5.1975 and the consequent action taken thereto, to refuse work w.e.f. 26.5.1975, was justified or not.

16. It is needless to point out that the action taken on 26th May, 1975 was only consequent to the action of the employers taken on 23.5.1975, whereby name of the workman was scored out from the wait list. The judgment relied upon by the counsel for the petitioner in Firestone Tyre and Rubber Company of India (P) Ltd. Vs. Workmen Employed, represented by Firestone Tyre Employees" Union, is well established principle. However, the said principle does not in any way, vitiate the reference or adjudication made by the labour court in view of the fact as noticed above.

17. Lastly it has been contended on behalf of the employers that in the circumstances it was still open to employers to bring home the charge against the workman by leading evidence before the labour court itself for justifying their action and for that purpose the labour court is still under obligation to afford an opportunity to the employers.

18. The said contention raised on behalf of the employers has to be accepted. Even after coming to conclusion that the name of the respondent workman has been scored out by way of penal action. It is open to employers to justify their action by cogent evidence before the labour court even in the cases where no enquiry was held by the employers earlier. The action taken was bona fide action and the charge can still be established by cogent evidence before the labour court.

19. It has been pointed out by the petitioner that necessary evidence was led before the labour court which has been noticed by the labour court for coming to conclusion that the charge as levelled against the workman was proved.

20. The said contention raised by the petitioner is not borne out from the award of the labour court although the labour court has noticed some evidence which have been led by the employer but the labour court has not decided the question

as to whether the evidence led by the parties for striking out the name has been proved or not. In such circumstances, the contention raised by the petitioner cannot be accepted.

21. In view of the aforesaid, the writ petition is allowed. The award of the labour court dated 12th July, 1988 is hereby set aside.

22. The matter is remanded to the labour court to decide the dispute afresh in accordance with law after affording an opportunity to the parties to lead evidence. Since the dispute is very old, the labour court may proceed to decide the dispute after remand at the earliest possible, preferably within a period of four months from the date a certified copy of this order is produced before it.