

(1989) 09 AHC CK 0004

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 6933 of 1988

Indra Dutt Tripathi

APPELLANT

Vs

U.P. State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 05-09-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2

Uttar Pradesh State Road Transport Corporation Act, 1950 — Section 12, 3, 34, 5

Citation : (1990) 1 AWC 290

Hon'ble Judges : S.H.A. Raza, J; Palok Basu, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Palok Basu, J.—Indradutt Tripathi, the Petitioner, has challenged the order dated 26-8-1988 (Annexure-30) to the writ petition whereby he has been dismissed from the post of Assistant Transport Engineer (Sahayak Parivahau Abhiyanta/ Sahayak Kshetriya Prabandhak Pravidhik), then working as Depot-Incharge, U.P. State Road Transport Corporation, (for short the U.P.S.R.T.C.) Rath depot, district Jhansi.

The charges against the Petitioner were as follows:

1. While being posted as Depot Incharge in Ballia, the Petitioner had entered into a conspiracy with the private bus operators so much so that on 9-2-1985, the Petitioner facilitated the manhandling and "Gherao" of Sri. P. Swaroop, the Deputy Manager, and Sri. B. Pathak, the Regional Manager, and thereby failed to discharge his duties and responsibilities and thus committed grave misconduct.
2. Ever since the Petitioner took over as in-charge of the Gonda Depot in August 1985, the meter reading of the buses started receding. In July 1985, the meter reading was 3.10 lacs, which receded to 2.69 lacs in July 1986. As compared to this, all other depots within Faizabad region had registered 25% increase.
3. During his tenure, the Petitioner did not perform regularly route checking job,

started operating buses without valid permission or justification, disregarded the directions of the Regional Manager, did not participate in the convened meetings, flouted the orders of the superior officers and exhibited carelessness and arbitrariness in discharge of his duties.

4. The Petitioner conveyed a wrong information through his letter dated 7-2-1985 that permit numbers 20, 21 and 22 had been issued on the Ballia-Beria-Sulemanpur, Ballia-Beria-Maajhi and Ballia-Beria-Lalganj routes, whereas the truth was that permit Nos. 21 and 22 were never issued from the office and because of the said wrong information, in an order in Writ Petition No. 11586/1985 of the High Court, the said permits were tagged together.

2. The relevant facts are that on 9-7-1987 a show cause notice was issued to the Petitioner. Though the Petitioner had received the said charges and show cause notice, he was not putting in appearance before the Enquiry Officer, namely Sri. R.S. Yadav, who was appointed as such by the U.P.S.R.T.C. for conducting the departmental enquiry. The Petitioner instead had sent a reply to the Commissioner that he should be informed:

(i) as to on what post Sri. R.S. Yadav, the enquiry officer was working and what was his pay-scale and

(ii) that since the matter concerning his employment was subjudice in the Court, therefore, the departmental proceedings should not be held.

3. The result was that not only the Petitioner did not reply to the chargesheet and the show cause notice but he even did not participate in the departmental enquiry conducted by the said Sri. R.S. Yadav. It may be noted that it is not denied that the charges framed by the enquiry officer and the show cause notice were duly served upon the Petitioner. It has further not been denied that the Petitioner voluntarily, on his own understanding of the situation, absented from participating in departmental proceedings and let the order dated 26-8-88 be passed against him. Moreover, the Petitioner has himself filed Annexure-21 and 23 the letters written by the enquiry officer Sri. R.S. Yadav. Annexure 21 shows that no further time was to be allowed to the Petitioner, if he did not send a reply by 21-9-1987. Annexure-23 shows that inspire of the fact that the officer concerned of the U.P.S.R.T.C. had already written to him that the pendency of the so called litigation about his employment did not in any way affect the departmental proceedings or its continuance, the Petitioner was not replying to the charges or participating in the proceedings, and it was clarified by Sri. Yadav in that letter that if by 25-4-1988, the Petitioner did not participate or file his reply, he would be forced to proceed ex-parte in the matter.

4. We have heard Sri. V.K. Srivastava, learned Counsel for the Petitioner and Sri. S.K. Kalia, learned Standing Counsel on behalf of the U.P.S.R.T.C. and have gone through the materials produced along-with the affidavits. But before we enter into the merits of the respective arguments in the writ petition, we have to decide an application dated and moved on 4-8-1989 by Sri. V.K. Srivastav,

learned Counsel for the Petitioner, who told the Court that he has been asked by his client Sri. Indradutt Tripathi to file the same.

5. The application dated 4-8-1989 is accompanied by an affidavit sworn on 4-8-1989 at 9.30 A.M. The relevant part of the prayer contained in this application is as under:

...Prayed that the Hon. Court may graciously be pleased to stop the final hearing of the aforesaid writ petition. It is further prayed that an order for the compliance of the orders dated 8-3-1989 passed by Hon. Justice Mr. D.S. Bajpai and the order dated 20-4-1989 passed by Hon. Justice K.C. Agrawal (at present the Hon. the A.C.J.) be passed and the final hearing be done thereafter in the interest of justice.

6. The record tells us that this writ petition was filed on 6-9-1988 before a Division Bench and was admitted on 22-2-1989. In the ordersheet dated 8-3-1989 there is an order of a learned Single Judge indicating that the interim matter was directed to be listed before him on the expiry of two weeks after service on opposite party no 3. However, on an application dated 28-3-1989 filed by opposite party No. 1 and 2, the Hon. the Chief Justice (Hon. B.N.K.C.J.) passed an order on 7-4-1989 that the writ petition itself be listed for hearing before the, appropriate Bench in the first week of May 1989. In paragraphs 5, 6, 7 and 8 of this application it was stated that neither the case was shown in the cause list of 8-3-1989 nor was any supplementary notice issued concerning the listing of the said case before Hon. the Single Judge on 8-3-1989 and thus they had no knowledge of the said order dated 8-3-1989. It was, therefore, prayed by them that the writ petition itself be posted for final hearing. It appears that the Petitioner's Advocate Shri V.K. Srivastav moved an application dated 7-4-1989 praying that a date in the "stay-matter" may also be fixed. On this, Hon. the Chief Justice (Hon. B.N.K., C.J.) passed an order on 13-4-89 directing it to be listed before Hon. B.L. Loomba, J. But on 7-4-1989 itself, the Petitioner's Advocate Sri. V.K. Srivastava, had moved another application before Hon. B.L. Loomba, J. praying that the record of the Writ Petition be directed to be placed before the learned Single Judge, who passed the order dated 8-3-1989. This application was directed by Hon.ble Loomba, J. to be listed before Hon. Senior Judge (Lucknow Bench) for orders. It was sought to be made out in this application that the matter was "tied up" to that learned Single Judge.

7. Yet another application was moved by Sri. V.K. Srivastav, Advocate, on behalf of the Petitioner on 20-4-1989, which was supported by an affidavit containing five paragraphs. It was prayed that the record of the writ petition be sent for and a convenient date be fixed. In paragraph 2 of the affidavit it was stated that on 22-2-1988 the matter had come up for bearing before the learned Single Judge, who had passed the order on 8-3-1988 after hearing the Counsel for the applicant directing the case to be listed before him immediately after two weeks. In paragraph 5 of the affidavit it was grayed that the matter be listed for hearing of the stay matter. In the other two paragraphs it was averred that the Petitioner

is out of employment, therefore, suffering a lot. Neither in the body of the application nor in the affidavit, is there any averment as to the existence of various orders, including that of the Hon. the Chief Justice dated 7-4-1989. On this application Hon. K.C. Agarwal, J. (now Hon. the A.C.J.) Directed on 20-4-1989 that since the learned Single Judge concerned was sitting in a Bench that application could not be directed to be listed before him immediately but it may be listed before him when he sits singly. On 21-4-1989 yet another application was moved, this time by the Petitioner Indradutt Tripathi himself before the Registry. A detailed report by the Registry was forwarded. From another noting On the said application, it appears that the said application was shown to the learned Single Judge (as desired by the said Hon. Judge) who had passed the order dated 8-3-1989. It was pointed out in the said report that the matter has to be listed now for hearing before the appropriate Bench as per the Hon. the Chief Justice's order dated 7-4-1989. From the order sheet dated 1-5-89 it appears that Hon. K.C. Agarwal J. had directed that the order of the Hon. the Chief Justice dated 7-4-1989 be complied with and thus recalled his order dated 20-4-1989. The matter was then listed for hearing before a Division Bench on 4-5-1989, when there was an illness-slip of Sri. V.K. Srivastav and the case could not be taken up. Again an application was moved by Sri. V.K. Srivastav on 19-5-1989 wherein the prayer was repeated that the matter may be listed before the learned Single Judge who had passed the order on 8-3-1989. On this the Hon the Senior Judge Lucknow Bench passed an order that the case itself has to be listed as per the order of the Hon. the Chief Justice. The learned Counsel for the Petitioner Sri. V.K. Srivastav has made an endorsement thereon that the case may be listed for hearing in the month of July 1989. At this, the Hon. the Senior Judge, Lucknow Bench, passed an order "let that be done". Then on 27-7-1989 the matter was directed to be listed before this Bench for hearing by the Hon. Senior Judge.

8. On 2-8-1989 the matter was listed before us when the cause list wrongly showed the name of the learned Counsel for the Petitioner as Sri. U.K. Srivastav. The Bench was again formed on 3-8-1989 when Sri. V.K. Srivastav the learned Counsel for the Petitioner was present and we heard him in support of this writ petition. After he had concluded his arguments, we proceeded to hear Sri. S.K. Kalia in reply. When this Bench again assembled on 4-8-1989, this application was moved by Sri. V.K. Srivastav, Advocate, which was signed by the Petitioner. It appears to us that this application dated 4-8-1989 of Indradutt Tripathi is without any force and has been moved with some ulterior purpose. We may incidentally mention here that but for the applications referred to by us, no other application exists on the record.

9. It is a mystery as to how the matter went before the learned Single Judge on 8-3-1989. Moreover, when the Hon. the Chief Justice has already directed that the petition itself should be heard on merits, we do not see any ostensible reason for the Petitioner to insist only on the stay matter being taken up by a particular Court. We are aghast at the way the things have moved emboldening the

Petitioner to harp with mechanical consistency on his desire that let only the prayer for interim relief be considered by the learned Single Judge who passed the order dated 8-3-1989, and, the writ petition itself should not be heard on merits inspite of the orders of the Hon. the Chief Justice. The affidavits have been exchanged; the matter was already ready for hearing. We are of the considered opinion that the Hon. the Chief Justice was empowered under the Rules of the Court to direct the listing of the petition for final hearing. Similarly, the Hon. Senior Judge was also acting within his powers conferred by the Rules of the Court in directing the listing of the matter for hearing on 2-8-89. In fact, to repeat Sri. V.K. Srivastav, Advocate was heard by us whereafter we had called upon Sri. Kalia to reply. Therefore, the hearing of the matter has rightly been taken up by this Division Bench. Consequently, the application dated 4-8-1989 is dismissed.

10. Sri. V.K. Srivastav, learned Counsel for the Petitioner, has raised four arguments on merits for our consideration:

1. The original post which was held by the Petitioner in the U.P. Roadways could only be filled in by the Government, hence he would be deemed to be an officer of the Roadways department and the Service Regulations framed u/s 34(i) of the Road Transport Corporation Act 1950 would not apply to him.

2. The injunction order restraining the opposite party from disturbing the position of the Petitioner being in operation, the impugned order dismissing the Petitioner from service is in the teeth thereof In this connection reliance was also placed upon the supplementary affidavit filed by the Petitioner on 3-10-1988.

3. The order of termination is malafide inasmuch as the opposite party No. 3 who was annoyed and biased as a result of which he has passed the impugned order dated 26-8-88.

4. The appointment of Sri. R.S. Yadav as inquiry officer was void and illegal and therefore the report submitted by him should be ignored. Consequently, the dismissal order passed upon the said report also be quashed.

11. Sri. Kalia has on the other hand refuted each and every ground and argued that for the reasons best known to the Petitioner he has intentionally avoided the departmental proceedings and permitted the matter to go ex-parte being fully conscious of the proceedings. No employee who is charged with serious misconduct can be permitted to bypass .the consequences of a departmental inquiry, its finding and the consequential order by the appointing authority only on the ground that he willfully permits the proceedings and the order to go ex-parte. It was further argued that the Petitioner was appointed by the U.P.S.R.T.C. on 31-10-1977 and therefore, it can not lie in his mouth to say that his appointing authority was the State Government or the Governor. It is further argued that the suit and the effect of the orders bad already come to an end as the U.P.S.R.T.C. had obtained suitable interim orders having moved the High Court through a writ petition. It has further been argued that the Petitioner"s

transfer from Gonda to Rath depot was challenged by him in Writ Petition No. 2078/1987, which had been dismissed by a Division Bench consisting of Hon. K. Nath and Hon. D.S. Bajpai, If. on 3-8-87. It has further been argued that the steps taken by the Respondent No. 3 Sri. V.K. Mittal, Managing Director of U.P.S.R.T.C. from time to time indicate all fairness and go to establish beyond doubt that each and every action was taken by him in accordance with law with all sincerity and sense of justice.

12. In our considered opinion, for the reasons appearing hereinafter, the Petitioner has failed to make out any case for interference with the order of termination passed in pursuance of the inquiry report submitted by the inquiry officer submitted by him after departmental proceedings.

13. There is no denial of the fact that the Petitioner was appointed in the U.P.S.R.T.C. on 31-10-1977 (Annexure-1 to the writ petition) as Assistant Transport Engineer and he was holding the promoted post of Depot Manager when departmental proceedings were initiated. It was a fresh appointment and the Petitioner was not to have any lien nor was he to be treated on deputation. Similarly, no option was to be exercised by him. This power of appointment was exercised by the then General Manager U.P.S.R.T.C. in exercise of his powers conferred by Sections 5 and 12 of the State Road Transport Corporation Act (unamended). It may be noted that U.P.S.R.T.C. came into existence through State Government Order dated 21-7-1972 issued u/s 3 of the Road Transport Corporation Act 1950 which Act was brought into force in Uttar Pradesh w.e.f. 1-4-1972. The State of U.P. framed rules as U.P. State Road Transport Corporation Rules, 1972. These rules have been amended by U.P. Road Transport Corporation Employees' (other than officers) Regulations 1981. These rules and regulations were made applicable to all the employees of the Corporation except those who had come on deputation. These regulations and rules have been upheld while rejecting the challenge to the rules regarding absorption of certain employees known as U.P. Roadways Abolition of Posts and Absorption of Employees Rules First Amendment 1982, which too have been upheld, by a Division Bench of this Court in Civil Misc. Writ Petition No. 3273/1982 decided on 22-5-1989. The learned Counsel for the Petitioner has not been able to point out any rule or regulation under which the Petitioner may be entitled to challenge the right of his own employer to continue with the departmental proceedings in accordance with the regulations framed by it on the supposed ground that the earlier post held by the employee may have been filled in by the Government. There is neither any factual nor any legal basis for the said argument because the "Regulations" were to apply as stipulated in the appointment letter itself. The result, therefore, is that it was open to the Respondents to institute the departmental proceedings in view of the provisions contained in the regulations and also in view of the clear stipulation to that effect in the appointment letter of the Petitioner.

14. It will be convenient to deal with the next two arguments together i.e.

malafides, and, supposed temporary injunction order prohibiting the transfer or suspension of the Petitioner while working in Gonda. The relevant paragraphs Nos. 18, 19, 20, 21, 22 and 40, 47, 48, 55 and 57 and their replies in the Counter affidavit have been placed by Mr. Srivastav. These allegations rest mainly upon the initiation of Contempt proceedings by the Petitioner on the supposed non-compliance of injunction order. It was pointed out in reply that the opposite party no 3 Sri. V.K. Mittal, Managing Director had on an earlier occasion refused to permit the proceedings to go on because of his opinion that the notices were not properly served. If there was any bias, malice or malafides, it is argued, he would have directed the completion of the proceedings at that very stage. The Counter affidavit shows that the Petitioner's writ petition challenging his transfer from Gonda to Rath had already been dismissed by the High Court. It is further admitted that the suspension order dated 25-10-1986 was revoked on 20-12-1986 as per High Court's decision in several other writ petitions. The Petitioner's suit No. 817/1986, it is argued, was based on wrong facts, pre-emptive, and was not maintainable, and, in view of the U.P. Amendment to Order 39 Rule 2 CPC no injunction order could be passed. In this very connection the attention of the Court was drawn by Sri. Srivastav to Annexure-3, passed by the Incharge District Judge, Gonda, on 2-12-1986 in Misc. Case No. 118/1986, Indradutt Tripathi v. Managing Director U.P.S.R.T.C. and Ors. through which it was directed that the status of the Plaintiff be not changed. That order dated 2-12-1986 was extended till 3-1-1987. A Contempt Application was moved in the High Court, in which the opposite party No. 3 to this Writ Petition Sri. V.K. Mittal, has been arrayed as opposite party No. 1. On 19-2-1987 a learned Single Judge directed issuance of notice on opposite party No. 1 to show cause why he should not be punished for committing Contempt. The basis for the said Contempt proceedings was that inspite of the said order dated 2-12-1986 of the Court of the Incharge District Judge, Gonda, the opposite party No. 1 Sri. Mittal had issued a transfer order dated 6-2-1987, which was according to the Petitioner, a gross contempt. We do not find any malafides or even bias in the order or conduct of O.P. No. 3 (Shri Mittal).

15. We have referred to the order of the Division Bench dated 3-8-1987, which had upheld the said transfer order dated 6-2-1987. Again, it is relevant to mention here that the U.P.S.R.T.C. had filed Civil Misc. Writ Petition No. 768/1987, which was admitted by another Division Bench on 4-2-87 and the following interim order was passed:

Issue notice.

Until further orders, the trial of the suit pending in the Court of Munsif Gonda and proceedings pending in the Court of District Judge, Gonda, relating to Suit No. 817/1986, Indradutt Tripathi v. U.P.S.R.T.C. and for any consequential relief hereafter moved or is pending before any Court of the district of Gonda, shall remain stayed.

Sd. D.N. Jha J. Sd. B. Kumar J.

16. It is further clear that no injunction order was operative on the day the transfer order was passed by Sri. V.K. Mittal. In any case, we fail to see any reason why should we read anything beyond what the order itself conveys. A simplicitor transfer was sought to be used by the Petitioner as a proof of malafides against Sri. Mittal which argument we have already negated herein above. Therefore, we have absolutely no hesitation in holding that even if for the arguments sake it may be assumed that the suit was pending, it did not in any way disturb or stay or discontinue the departmental proceedings. Thus there is no force in this point also.

17. Coming to the last argument that Sri. R.S. Yadav, was wrongly appointed as an inquiry officer, we must say that this point too has been raised without any foundation. The appointment of Sri. Yadav was made in pursuance of the directions of the State Government issued from time to time u/s 34(i) of the U.P. Road Transport Corporation Act. A panel of persons was drawn by the U.P.S.R.T.C. appointing officers who may hold departmental inquiries. Thus, Sri. Yadav was in no way incompetent to be appointed as an inquiry officer. We may incidentally mention here that Sri. R.S. Yadav had been an Additional Agricultural Production Commissioner and was thus expected to have sufficient administration and legal background which may have been the reason for his nomination in the panel. From a perusal of paragraphs 24 and 25 of the Counter affidavit it appears that Sri. R.S. Yadav had made frantic efforts to serve the chargesheet upon the Petitioner but failed. In paragraph 35 of the CA it has been averred that though the Petitioner did not reply to the chargesheet and played dilatory tactics, yet more than reasonable opportunity was extended to him by the inquiry officer but he never participated in the proceedings. Consequently, the inquiry officer examined the materials and evidence and recorded his findings. Before concluding, it may be relevant to mention here that from the dismissal order dated 26-8-88, it is apparent that the inquiry officer had examined Sri. B. Pathak and Sri. P. Swaroop, the two senior officers of the U.P.S.R.T.C. in support of the charge relating to the incident dated 9-2-1985 and the alleged misconduct of the Petitioner. As regards the charge that during his posting the kilometer rate receded, one Sri. R.P. Jain, Assistant General Manager, and M.N. Agrawal, the then Regional Manager, were examined by the inquiry officer. The aforesaid Shri Jain has further proved the conduct of the Petitioner regarding the third charge that he had disregarded the directions of the Regional Manager and did not participate in the convened meetings and flouted the orders. About the fourth charge that it was the Petitioner who wrongly tried to connect permit No. 20 with permit Nos. 21 and 22 on the Ballia-Beria route thus facilitated a favourable order for some Petitioners in a writ-petition in the High Court, the inquiry officer examined the report of one Shri N.G. Chowdhury who appeared before him also. But the inquiry officer ultimately opined that since the matter is subjudice in the High Court, no final order or decision should be passed or taken departmentally. Consequently, the fourth charge was left out from consideration by the appointing authority while imposing punishment. Therefore, three charges have

been found proved by the inquiry officer (Charge No. 1, 2 and 3 as shown in the beginning of this judgment) which in turn have been approved by the appointing authority while passing the order of punishment dated 26-8-1988.

18. In view of the aforesaid discussions, we are of the considered opinion that there is no merit in this writ-petition which fails and is hereby dismissed with costs.