
(2012) 04 AHC CK 0148
In the Allahabad High Court
Case No : C.M.W.P. No. 4650 of 2004

Kailash Kumar Mishra

APPELLANT

Vs

U.P. State Public Services Tribunal and Others

RESPONDENT

Date of Decision : 10-04-2012

Acts Referred:

Citation : (2012) 5 AWC 4892

Hon'ble Judges : Rakesh Tiwari, J; Ashok Pal Singh, J

Bench : Division Bench

Advocate : M.D. Singh "Shekhar", for the Appellant; Samir Sharma and C.S.C., for the Respondent

Final Decision : Disposed Of

Judgement

Rakesh Tiwari and Ashok Pal Singh, JJ.—Heard counsel for the parties and perused the record.

Claim petition No. 1592 of 2000 filed by the petitioner has been allowed by U.P. Public Services Tribunal vide judgment and order dated 31.10.2003 which is impugned in the present petition. The petitioner has challenged part of the aforesaid order.

In brief facts of the case are that petitioner is a bus conductor in U.P.S.R.T.C. On 18.10.1996 bus conducted by him was checked on Allahabad-Agra Route at Lallupura Railway crossing by the inspectors of the Corporation and a report was made against him that 17 passengers were found without ticket in the bus. The checking party took Rs. 841.50P. in cash from the petitioner and made a collective penalty ticket of ten times the amount of the fare and a remark to this effect was also made in the way bill.

2. Version of the petitioner was that when the bus was standing at the Lallupura Railway crossing, 17 persons came inside the bus who were not inclined to pay the fare. During the process when the petitioner was trying to disembark them, the inspectors reached at the spot and without verifying the position from the

petitioner or making an inquiry into the matter from those persons wrote a remark that 17 persons were found without ticket. Thereafter, the petitioner was suspended and charge-sheet was served on him.

3. The petitioner replied to the charge-sheet denying the charges. He sought an opportunity for cross-examination of the witnesses and for giving oral evidence in support of his case. Ultimately, by order dated 23.5.1998 services of the petitioner were terminated, against which he preferred a departmental appeal which was also dismissed. Challenging these orders, he preferred Claim Petition No. 1592 of 2000, Kailash Kumar Mishra v. State of U.P. and others, before the Tribunal.

4. On the basis of evidence adduced by the parties and considering their respective submissions, the Tribunal arrived at the following conclusions:

(a) From the inquiry report, it is evident that inspectors who checked the bus, did not come for their evidence although many dates were fixed for their evidence and registered A.D. Letters were sent to them but they neither appeared nor sent any letter or any information;

(b) That no opportunity of defence was given to the petitioner;

(c) That inquiry officer has concluded that 17 persons were found without ticket in the inspection but in the absence of cross-examination of the reporting inspectors, it could not be proved that the petitioner had attempted to misappropriate the money received as fare from the passengers found without ticket and that the charges were found partially proved;

(d) That since the inquiry officer did not afford any opportunity of cross-examination or of defence to the petitioner, it is clear that principles of natural justice have been violated and the inquiry is, therefore, vitiated; and

(e) That order of punishment is a totally non-speaking order because the punishing authority has not given any reason for disagreeing with the findings of the inquiry officer nor any reason has been given by the punishing authority for his own findings, and hence the order is bad in the eyes of law.

Thereafter relying on the decisions in R.K. Singh Vs. Director/Appointing Authority and another, : Safat Ullah v. Commissioner, Varanasi, 2002 (20) LCD 733; Mahamoodul Hasan v. State of U.P. and others, 1983 (1) LCD 272 and Madhurlata Bhatnagar v. Deputy Director of Education, Allahabad and others, 1983 (1) LCD 146, the Tribunal allowed the claim petition, quashed the orders impugned and ordered thus:

The claim petition is hereby allowed. The punishment order dated 23.5.1998 (Annexure-1) and the order dated 12.6.2000 (Annexure-2) passed in appeal against the punishment order are hereby quashed. The opposite parties are directed to reinstate the petitioner on the date of receipt of this order. The petitioner shall however not be paid any pay and allowance from the date of his

termination to the date of his reinstatement in view of the fact that he had not done any work for that period. He shall be entitled for consequential benefits from the date of reinstatement only.

No order as to costs.

5. The petitioner is aggrieved by part of the order, by which the Tribunal has directed that petitioner would not be paid any pay and allowances from the date of his termination to the date of his reinstatement on the principle of "no work no pay" in view of the fact that he had not done any work during that period though holding him to be entitled for consequential benefits from the date of reinstatement only.

6. Taking into consideration the facts and circumstances of the case, in our considered view, the principle of "no work and no pay" appears to have wrongly been applied in the instant case. Once the enquiry was found to be vitiated: the charges not be proved: opportunity of cross-examination of the witnesses not afforded to him: and the punishing authority not giving any reason for disagreeing with the findings of the inquiry officer nor any reason having been given by the punishing authority for his own findings, the petitioner alone cannot be made to suffer. Further, the principle of "no work no pay" is to be applied as a punitive measure in those cases where the employee concerned had willingly not performed his duties or had absented himself from work without proper cause. Such is not the position in the present case. Here, the petitioner could not discharge his duties because of the enquiry proceedings and the punishment order which have ultimately been found to be vitiated on the aforesaid grounds. Since faults have been found on the part of the department also, in our view, the ends of justice would meet if 50% of the salary and allowances is awarded to the petitioner from the date of his termination till his reinstatement. For all the reasons stated above, we modify operative part of the impugned judgment to this extent that petitioner shall be entitled and paid 50% of his salary and allowances from the date of his termination till his reinstatement in service, with all consequential benefits.

With the above modification in the impugned order, the present writ petition stands finally disposed of. No order as to costs.