(2019) 03 UK CK 0149

In the Uttarakhand High Court

Case No : Special Appeal No. 242 Of 2019

Manoj Kumar APPELLANT

Vs

Uttarakhand Transport Corporation & Others RESPONDENT

Date of Decision : 29-03-2019

Acts Referred:

Citation : (2019) 03 UK CK 0149

Hon'ble Judges : Ramesh Ranganathan, CJ;N.S. Dhanik, J

Bench : Division Bench

Advocate : Tapan Singh, Ashish Joshi

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. Tapan Singh, learned counsel for the appellant and Mr. Ashish Joshi, learned counsel for the respondent-Corporation.

2. This appeal is preferred against the order passed by the learned Single Judge in Writ Petition (S/S) No.2038 of 2018 dated 12.02.2019.

3. Facts, to the limited extent necessary, are that the appellant was appointed as a Conductor, by the respondent-Corporation, on a contract basis through an outsourcing agency on 27.01.2012, and was posted at Kashipur Depot, Udham Singh Nagar district. While he was travelling enroute from Delhi to Ramnagar on 01.04.2018, he issued a ticket to a passenger, from Anand Vihar, Delhi to Kashipur for Rs.255/-, through an electronic biometric machine. On a complaint from a passenger, the day after the journey, that the petitioner had failed to return Rs.45/- despite having so endorsed on the ticket issued to him, the depot administration, on verification of the facts, found that the ticket, which the passenger held, was not a passenger ticket but a record ticket (which is a copy of the passenger ticket recorded in the biometric machine for the purposes of the record of the concerned depot). The appellant's services were, therefore,

dispensed with questioning which he filed the present Writ Petition raising several grounds, including that no inquiry was held to establish the charges; his action, in issuing a record ticket to the passenger, was bonafide since the print out of the original ticket was smeared and unclear; such an act could not be treated as an act of misconduct; and in terms of the communication addressed by the Secretary, Government of Uttarakhand to the Managing Director of the Corporation, vide proceedings dated 12.01.2017, employees involved in irregularities of below Rs.250/-, and those who are absolved in the inquiry, are entitled to be considered for reappointment.

4. It is not even the appellant's case that he had reported to the depot, after completion of the journey, that the machine was not functioning properly and that the passenger ticket was misprinted, for his entire case, before the learned Single Judge, was that a copy of the record ticket (which is meant for the purpose of the record of the depot) was given to the passenger as the original ticket was smeared and unclear. It is only because the passenger came to the depot, complaining that the appellant had failed to refund Rs.45/- to him, that the entire episode came to light, and the aforesaid incident justified the Corporation disengaging the services, of the appellant, thereafter. As has been rightly held by the learned Single Judge, the appellant-writ petitioner was engaged through an outsourcing agency by the Corporation. No master-servant relationship existed between the appellant and the Corporation as his services were engaged on a contractual basis not by the Uttarakhand State Road Transport Corporation but by an outsourcing agency which had deputed him to work with the respondent-Corporation. In the absence of any master-servant relationship existing between him and the Corporation, the appellant cannot claim, that too as of right, that his services should have been continued by the Corporation.

5. With regards his claim that the Corporation should, at least, be directed to consider his case for re-appointment, the appellant places reliance on the letter of the Secretary, Government of Uttarakhand dated 12.012017. In this context, it must be borne in mind, that the Uttarakhand State Road Transport Corporation is a legal entity distinct from that of the State Government. The Secretary could, therefore, not have issued any directive to the Managing Director of the Corporation necessitating strict adherence. Even otherwise, the said letter requires the Corporation to take a lenient view only where the amount involved is less than Rs.250/-. In the present case, the value of the ticket is Rs.255/- which is more than the sum, stipulated in the said letter, of Rs.250/-.

6. Mr. Tapan Singh, learned counsel for the appellant, would submit that, since the said letter required persons to be considered for being re-engaged in the services of the Corporation in cases where they were absolved in an inquiry, failure on the part of the Corporation to hold an inquiry against the appellant had caused him prejudice, since he would now loose the benefit of being considered for re-appointment in the Corporation.

7. The appellant's defence, for his having issued a copy of the record ticket to the passenger, is that the passenger ticket which he had issued stood effaced and, consequently, he was obligated to issue a record ticket to the passenger. If this was indeed true, the appellant ought to have reported this fact to the depot when he handed over the biometric machine. It is neither the appellant's case that there were earlier incidents of the biometric machine having malfunctioned, nor have those conductors who had utilized the said biometric machine thereafter complained of the machine being defective. The Corporation is, therefore, justified in its conclusion that the record ticket was issued to the passenger only to deprive the Corporation of the amount which was legitimately required to be deposited with it; and that these facts came to light only because the passenger has come and complained at the depot.

8. Interference in an intra-court appeal would be justified only if the order under appeal suffers from a patent illegality. We find no such infirmity in the order under appeal.

9. The appeal fails and is, accordingly, dismissed. No costs.

