
(1997) 09 AHC CK 0168

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 964 of 1988

Maya Prakash Agrawal

APPELLANT

Vs

Presiding Officer, Labour Court & Ors.

RESPONDENT

Date of Decision : 08-09-1997

Acts Referred:

Citation : (1997) 09 AHC CK 0168

Hon'ble Judges : R.K.Mahajan, J

Final Decision : Dismissed

Judgement

R. K. Mahajan, J.—This is a writ petition for issuance of an order, direction or writ in the nature of certiorari quashing the Award dated 28/4/1987 (Annexure 6) to the extent it has not given full back wages to the petitioner from the date of termination to the date of reinstatement. An other prayer has also been made to quash the order dated 13/10/1987 (Annexure 15) passed by Regional Manager U.P. State Road Transport Corporation, Allahabad. Further, prayer has also been made to issue a writ of mandamus directing the opposite parties to reinstate the petitioner in the service.

2. To understand the controversy involved in this writ petition following facts have to be born in mind. It appears that the power of appointment of Drivers and Conductors was delegated to the Assistant Regional Manager by a resolution under Section 12(1)(c) of U.P. State Road Transport Corporation Act, 1950. Later on this delegation was challenged and the termination/dismissal or any disciplinary action taken by virtue of the said delegation were declared null and void by a judicial pronouncement of this Court. This lacuna was pointed out in famous case of Bhopal Singh v. U.P.S.R.T.C. So many Labour Court awards passed on merits were also declared invalid. The U.P. Government first of all resorted to Ordinance and later on substituted it by enactment to overcome this difficulty. The Ordinance is called U.P. Ordinance No. 9 of 1987. The relevant clause reads as under:

"Notwithstanding any judgment and or order of any Court, Tribunal or other

authority or any provisions of the U.P. State Road Transport Corporation Employees (other than Officers) Regulations, 1981, no orders made, actions or proceedings taken or jurisdiction exercised on or after June 19, 1981 by the officers authorised as appointing authority by the Uttar Pradesh State Road Transport Corporation under Clause (c) of subsection (1) of Section 12 of the Road Transport Corporation Act, 1950 shall be deemed to be illegal or void or ever to have become illegal or void merely on the ground that such authorised officers were not the appointing authority."

3. It appears that the petitioner was chargesheeted for misconduct vide chargesheet dated 11111982 and the charge levelled against him was that on 14101982 he was deputed as Conductor on Bus No. UTY 9328 plying on Allahabad Banda route. The Bus was checked. The Checking authorities found that petitioner was carrying 12 passengers without tickets and he misbehaved with the checking authorities. Ultimately departmental enquiry was initiated against the petitioner and pending enquiry he was put under suspension. However, since the departmental proceeding was taking long time, petitioner was provisionally reinstated in service w.e.f. 13583. But in the departmental enquiry serious charges of misconduct were found proved against the petitioner therefore, a showcause notice dated 15783 along with the enquiry report was served on him.

4. It appears that in the meantime again on 9783 when the petitioner was deputed as Conductor on Bus No. 6839, the Checking Authorities found that petitioner was carrying 8 passengers without tickets whereas he had realized the fare from them and on return the petitioner did not deposit the amount of fare realized by him from those passengers, therefore, F.I.R. was lodged against him. Ultimately he deposited the said amount on 12783.

5. It appears that even thereafter on 23101983 when the petitioner was deputed as Conductor on Bus No. U. P.G. 5690, the Checking Authorities found that he was carrying 3 passengers without tickets. Therefore, petitioner was suspended on 23111983 and chargesheet dated 5121983 was served on him. The departmental enquiry was instituted. In the enquiry serious charges of misconduct were found proved after affording full opportunity to the petitioner. Therefore, again a showcause notice dated 731984 along with the copy of enquiry report was served on the petitioner. But the petitioner did not submit reply to the showcause notices served on him. The appointing authority accordingly removed the petitioner from service vide order dated 1241984, against which petitioner filed appeal which has been rejected vide order dated 2181984.

6. Thereafter the petitioner appears to have raised the industrial dispute which was referred by the Sate Government to the Labour Court. The Labour Court by the its award dated 2311987 recorded finding that both the charges against the petitioner were found proved in the departmental enquiry. But in view of Bhopal Singh's case (supra) petitioner was directed to be reinstated, without back

wages.

7. Learned Counsel for petitioner submitted that the case be remitted to the Labour Court for deciding afresh in accordance with the judgment of this Court in Writ Petition No. 36530 of 1989, *U.P.S.R.T.C. v. The State of U.P. & Ors.*, decided by learned Single Judge on 30/11/1991. Learned Counsel further submitted that the petitioner was not afforded adequate opportunity to defend himself.

8. Learned Counsel for the respondents Mr. Sharma submitted that Bhopal Singh's case (*supra*) has been validated by the Legislature and the Legislature is competent to do so. Learned Counsel for the petitioner however, submitted that the Legislature cannot do so.

9. Having heard learned Counsel for the parties. I am of the view that the writ petition lacks merits and deserves to be dismissed for the reasons given below.

10. The Legislature has power and authority to legislate law, prospectively and retrospectively both. The Legislature can give effect to the law legislated by it with retrospective date to overcome the difficulty if any realized by it. It has been well settled by the apex Court that the Legislature can revalidate the actions declared invalid by suitable enactment in public interest and in that event it would not amount to encroachment in the field of judiciary. In the case of Bhopal Singh's case (*supra*), the Legislature has done nothing except to remove the defect as certain officers who were not authorized to exercise disciplinary powers, were conferred those powers retrospectively to overcome the difficulty.

11. In *Shri Prithvi Cotton Mills Ltd. etc. v. Broach Borough Municipality & Ors.*, AIR 1970 SC 192, apex Court ruled that if the legislature has the power over the subjectmatter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions. (See also *Mis. West Ramnad Electric Distribution Co. Ltd. v. The State of Madras & Ors.*, AIR 1962 SC 1753).

12. I am therefore, of the view that there is nothing wrong in passing the Ordinance and later on substituting it by an Act to overcome the difficulty and remove the defect realised by the Legislature. Thus, the actions taken on the basis of Bhopal Singh's case (*supra*) were later on revalidated by the competent Legislature.

13. As regards the judgment of learned Single Judge of this Court in *U.P.S.R. T.C.* case (*supra*) it has no application to the facts of instant case as in that case the conclusion of Labour Court on merits of the case was that the termination of the workman was illegal but in the present case before me the finding recorded by the Labour Court is that the charges have been proved and the termination is valid but only because of Bhopal Singh's case the termination was held illegal.

14. In the instant case from the facts it is clear that the department gave opportunity after opportunity to the petitioner to mend and has shown enough leniency in the matter and when the petitioner could not improve then he was

removed from the service on proved charges. The Labour Court passed Award on merits and the Labour Court Awards are not to be interfered in writ jurisdiction unless it is a case of no evidence or it is a perverse award. In the facts and circumstances of the case the conclusions of Disciplinary Authority as well as Labour Court cannot be said to be perverse and thus there is no justification to remit the case back as entire case is now before this Court including the findings of the Enquiry Officer, conclusions of the Disciplinary Authority which have been confirmed by the Labour Court therefore, to remand the case would amount to put the clock back which will be a wrong view in law.

15. In view of the discussions made above I am of the considered opinion that no interference by this Court is called for. The writ petition fails and consequently it is dismissed. There shall be no order as to costs.

Writ petition dismissed.