
(2011) 02 UK CK 0005

In the Uttarakhand High Court

Case No : Writ Petition No. 377 of 2006 (S/B)

Naresh Chandra

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 15-02-2011

Acts Referred:

Citation : (2012) 1 UC 115

Hon'ble Judges : V.K. Bist, J; Tarun Agarwala, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Hon"ble Tarun Agarwala, J.—We have heard Shri Rajendra Dobhal, the learned Senior Counsel assisted by Shri G.D. Joshi, Advocate for the Petitioner and Shri Vikas Pandey, the learned Standing Counsel for the Respondents.

2. The Petitioner was posted as an Upper Division Clerk in the Survey of India at Dehradun and, on 24th February, 1998 applied for Leave Travel Concession (hereinafter referred to as the LTC), for the block year 1998-2001 for himself and for his family members, to conduct a journey from Dehradun to Kanyakumari and back. The application of the Petitioner was allowed and the Petitioner was sanctioned 90% of the expenses, and, a sum of "17,000/- was released. It has been stated that the Petitioner undertook the journey alongwith his family members from 1st April, 1998 to 20th April, 1998 in a bus operated by Garhwal Mandal Vikas Nigam Ltd. Prior to undertaking his journey, the Petitioner had submitted the receipt-cum-ticket to the authorities and also informed the authorities that the journey was being done in a bus of Garhwal Mandal Vikas Nigam Ltd.

3. It transpires that after returning from the journey, the Respondents issued a letter dated 27th April, 1998 to refund the entire amount, taken as advance, on the pretext that the Petitioner could only perform the journey either by Railway or Government owned transport and, since the Petitioner had travelled on a bus

owned by Garhwal Mandal Vikas Nigam Ltd., which was not permissible, consequently, the advance given for LTC was liable to be returned. It transpires that the Petitioner submitted his explanation, explaining the circumstances, under which he was compelled to perform the journey in a bus owned by Garhwal Mandal Vikas Nigam Ltd., which did not find favour with the authorities and consequently, by an order dated 19th August, 1998, the Respondents passed an order directing the Petitioner to refund the entire amount of "17,000/- alongwith interest. By another order dated 6th October, 1998, the Respondents passed an order that the entire amount, alongwith interest, would be recovered from the salary of the Petitioner. It has been stated that a sum of "1,000/- per month is being recovered from the salary of the Petitioner.

4. The Petitioner, being aggrieved, filed a claim application before the Central Administrative Tribunal, Allahabad Bench, which was rejected by the Tribunal by its order dated 9th May, 2003. A Review Application was filed which was rejected by an order dated 6th August, 2003. The Petitioner being aggrieved by the aforesaid orders has, consequently, filed the present writ petition.

5. From the record, we find that the authorities had issued a Notification dated 29th March, 1988, which permitted employees to avail LTC in a bus wholly operated and conducted by Garhwal Mandal Vikas Nigam Ltd. This Notification remained operative till it was superceded by the Notification dated 9th February, 1998, whereby this facility of availing LTC in a bus operated by Garhwal Mandal Vikas Nigam Ltd. was Withdrawn.

6. In Paragraph-12 of the writ petition, the Petitioner has contended that the Notification dated 9th February, 1998, was communicated to the office of the Respondent No. 5 vide letter dated 20th April, 1998 and prior to this date, the employers of the Petitioner were unaware of the new Government Order relating to LTC. Paragraph-12 of the writ petition has not being denied specifically by the Respondents in paragraph-14 of the counter affidavit. In fact, the Respondents admitted that the Notification dated 9th February, 1998 was communicated in their office vide letter dated 20th April, 1998 and thereafter circulated to the employees. The Respondents, however, contended that the Notification is to be implemented from the date of issue of the Notification and not from the date of knowledge of the Notification. The Court further finds that the Government issued another Notification dated 30th July, 2002, restoring the earlier position of availing LTC in buses operated by Garhwal Mandal Vikas Nigam Ltd.

7. In the light of the aforesaid, the Court finds that the Petitioner undertook the journey bonafidely in a bus operated by Garhwal Mandal Vikas Nigam Ltd., which is a State owned Undertaking and is not a Private Undertaking. The Court finds that no fraud was played by the Petitioner and the Respondents admit that the Petitioner and his family members had, in fact, performed the journey. Further, the Notification dated 9th February, 1998 was not in the knowledge of the Petitioner or to the employers and, consequently, the Petitioner cannot be made to suffer and, in fact, should be allowed to reap the fruits of the journey, which

he had validly undertaken.

8. In similar circumstances, the claim of Rajendra Singh, of the same Department, was rejected against which he preferred Writ Petition No. 512 (S/B) 2003 which was allowed vide judgment dated 17th February, 2009, in "Rajendra Singh v. Union of India and others", 2009 (1) U.D. 137 and the Court directed the Respondents to refund the amount recovered from the salary. We find that the said judgment is squarely applicable to the present set and circumstances of the case.

9. In the light of the aforesaid, the writ petition is allowed. The impugned orders dated 19th August, 1998, 6th October, 1998 and the orders of the Tribunal are quashed. A writ of mandamus is issued commanding the Respondents to refund the amount, recovered from the salary of the Petitioner, within four weeks from the date of production of a certified copy of this order. The Respondents are further directed to release the balance amount payable towards the LTC, performed by the Petitioner and his family members, which amount will also be released within the same period.