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(2007) 05 AHC CK 0319

In the Allahabad High Court

Nathu Ram Tiwari — APPELLANT

Vs

U.P. State Public Service Tribunal and Others — RESPONDENT

Date of Decision : 01-05-2007

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2008) 5 AWC 4575 : (2007) 114 FLR 567

Hon'ble Judges : Sudhir Agarwal, J;Anjani Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Anjani Kumar and Sudhir Agarwal, JJ.—Aggrieved by the order dated 30th July 2000 passed by the U.P. Public Services Tribunal, Lucknow (hereinafter referred to as the Tribunal) the petitioner has filed this writ petition under Article 226 of the Constitution of India seeking a writ of certiorari for quashing the said order as also the order dated 30th October 1975 which was impugned before the Tribunal. Petitioner has also sought a writ of mandamus commanding respondents No. 2 to 5 to reinstate him and pay full back wages.

2. The facts in brief are that the petitioner was appointed as Bus Conductor in U.P. Government Roadways in the year 1967. He was removed from service in 1970. In appeal the order of removal was revoked and he was reinstated by order dated 10/1lth January 1971 and posted at Kanpur City Bus Service. In the year 1972 U.P. State Road Transport Corporation (hereinafter referred to as the Corporation) came into existence and the employees of U.P. Government Roadways department stood transferred to the Corporation. The petitioner was also transferred to the said Corporation. On 29th May 1975, while discharging his duties at Banda Depot, the bus on which he was on duty, was checked at Murawan Bus stop and it was reported that the petitioner was carrying certain passengers without ticket. Again on 28th August 1975 the bus was checked at Chilla bus stop by Assistant Traffic Inspection and he also made similar entries on the way bill. The petitioner apprehending action of termination against him filed

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Original Suit No. 571 of 1975 in the court of Munsif Banda praying for a permanent injunction restraining defendants from interfering in his working and not to terminate his service. Another relief was subsequently added for summoning order, if any, and quash the same. He also moved an application for temporary injunction whereupon the Munsif Banda passed an order restraining defendants from terminating his service. When the suit was pending, U.P. Public Services Tribunal Act 1976 came into force and by virtue of Section 6 of the said Act the suit was transferred to the Tribunal on 14th February 1976. On transfer the suit was converted into claim petition and registered as Claim Petition No. 307/T/I of 1978. Respondents filed counter affidavit before the Tribunal stating that petitioner was already terminated on 30th October 1975 but in view of injunction granted by the trial court he was not relieved at that time but after transfer of the suit injunction order lapsed and by order dated 28th March 1978 petitioner was informed that he has been relieved of his duties. The copy of letter dated 28th March 1978 was annexed to the counter affidavit. Petitioner filed rejoinder affidavit stating that he has never been served with the order of termination or relieving order. The claim petition was ultimately allowed by the Tribunal vide order dated 19.12.1979 against which respondent No. 2 filed Writ Petition No. 1042 of 1980 before Lucknow Bench of this Court. The writ petition along with others was allowed vide judgment dated 27th January 1987 remanding the matter to the Tribunal to decide afresh in the light of Full Bench decision in U.P. State Road Transport Corporation Vs. State of U.P. and Others, . Some persons went in appeal before the Apex Court and during the pendency of the matter before the Apex Court, the Tribunal did not decide the matter. Ultimately appeals were dismissed by the Apex Court on 9th July 1996. The petitioner also got his relief amended in the Tribunal by challenging the termination order dated 30th October 1975. The amendment was allowed by the Tribunal by order dated 19th January 1998. The Tribunal after hearing the parties vide order dated 30th July 2000, impugned in the writ petition, has dismissed the claim petition as barred by limitation.

3. Learned Counsel for the petitioner contended that the Tribunal has erred in law while rejecting his claim petition on the ground of limitation.

4. Learned Counsel appearing for respondent-Corporation opposed the writ petition and supported the order of the Tribunal for the reasons stated therein.

5. We have heard learned Counsel for the parties and perused the record.

6. It is evident from the record that petitioner had not challenged the order of termination before the court of munsif when he filed original suit. He filed an amendment application before the Tribunal in 1997 which was allowed by the Tribunal vide order dated 4th February 1998. The respondents in their reply specifically contended before the Tribunal that termination of the petitioner was communicated on 28th March 1978 and-it was well within his knowledge yet he had chosen not to challenge the same for almost more than 20 years. The subsequent challenge in 1997 was clearly barred by time. The Tribunal after

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perusing order dated 28th March 1978 which was placed before it along with reply filed by respondent-Corporation, it has recorded a finding of fact that the said order contained recital about termination of petitioner by order dated 30th October 1975 yet he did not seek any declaration by making amendment in the claim petition challenging termination order in 1978 or immediately thereafter, hence claim petition against termination was barred by limitation. The Tribunal has also noticed that termination was validly communicated is also evident from the fact that the petitioner did not discharge any duty to the Corporation on or after 28th March 1978. In view of aforesaid finding of fact recorded by the Tribunal and also considering the conduct of the petitioner that he was found indulged in various acts of misconduct in 1970 also but taking a lenient view he was allowed to resume duty. Still he did not mend his ways but again continued to work in the same manner. In our view, it is not a fit case which warrants any interference under Article 226 of the Constitution of India. The writ petition, therefore, is dismissed without there being any order as to costs.

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