

(2010) 10 UK CK 0134
In the Uttarakhand High Court
Case No : Writ Petition No. 30 of 2004 (S/B)

Pushkar Chand

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 20-10-2010

Acts Referred:

Citation : (2010) 10 UK CK 0134

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Shri Lok Pal Singh, the learned Counsel for the Petitioner and Shri K.P. Upadhyaya, the learned Addl. C.S.C. for the Respondents.

2. The Petitioner was appointed as a Constable Driver and, while driving a government vehicle, fell in a ditch near Bhujia Ghata on Nainital-Haldwani road in which he was injured and his companion who was also an employee in the police department was also injured. The Govt. vehicle was badly damaged. A first information report was lodged and a domestic inquiry was also initiated against the Petitioner. The charge against the Petitioner was that he was driving in an intoxicated state of mind. The charge was proved by the Inquiry Officer and, based on the inquiry report and, the reply to the show cause notice, the Petitioner was removed from the services. The Petitioner, being aggrieved, filed a claim application before the Public Service Tribunal.

3. The Public Service Tribunal, by an order dated 21st October, 2003 held that the charge against the Petitioner could not be proved by the department and further found that the Petitioner was also acquitted in the criminal proceedings initiated against him. The Tribunal also held that barring two incidents in which the Petitioner was involved in an accident, his previous conduct was satisfactory and, therefore, the Tribunal set aside the order of the removal subject to the condition that the Petitioner would not be entitled for payment of salary from the

date of his removal from the service till the date of his reinstatement. The Petitioner, being aggrieved by this part of the order, has filed the present writ petition praying that the salary for the period 26th May, 1992 to 12th December, 2003 be awarded.

4. The learned Counsel for the Petitioner submitted that the Petitioner was unnecessarily blamed for the accident and that it was a case of victimisation. The learned Counsel submitted that the Petitioner was acquitted honourably from the criminal court and further submitted that even the Tribunal concluded that there was no evidence to indicate that the Petitioner was driving under the influence of alcohol when the accident had occurred and, consequently, the charge leveled against him could not be proved. The learned Counsel further submitted that the co-passenger also deposed in favour of the Petitioner, namely, that the Petitioner was not driving under the influence of the alcohol. In the light of the aforesaid, the learned Counsel further submitted that the medical report produced by the department was not proved by the Medical Officer and, consequently, no cognizance on the said document could be taken. In the light of the aforesaid, the learned Counsel submitted that since the Petitioner was honourably acquitted in the criminal proceedings and the charge against him was also not proved in the departmental proceedings, the Tribunal, while reinstating the Petitioner was not justified in not granting the backwages. In support of his submission, the learned Counsel placed reliance upon a decision of the Supreme Court in *Dayaram Dayal Vs. State of M.P.* and another [OVERRULED], wherein the Supreme Court, while setting aside the order of termination, directed reinstatement with continuity of service and with arrears of wages. The learned Counsel submitted that similar treatment should also be given to the Petitioner.

5. Having heard the learned Counsel for the Petitioner at some length, the court finds that the Tribunal allowed the claim of the Petitioner on a technicality. There was a medical report indicating the level of alcohol in the blood stream of the Petitioner at the time of the accident which concluded that the Petitioner was driving the vehicle under the influence of the alcohol. The Tribunal allowed the claim on the ground that the medical report was not proved by the production of the Medical Officer and, on this technicality, the medical report was not considered. The Tribunal further found that the co-passenger also supported the Petitioner and, on this basis, the order of removal was set aside. The Tribunal did not grant the arrears of wages on the ground that two accidents had taken place which were committed by the Petitioner and, therefore, the Tribunal was of the opinion that arrears of wages should not have been given.

6. Having considered the submissions of the learned Counsel for the Petitioner and having perused the record, the court finds that the direction of the Tribunal does not require any interference. The court is of the opinion that the co-passenger became hostile. Initially, he gave evidence stating that the Petitioner's breath was reeking of alcohol at the time when he was driving. Subsequently, he changed his stand. There is a contradiction in the statement of the co-passenger.

Further, the court finds that on account of non-availability of the medical doctor, the medical report could not be proved. In department proceedings, it is not essential that documents are required to be proved. It is sufficient that the medical report was filed by the department. If the Petitioner disputed the veracity of that document, he should have made a request for the cross examination of the Doctor which the Court does not find that such a request was placed by him.

7. The contention that when there is an order for reinstatement, the normal rule for payment of backwages should be granted is not an absolute rule of law. The Supreme Court in General Manager, Haryana Roadways Vs. Rudhan Singh, has held that backwages should not be granted as a matter of right when there is an order for reinstatement and that other factors are also required to be seen. One such factor which the Court notices is whether the employee remained unemployed during this intervening period. In the present case, there is no averment in the writ petition that the Petitioner remained unemployed from the date of the termination till the date of his reinstatement. On this score, the Petitioner is not entitled for payment of backwages.

8. In the light of the aforesaid, coupled with the fact that the Petitioner was also involved in an earlier accident and, on the salient principle of "no work no pay", this Court is of the opinion that the denial of backwages from the date of the termination till the date of reinstatement was justified in the facts and circumstances of the case. This Court, consequently, is not inclined to interfere in the impugned order passed by the Tribunal. The writ petition is dismissed.