

(2005) 04 AHC CK 0108

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2562 of 2001

Shayam Sunder Lal

APPELLANT

Vs

U.P. State Road Transport Corporation

RESPONDENT

Date of Decision : 01-04-2005

Acts Referred:

Citation : (2005) 106 FLR 83

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Bhoopendra Nath Singh and V.N. Singh, for the Appellant; M.M. Sahai, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

2. This writ petition has been filed against the Award dated 29.9.1995. (Annexure 1 to the writ petition) passed by the Presiding Officer, Labour Court, U.P., Kanpur in Adjudication Case No. 126/91. By the aforesaid award, the Labour Court has held that there is no evidence on record from which it can be deduced that the workman was habitual of carrying passengers without tickets. It is further held in the award that there is also no evidence from which it can be ascertained that he has any other source of income and that if he is reinstated without payment of back wages there is possibility of "his reformation and the purpose of punishment would also be served.

3. The services of the petitioner-workman had been terminated w.e.f. 30.12.1989. Aggrieved by his termination he had raised an industrial dispute which was referred for adjudication to Labour Court, U.P., Kanpur where it was registered as Adjudication Case No. 126 of 1991.

4. The counsel for the petitioner contends that an additional issue was framed before the Labour Court to the effect that "Whether the enquiry conducted by the employers against the workman was in accordance with the principles of natural

justice or not? The Labour Court by interim award dated 31.1.1992 held the enquiry to be vitiated for non-compliance of the principles of natural justice and permitted both the parties to lead evidence to prove the charges.

5. The respondent-employers examined Sri M. R. Khan, Traffic Superintendent, as E.W.1 and Sri O. P. Sharma, Traffic Inspector, as E.W.2 in support of their case. They stated in their evidence that the bus was checked at the distance of 14 Km. from Tilhar when the bus was stopped on his signal. The concerned workman took out tickets from the tickets tray numbering 22142 to 22172 and tried to give them to the passengers. On checking it was found that 31 passengers were travelling without tickets.

6. According to the counsel for the petitioner the first and foremost controversy involved in the adjudication case was as to whether when the bus was checked it was standing or it was got stopped by the checking staff as stated by E.W.1. The second question involved in the adjudication case according to him was whether the bus was checked at the distance of 2 to 2? Km away from Tilhar as stated by the petitioner or it was checked at the distance of about 14 Km as stated by E.W. 1.

7. He contends that the above observation of the Labour Court is contrary to the evidence on record of Sri O. P. Sharma who in his cross-examination stated that the driver had seen the staff car from a distance of one to two furlongs and he had found the bus standing. He then placed reliance on the statement of the workman that (i) he had stopped the bus for issuance of tickets to the passengers because the passengers had boarded the bus on the way and it was necessary to issue tickets to them; (ii) the checking of the bus started after he had issued the tickets but before he could make entry in the Way Bill; and (iii) He was going to make entry in the Way Bill but by that time the Checking staff had taken the Way-Bill (Marg Patra) from him

8. The counsel for the petitioner has drawn the attention of the Court to the observations of the Labour Court in the award that the workman had stated in his explanation that 31 passengers had boarded the bus at Tilhar. At about 2 to 2? Km. away from Tilhar on Tilhar - Shahjahanpur road after getting the bus stopped the workman wanted to confirm and tally the number of the passengers with the tickets he issued. It is further observed that on the contrary the statement of Traffic Superintendent Sri Khan and Traffic Inspector Sri O.P. Sharma is that the bus was in motion and was proceeding towards its destination to Shahjahanpur when it was signalled to stop and the distance of checking spot (Banthara) from Tilhar according to the evidence of both the E.Ws. is about 13 to 14 Km. The Labour Court relied upon their evidence observing that there was no basis for not believing the version of these witnesses.

9. The counsel for the petitioner has further drawn the attention of the Court to certain portions of the statements of the employers' witnesses, their workmen and the award of the Labour Court and has vehemently argued that the Labour

Court has failed to consider that the workman was not cross-examined on the question as to whether he had stopped the bus after the signal for stopping the bus was given or the bus was in motion when it was checked. Great emphasis has been laid by the counsel for the petitioner upon the distance and position of the bus. He has strenuously argued that the finding given by the Labour Court is perverse and against the statement made by Sri. O. P. Sharma, the employers' witness, wherein he has Stated that the bus was found stopped by him as the statement of the workman remained unchallenged and the Labour Court committed an illegality in not considering this aspect of the matter.

10. It is submitted by the counsel for the petitioner that the finding of the Labour Court is perverse and against the evidence on record and thus is liable to be set aside. It is stated that as per the departmental instructions if the conductor has stopped the bus for issuing tickets and completing the Way-Bill (Marg Patra) beside the road, the bus cannot be checked by by cheking authorities and that is why Sri, M. R. Khan and Sri O. P. Sharma in the statement made before the Labour Court stated that the bus was stopped after giving signal by the checking staff, as such the finding given by the Labour Court holding the petitioner guilty is perverse, the award is liable to be quashed and the workman is entitled to reinstatement with full back wages.

11. The counsel for the respondent submits that the Labour Court has given a finding of fact that it is undisputed that the Traffic Superintendent Sri M.R. Khan had checked the bus along with two Inspectors Sri O. P. Sharma and Sri K. C. Saxena. The Labour Court has also found that it is not in dispute that at the time of checking the Way-Bill (Marg Patra) had not been filled up. It has also been found undisputedly proved that at the time of checking, the petitioner-workman was conducting the bus and had torn out a bunch of tickets but had been unable to make entry in the Way-Bill (Marg Patra).

12. It is apparent from the record that the workman had in his explanation stated that 31 passengers had boarded the bus from Tilhar Bus Stand and from the evidence it appears that the bus had been stopped at the distance of about 13 to 14 Km. on sighting the checking authorities. Since the passengers had boarded the bus from the bus stand the rule of pay and board should have been followed and the passengers should have been issued tickets within a reasonable distance of Tilhar bus station according to rules and not 13 - 14 Km. away from the bus station. Since the passengers had not boarded the bus en-route the principle of "pay and board" would be applicable. There was no occasion for the bus to be stopped except for being checked by the checking staff, hence the argument of the counsel for the petitioner that the bus was moving when stopped by the checking staff or had stopped on seeing them becomes wholly irrelevant in the facts and circumstances of the case.

13. The Labour Court has held that the distance of 13 to 14 Km was sufficient for issuance of tickets and even if there is slight contradiction in the statements of the witnesses regarding the distance, it would not have any effect on the fact

regarding checking of the bus in which it was found that 31 passengers were travelling in the bus without tickets. The finding of fact recorded by the Labour Court that the employers have proved their case and the charges against the workman before the Labour Court does not suffer from any illegality or perversity. I concur with the conclusion arrived at by the Labour Court that any discrepancy in the evidence of the witnesses regarding distance where the bus was stopped would not have any effect on the fact that the petitioner was found carrying 31 passengers without tickets.

14. For the reasons stated above, this writ petition is dismissed. No order as to costs.