

(2004) 01 AHC CK 0149

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 14779 of 1984

State Road Transport Corporation through its Deputy General Manager, Western Zone, Meerut APPELLANT

Vs

State of U.P. & Ors. RESPONDENT

Date of Decision : 05-01-2004

Acts Referred:

Citation : (2004) 01 AHC CK 0149

Hon'ble Judges : Rakesh Tiwari, J

Final Decision : Partly Allowed

Judgement

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

2. This writ petition is directed against the award of the labour Court dated 641984, Annexure 12 to the writ petition. By the impugned award the labour Court has held that the termination of the services of the workman was neither legal or justified and as such he is entitled to reinstatement with full back wages till he is reinstated.

3. By the interim order dated 10101984 the operation of the impugned award dated 2641984 was stayed. The interim order dated 10101984 was modified vide order dated 2621986 directing that any further implementation of the award dated 2641984 was stayed provided the petitioner takes back respondent No. 3 in service by 1531985 and pays him monthly wages thereafter in the usual way as and when they became due on the footing that respondent No. 3 has earned all his increments throughout the period of his unemployment.

4. The brief facts of the case are that respondent No. 3 was initially appointed as conductor in the corporation with effect from 1231974. He was conducting Bus No. 9783 on Agra Shamshabad route. The Bus was checked by the checking staff at about 600 p.m. and it was found that the Bus was carrying 58 passengers, out of which 14 passengers were without tickets, but respondent No. 3 hurriedly distributed 9 tickets to the passengers and made entries in respect of them in

the WayBill. It is alleged that he was caught red handed by the checking staff. The checking staff submitted a report on 8121981. He was placed under suspension and a chargesheet dated 26121981 was served on him. He submitted his reply. Consequently, departmental proceedings continued against him, as the reply submitted by him was not found to be satisfactory. The Appointing Authority after carefully considering all the materials on record, removed him from service vide dated 1221982. He raised an industrial dispute before the Regional Conciliation Officer, Agra, but no settlement arrived at, a report was submitted to the State Government. The State Government while expressing its powers under Section 4 of the U.P. Industrial Disputes Act, referred the following dispute to the labour Court, Agra on 3131983, which was registered as Adjudication Case No.32 of 1983:

?Whether the termination of services of Gopi Chandra son of Sri Bhudha Ram with effect from 1221982 by the employers was proper and/or legal ? If not, to what relief/damages is he entitled.?

5. The employers did not stress on the domestic enquiry and sought to establish the case on the entire evidence adduced before the Court. The labour Court after going through the entire facts and evidence gave findings of fact that the whole case against the workman is based on suspicion. The labour Court held that the Conductor had already issued 9 tickets and did not accept the contention of the employers that the entries of 9 tickets were not made. In so far as the remaining five tickets are concerned the labour Court held mat they had already torn from the TicketBook when intercepted by the checking staff. It seems that the Conductor would have to pay and deposit the costs of those tickets as well. Relying upon the case of Arya Vaidya Pharmacy (Coimbatore) Ltd. v. Secretary, Arya Vaidya Pharmacy Employees Union, 1982 (44) F.L.R. 218, wherein it has been held that the case against the workman should be fully established. The labour Court held that the checking staff did not conduct the checking in this case in a manner, which may establish the guilt of the Conductor and did not adduce any independent witness and that the evidence led before the Court also does not establish the guilt and dishonesty of the Conductor beyond doubt. The labour Court by the impugned award set aside the termination of services of the workman granting him relief of reinstatement with full back wages till he is reinstated.

6. Counsel for the respondents submits that the workman has been reinstated, as directed by the interim order granted by this Court. He has also been promoted and is working as BookingClerk for the last eight years.

7. From the record it appears that though the workman had denied the charges the departmental enquiry as well in the labour Court and has taken a stand that a person, who was drunken state entered the Bus and a lot of time was lost in the affair. He could not make entries properly in the way bill and had made incorrect entries of the ticket numbers of the tickets, which were intercepted by the checking staff. The labour Court has held that this mistake has occurred in

the normal course. It does not appear to be correct.

8. Counsel for the petitioner submits that the entries of all the passengers, who had boarded the Bus from the BusStation, ought to have been made in the way bill first and thereafter the entries in respect of those passengers, who had boarded the Bus in the way ought to have been made, but the Conductor done otherwise which shows that the intention of the Conductor in making the entries was not bona fide and the case of the employers against the workman is not a case of suspicion, but based on the materials on record, which clearly reflects the misappropriation of money by the Conductor. Similarly he further submits that on the way will the 10th entry is of the luggage ticket as stated by the Conductor and also confirmed by the EW/1 Ch. Y.S. Tomar. On Ex. E/6 is affixed another ticket No. 91548 which is supposed to be a block ticket for 5 passengers but actually the ticket number should have been 91549 as shown in the way bill in the remarks made by the checking staff. It appears that the labour Court was influenced in its award by the fact that Y.S. Tomar could not describe the luggage for which ticket No. 10 was issued, and concluded that the case of the petitioner was based on suspicion. Be that as it may, from the record it appears that when the Bus was checked, the Conductor had not made any entry in the way bill in respect of the passengers, who had boarded the Bus from the BusStation and on being intercepted by the checking staff, the entries could have hurriedly been made by the Conductor in the way bill. The tickets in respect of 5 passengers were torn from the TicketBook for which there is no explanation by respondent No. 3.

9. For the reasons stated above, the writ petition is partly allowed and the award of the labour Court is modified to this extent that the workman shall be entitled to 50% of back wages instead of full back wages. No order as to costs.