

(2007) 07 AHC CK 0076
In the Allahabad High Court

U.P. State Road Transport Corporation and Another	APPELLANT
Vs	
Om Prakash and Others	RESPONDENT

Date of Decision : 02-07-2007

Acts Referred:

Citation : (2007) 4 AWC 4207 : (2007) 115 FLR 70

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Judgement

S.U. Khan, J.—Both these writ petitions are directed against the same award dated 28.2.1990 given by Presiding Officer, Labour Court (IV), U.P. Kanpur in Adjudication Case No. 105 of 1986. The matter which was referred through order dated 29.10.1986 was as to whether the action of the employer, U.P.S.R.T.C. terminating the services of its employee Om Prakash Singh, a Conductor, through order dated 4.6.1983 was valid or not.

2. The charge against the employee was that on 25.1.1983 on surprise inspection it was found that he was carrying 38 passengers without tickets. In domestic enquiry charge was found proved. The employee admitted that oral statements of the witnesses were recorded in the enquiry in his presence and that he did not make any complaint regarding unfairness of domestic enquiry, during continuance of enquiry. Labour court held that enquiry was fair. Apart from it, labour court in its award held that the workman in cross-examination clearly admitted that at the time of surprise inspection he had not issued tickets to 38 passengers.

3. However, regarding quantum of punishment [i.e., dismissal from service), labour court held that it was too severe. Accordingly labour court directed reinstatement but without any back wages. The said award has been challenged by both the parties.

4. As far as finding given by the labour court is concerned, I fully agree with the said findings. No material was brought on record to suggest that enquiry was not

fair. The workman himself admitted that tickets had not been issued to 38 passengers at the time of inspection.

5. However, as far as interference of labour court in the punishment of dismissal is concerned it is utterly illegal. Conductor enjoys position of trust. If a single passenger is found without ticket, dismissal from service is the only reasonable punishment. Employer is fully justified in terminating the services of conductor even if one passenger is being carried by him without ticket on the ground of loss of confidence.

6. Accordingly, first writ petition is allowed. Impugned award in so far as it substitutes the punishment of dismissal by withholding of back wages and direct reinstatement is set aside. It is held that order of reinstatement passed by the labour court is utterly erroneous in law. Consequently dismissal order passed by the employer is upheld and reinstatement order passed by the labour court is set aside. As reinstatement order has been set aside, hence, there is no question of considering the plea of workman in the second writ petition to the effect that back wages were wrongly denied to him. Accordingly, second writ petition by the workman is dismissed.

However, there is an important fact having direct relation with these writ petitions which requires consideration. In the rejoinder written statement filed by the workman before the labour court copy of which is Annexure-4 to the second writ petition it was stated in Para 18 that termination order dated 4.6.1983 had been set aside by the High Court through judgment dated 27.10.1986, passed in Writ Petition No. 16222 of 1986. Even in the writ petition by the workman (Writ Petition No. 28847 of 1990), there is no mention of the said order of the High Court. In the award given by the labour court also there is no mention of the said judgment of the High Court. I therefore, passed an order on 7.8.2006 (on the order sheet of the first writ petition). On the said date photocopy of the certified copy of the judgment of this Court dated 22.10.1986 in Writ Petition No. 16222 of 1986 had been placed on record by the learned Counsel. I directed the parties to file supplementary-affidavit annexing therewith copy of the said judgment. Accordingly, supplementary affidavit was filed. The said judgment dated 22.10.1986 is only of 17 lines. Through the said judgment termination order of the workman Om Prakash dated 4.6.1983 passed by Assistant Regional Manager was set aside only on the ground of incompetence by Assistant Regional Manager to pass termination order in view of the authority of Bhopal Singh v. U.P.S.R.T.C., Writ Petition No. 8363 of 1986, decided on 10.9.1986. Absolutely nothing was said regarding correctness of termination order on merit. The petitioner was held to be entitled to reinstatement but not entitled to be paid back salary.

7. Learned Counsel for U.P.S.R.T.C. has vehemently argued that there was a technical flaw in the relevant rules and regulations due to which in the authority of Bhopal Singh. It had been held that Assistant Regional Manager was not competent to pass punishment orders against their subordinates including the order of dismissal from service and that technical flaw was later on cured by

Ordinance which was later on converted into U.P. Raj Sarak Parivahan Nigam Karamchari (Adhikarion Se Bhin) (Niyukt Pradhikari) Adhiniyam, 1987 (U.P. Act No. 15 of 1987). It has further been argued that in view of the aforesaid Ordinance and the Act this Court in *M.P. Sharma v. Regional Manager. U.P.S.R.T.C.* 1988 (56) FLR 185 (DB). held that termination orders passed by Assistant Regional Manager were valid as the foundation of the authority of Bhopal Singh stood removed by the aforesaid Ordinance and Act.

8. However, the learned Counsel for the workman has argued that as the order passed in favour of workman on 21.10.1986 in Writ Petition No. 16222 of 1986 has not been set aside, hence, irrespective of the fact that as to whether it is correct or not or as to whether it remained correct or not after the aforesaid Ordinance and Act the same has to be implemented.

9. In my opinion, in this writ petition these questions need not to be decided. Actually the workman himself was not placing reliance upon the said judgment. It was only the query of the Court, which impelled the learned Counsel to file copy of the said judgment. Copy of the said judgment was not filed even before the labour court. If the copy of the said order of the High Court had been filed then labour court must have outrightly refused to decide the matter as it had already been decided by the High Court, It appears that the workman took a chance in respect of the back wages which had not been awarded by the High Court.

10. On the material which was available before the labour court and the points argued before it, the order of the labour court directing reinstatement cannot be sustained therefore, it has been set aside in the earlier part of this judgment. The question of effect of judgment of High Court dated 21.10.1986 is expressly left open. Let it be decided in such proceedings where it is subsequently raised. If reliance upon the said judgment is placed by the workman then all permissible pleas will be available to the employer including the plea of omission of the workman to take any steps for its enforcement for about 21 years and its effect.