

(2013) 01 AHC CK 0398

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 25677 of 1997

U.P. State Road Transport Corporation APPELLANT

Vs

Mahar Singh and Others RESPONDENT

Date of Decision : 07-01-2013

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2013) 2 ADJ 346 : (2013) 137 FLR 407

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

Bench : Single Bench

Advocate : V.K. Singh, for the Appellant; G. Narain and Rajesh Kumar Yadav, C.S.C., for the Respondent

Final Decision : Disposed Of

Judgement

S.U. Khan, J.—Earlier this writ petition was allowed by me on 30.3.2011 without hearing any one on behalf of workman respondent No. 1. Order dated 30.3.2011 is quoted below:

Heard learned counsel for the petitioner. Shri Gopal Narain, learned counsel for the workman-respondent No. 1 states that twice he sent registered letters but his client is not responding therefore he is not in a position to argue the case.

This writ petition is directed against award dated 15.10.1996 given by Presiding Officer, Industrial Tribunal (IV), Agra in adjudication case No. 57 of 1994. The matter which was referred to the Labour Court was as to whether the action of petitioner - employer terminating the services of its workman - respondent No. 1 with effect from 17.12.1988 was fair and proper or not. The dispute was raised in the year 1994 i.e. after about six years of termination of service. Respondent No. 1 was bus conductor. His services were terminated after domestic enquiry. Through order dated 6.4.1996 passed by the Industrial Tribunal it was held that the domestic inquiry was fair and proper. Second half portion of para-3 of the impugned award is quoted below:

This tribunal passed a detailed order on 6.4.1996 wherein it was held that domestic enquiry was fair and proper. Thereafter ample opportunity was given to the parties to lead evidence on the question of quantum of punishment, that they may want to lead and think fit to lead. But none of the parties wished to lead any evidence. Consequently this Tribunal once again heard the parties and went through the records on file on 15.10.1996.

The allegation against the workman was that at the time of surprise inspection/checking on 24.8.1986, it was found that out of 57 passengers, 14 passengers had been issued tickets for shorter distance and of lesser amount. Total loss caused was of only Rs. 7/-. The Industrial Tribunal held that the allegation was not proved beyond reasonable doubt. In para-9 of the impugned award it is mentioned that employer brought on record that earlier also there were charges of irregularities committed by the workman and he had been punished for those actions. In para-12 of the written statement filed by the employer petitioner before the Industrial Tribunal earlier instances of mis-conduct and punishment were mentioned. Copy of the said written statement is Annexure-2 to the writ petition. The charges were that on 15.7.1984 two passengers were found without ticket and one month's allowance for good conduct was withheld. Similarly on 6.8.1984 two passengers were found ticket less and four months allowance for good conduct was withheld. On 14.8.1986 one passenger was found ticket less and four months allowance for good conduct was withheld. On 25.4.1987 one passenger was found ticket; less and two months allowance for good conduct was withheld. On 30.11.1988 four passengers were found without ticket and six months allowance for good conduct was withheld.

Carrying ticket less passengers by conductor is a serious mis-conduct. Conductor holds a position of trust. Quantum of loss is not much material vide North West Karnataka Road Transport Corpn. Vs. H.H. Pujar, , Divisional Manager, Rajasthan S.R.T.C. Vs. Kamruddin, and U.P. State Road Transport Corporation Vs. Nanhe Lal Kushwaha, . The Supreme Court in The Govt. of A.P. and Others Vs. Mohd. Taher Ali, , has held that earlier lapse of delinquent may also be taken into consideration while deciding the question of punishment.

It was therefore not a case where punishment of termination could legally be diluted by the Industrial Tribunal.

Accordingly, writ petition is allowed. Impugned award is set aside.

Thereafter restoration application was filed on 22.9.2011. During pendency of the restoration application learned counsel for workman respondent No. 1 was directed to file counter-affidavit to the writ petition so that in case restoration application was allowed matter could be heard on merit at once. Thereafter, counter and rejoinder-affidavits were filed. On 4.10.2012 restoration application was allowed, arguments of learned counsel for both the parties on the merit of the writ petition were heard and judgment was reserved.

2. Alongwith the counter-affidavit copy of charge-sheet, copy of the report of

inquiry officer after completion of domestic inquiry dated 22.2.1988 and reply of petitioner to second show-cause notice by the appointing authority have been filed as Annexure CA-1 to the counter-affidavit. There were two charges in the charge-sheet. The first was that out of 57 passengers present in the bus at the time of inspection 14 had been issued tickets for shorter distance in the sense; that they had boarded the bus from Chaumuha, however they were issued tickets from Jaitya. The other charge was that some blocks of ticket book were unfilled. In respect of the first charge, the inquiry officer himself accepted the explanation of the workman that those 14 passengers had boarded the bus from Jaitya and not from Chaumuha and merely because one of them stated that he was resident of Chaumuha, the inspecting team wrongly drew the inference that 14 passengers had boarded from Chaumuha. The inquiry officer categorically held that charge of carrying 14 passengers without ticket of proper distance was not proved beyond doubt.

3. However, in respect of the other charge/allegation that some tickets were blank, the inquiry officer held that it was against the Rule and violation of code of conduct which proved that the conduct of the workman was doubtful. The Inquiry Officer did not find the workman guilty of any misappropriation or financial irregularity. Date of the report of inquiry officer is not clear.

4. Annexure CA-2 is the copy of promotion order dated 25.4.2011 through which workman has been promoted to the post of booking clerk from the post of conductor. In para-14 of the counter-affidavit, it has been stated that pursuant to the impugned award workman recovered Rs. 3,24,392/- through order dated 22.10.1997 (passed by Deputy Labour Commissioner, Agra). That order is Annexure CA-5. In the said order, it is mentioned that the employers had not filed any stay order. In fact stay order had been passed on 11.8.1997 but the employers did not file the same before the labour Court. Through interim order petitioners were directed to pay last drawn wages to the workman. It is undisputed that thereafter workman was reinstated.

5. As no one had appeared on behalf of the workman hence while allowing the writ petition on 30.3.2011, I held that Industrial Tribunal held that the allegation of carrying 14 passengers with tickets of shorter distance was not proved without reasonable doubt. In fact this finding had been recorded by the inquiry officer and not by the Industrial Tribunal.

6. Accordingly, my judgment dated 30.3.2011 being based on misconception of facts is liable to be set aside. I fully agree with the view of the Industrial Tribunal that just for not filling some blogs of ticket book promptly services could not be terminated. I further agree with the punishment awarded by the labour Court i.e. stopping of two increments. It was perfectly in accordance with Section 11-A of Industrial Disputes Act.

7. However, the Industrial Tribunal was not right in awarding complete back wages from 17.12.1988 when services were terminated for the reason that

dispute had been raised after six years. Accordingly, back wages could be awarded only from 2.6.1994, the date of reference.

8. During arguments learned counsel for workman had agreed that in case matter was decided in favour of the workman he would return/ adjust half of the amount which he had realised through order of Deputy Labour Commissioner i.e. about Rs. 3,25,000/-.

9. In my opinion due to late filing of the claim workman is required to return the amount of wages for the period from 17.12.1988 till 2.6.1994 when reference was made (through Notification No. 6216-CP-45/94, Agra). Let the said amount: be recovered from the petitioner in equal instalments from his future salary by deducting one third of the total salary payable to him every month until the entire amount is recovered/adjusted.

10. Accordingly, impugned award is modified only in respect of back wages as indicated above. Writ Petition is disposed of accordingly.