

(2013) 01 AHC CK 0095

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 33688 of 2000

U.P. State Road Transport Corporation

APPELLANT

Vs

Ram Chet Chauhan and Others

RESPONDENT

Date of Decision : 30-01-2013

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 4k

Citation : (2013) 5 ADJ 76 : (2013) 4 ALJ 253 : (2013) 137 FLR 784 : (2013) LLR 762

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : Samir Sharma, for the Appellant; J.N. Sharma, Pradeep Saxena and Satish Kumar, for the Respondent

Final Decision : Allowed

Judgement

B. Amit Sthalekar, J.—By this writ petition the petitioner is challenging the order dated 1.9.1999. Briefly stated the case of the respondent No. 1 is that he was working as Conductor under the petitioner-department and his services were terminated with effect from 30.3.1988- He raised an industrial dispute, which was referred by the State Government by a notification dated 13.12.1991 to the labour Court in exercise of power u/s 4k of the U.P. Industrial Disputes Act, 1947. The case of the respondent No. 1 was that earlier he was placed under suspension on 1.8.1985, which was revoked on 9.3.1987 but thereafter again by order dated 13.4.1987 he was placed under suspension. Thereafter, on 13.4.1987 a charge-sheet was issued to him. Charge against the petitioner was that when the Bus No. U.P. H.I. 502 was going from Shahjahanpur to Mohamadi, on 30.7.1985 it was checked by the inspection staff and 20 passengers were found travelling without ticket. Charge against the petitioner further was that when he was questioned in this regard he tried to snatch the way bill and thereafter tore up the same. A departmental enquiry was held against the petitioner in which the petitioner was found to be guilty of the aforesaid charges.

Thereafter, the competent authority proceeded to pass the order dated 30.3.1988 by which the petitioner was removed from service.

2. Before the Labour Court a preliminary issue was framed on 25.8.1992 as to whether the departmental enquiry held against the petitioner was legal and valid. On 2.7.1998 respondent No. 1, workman gave an application stating that he does not want to say anything with regard to termination of the respondent No. 1 and thereafter the Labour Court proceeded to pass an order holding the departmental enquiry to have been legally and validly held.

3. Subsequently before the Labour Court the petitioner was given another opportunity of hearing and to lead evidence. The petitioner thereafter submitted that the entire enquiry proceedings have been initiated against him as an act of animus as in fact he had been asked to carry two sadhus without ticket by one Jai Ram Singh, which he declined, therefore, he has been falsely implicated in the departmental enquiry. Before the Labour Court the said Jai Ram Singh was produced as management witness. This witness denied the allegations of the petitioner that the enquiry proceedings had been motivated on account of refusal of respondent No. 1 to carry two sadhus without ticket and he further stated that during inspection of the bus 20 passengers were found to be travelling without ticket and when the respondent No. 1 was questioned in this regard, he tried to snatch the way bill and in the process he also tore the way bill. The Labour Court has further held that the enquiry against the petitioner has not been held correctly and properly and giving the respondent No. 1 benefit of doubt, has set aside the order of termination dated 30.3.1988 and has directed the petitioner-department to reinstate him in service but without any back wages.

4. I have heard Sri Samir Sharma, learned counsel for the petitioner and learned standing counsel for the respondents. None appeared for respondent No. 2. List has been revised.

5. It has been submitted by Sri Samir Sharma that once the Labour Court had come to the conclusion with regard to the Issue No. 1 that the departmental enquiry against respondent No. 1 had been legally and Validly held, it was not open for the Labour Court to have re-examined the issue by giving the petitioner opportunity of again leading evidence. He further submitted that even after giving opportunity, evidence was led on behalf of the management. One Jai Ram Singh, management witness was produced before the Labour Court who reiterated the stand of the petitioner-department but his evidence has been rejected only on-the ground that he was the only witness produced by the Management and no other witness had been produced and that therefore, being an interested witness his testimony was unreliable. Sri Samir Sharma submitted that this could not have been a ground for rejecting the testimony of Jai Ram Singh without giving any further reasons as to why the testimony of Jai Ram Singh was not acceptable.

6. I have gone through the averments in the writ petition and the impugned

award of the Labour Court as well as the documents on record, the fact that on 25.8.1992 certain issues were framed and a preliminary issue was framed namely whether the departmental enquiry was held against respondent No. 1 was legal and valid or not, finds mentioned in the order of the Labour Court itself. The Labour Court has recorded a clear finding that on 2.7.1998 an opportunity was given to the respondent No. 1 to file his objections but the respondent No. 1 submitted an application stating that he does not want to file any objections with regard to the preliminary issue and thereupon the Labour Court has recorded a categorical finding that after examining the entire documentary evidence on record and categorical findings, there is no illegality and infirmity in the departmental enquiry held against respondent No. 1. In this view of the matter there was no occasion for the Labour Court to have allowed the petitioner opportunity.

7. Be that as it may the Labour Court gave a second opportunity to the respondent No. 1 to lead evidence. The management produced its witness Jai Ram Singh as management witness. The testimony of Jai Ram Singh has been rejected by the Labour Court only on the ground that he was the sole witness produced by the Management-petitioner and no other witness has been produced and that he was an interested witness and, therefore, his testimony could not be relied upon. No other reason has been given by the Labour Court for disbelieving the testimony of Jai Ram Singh at the internal page -6 of the award of the Labour Court. A finding has also been recorded by the Labour Court that the respondent No. 1 workman in his testimony has stated that with regard to the document Exh.-5 he had never stated before the departmental enquiry that he was asked by Jai Ram Singh to carry two shadhus in the bus without ticket. Thus it is established beyond doubt that this story of the departmental enquiry being motivated against the respondent No. 1 was raised by him for the time in the Labour Court and is by way of after thought as this was never his case before the departmental proceedings. Even otherwise the testimony of Jai Ram Singh could not have been rejected solely on the ground that he was the only witness produced by the petitioner-management and no other witness had been produced. The Labour Court has not given any other reason for disbelieving the testimony of Jai Ram Singh and in these circumstances the respondent No. 1 could not have been given the benefit of doubt nor could the order of termination be set aside for such flimsy reasons.

8. Sri Samir Sharma has relied upon a decision of this Court in U.P. State Road Transport Corporation Vs. State of U.P. and others, , wherein this Court on the question of the Labour Court giving benefit of doubt to a workman has held as follows.

13 The finding of the labour Court has been mentioned in paragraph 3 of the judgment. The first three findings are against the contesting respondent and are not challenged. But in regard to the fourth finding, namely realisation and misappropriation of the fare, the labour Court has used contradictory words. At

one place the labour Court has observed that the charge, of realising the fare from the passengers and misappropriating it, is not proved; at the other place, the labour Court held that this charge was not proved beyond reasonable doubt. It is not clear if the Labour Court has looked into the evidence in the light of standard of proof as in a criminal trial-of beyond reasonable doubt; or like in a departmental proceeding-on preponderance of probability. The award of the Labour Court is illegal.

9. Thus on the above analysis it is clearly established that rules of evidence as applicable in the criminal trial are not applicable in the case of departmental proceedings or even in the proceedings before the Labour Court and in the absence of any other finding by which the testimony of Jai Ram Singh may be held to be vitiated the said testimony could not have been rejected only on the ground that no other witness had been produced by the management and that Jai Ram Singh was an interested witness.

10. For the aforesaid reasons and the law laid down by this Court in the case of UPSRTC (*supra*), the award of the Labour Court dated 1.9.1999 is illegal and is quashed.

The writ petition is allowed.

So far as the amount deposited before the Labour Court under the interim order of this Court dated 7.8.2000 is concerned, it will be open for the petitioner to move an application before the Labour Court for release of the same and on such application being moved, the respondent No. 2 shall pass appropriate orders for release of the said amount in favour of the petitioner within a further period of one month.