

(1992) 05 AHC CK 0037

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 10440 of 1992

U.P. State Road Transport Corporation Central Workshop

APPELLANT

Vs

Ram Dayal and Others

RESPONDENT

Date of Decision : 01-05-1992

Acts Referred:

Uttar Pradesh Roadways Organization (Abolition of Posts and Absorption of the Employees) Rules, 1982 — Rule 4(1), 4(2)

Citation : (1992) 3 AWC 1327

Hon'ble Judges : M. Katju, J

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

M. Katju, J.—The Petitioner is a Corporation constituted under the State Road Transport Corporation Act. Prior to its constitution the U.P. Govt. was running part of the transport industry in the State directly through the U.P. Govt. Roadways, but after the corporation was set up the work of the Roadways was taken over by the Corporation.

2. Respondent No. 1 was appointed in the service of the U.P. Govt. Roadways in 1962, and since then he continued in service as a government servant. It is alleged in para 1 of the writ petition that Respondent No. 1 was involved in illegally removing some property of the Corporation, and when this was detected he submitted his resignation on 2-5-77 which was accepted the same day. The Respondent No. 1 raised a dispute which was referred to the labour court which held by its award dated 30-8-80 (Annexure 1 to the writ petition) that the resignation of Respondent No. 1 was obtained by coercion.

3. The Petitioner challenged this award dated 30-8-80 by writ petition No. 347/81 which was allowed on 29-11-89 by the judgment whose copy is Annexure 2. A perusal of this judgment shows that the only point on which the matter was

remanded to the labour court was whether there was an employer-employee relationship between the Petitioner and Respondent No. 1. The High Court specifically held that the point regarding acceptance of resignation of Respondent No. 1 had no merit and was consequently rejected.

4. After the matter came back to the labour court on remand the impugned award dated 16-1-91 was passed (Annexure 3).

5. In this award it was noticed that the corporation came into existence with effect from 1-6-72 vide Govt. Notification dated 31-5-72. The employees of the U.P. Govt Roadways were U.P. Govt. Servants, and when the corporation came into existence the said employees were continued in service on deputation with the corporation. Thereafter the U.P. State Road Transport Corporation employees (other than officers) Service Regulations, 1981 was promulgated under which the employees of the U.P. Govt. Roadways (who were on. deputation with the corporation) were given an option for absorption in the service of the corporation, and those who did not exercise that option would cease to be employees of the U.P. Govt. Roadways. Subsequently by notification dated 28-4-82 the U.P. State Roadways Organization (Abolition of Post and Absorption of Employees) Rules, 1982 were issued. Rule 4(1) of the said Rules provided that an employee of the U.P. Govt. Roadways who was placed on deputation with the corporation, and who does not wish to be absorbed in the service of the corporation shall, within 3 months from the notification of the rules in the Gazette intimate to the Transport Secretary that he does not wish to be absorbed. Sub-rule (2) of Rule 4 provides that every employee who does not give an intimation under Rule 4(1) shall be deemed to have exercised his option for absorption in the service of the corporation.

6. By its award dated 16-1-91 the Labour Court has held that since the resignation of the Respondent No. 1 dated 2-5-77 was obtained by coercion hence it will be deemed that Respondent No. 1 continued in the service of the U.P. Govt. Since the Respondent No. 1 was illegally prevented from exercising his option under Rule 4(1) of the 1982 rules (by his forced resignation) it will be deemed that he refrained from exercising his option, and hence was absorbed in the service of the corporation under rule 4(2). In view of this position the Labour Court directed reinstatement of Respondent No. 1 with back wages of 30% of his wages from 2-10-80 to 29-11-89.

7. The present writ petition has been filed against the award dated 16-1-91, and the contention of learned Counsel for the Petitioner is that the Respondent No. 1 was an employee of the U.P. Govt. Roadways, and hence a State Govt, employee, and was on deputation to the corporation from 1-6-72, and while on deputation he resigned on 2-5-77 which resignation was accepted the same day. Consequently it was urged that there was no relationship of employer and employee between the Petitioner and Respondent No. 1, and hence the award of the Labour Court was illegal

8. Learned Counsel for the Petitioner has referred to the decision of a division bench of this Court in Jagdish Prasad Gupta v. State of U.P. 1980 ALR 81 in which it was held that even after 1-6-72 the employees of the U P Govt. Roadways continued to be govt servants and did not become employees of the Corporation. The other dictum of the division bench that the employees of the U.P. Govt. Roadways were not workmen under the Industrial Disputes Act as they were government servant is no longer good law in view of the decision of the Supreme Court in Des Raj and Ors Vs. State of Punjab and Ors, wherein it has been clarified that a Govt. department can sometimes also be an industry if it is not performing legal functions.

9. The contention of learned Counsel for the Petitioner that on 2-5-77 when the Respondent No. 1 was said to have resigned he was an employee of the government and not of the corporation is correct because in 1977 the Absorption rules of 1982 had not come into force. However, since the Respondent's resignation has been found to have been obtained by coercion it is no resignation in the eye of law, and hence the Respondent No. 1 will be deemed to have continued in government service even after 2-5-77. Consequently when the 1982 rules came into force, the Petitioner will be deemed to have exercised his option for absorption in service of the corporation vide Rule 4(2) of the said Rules (which have been annexed as Annexure 2 to the rejoinder affidavit) since he did not send intimation to the Transport Secretary. In the circumstances, the award of the labour court is correct and calls for no interference. The writ petition is accordingly dismissed. There is no order as to costs.