
(2009) 11 UK CK 0016
In the Uttarakhand High Court
Case No : Writ Petition No. 1286 of 2006 (S/S)

Vijendra Singh

APPELLANT

Vs

Assistant Regional Manager, Uttaranchal Parivahan Nigam
and Others

RESPONDENT

Date of Decision : 24-11-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh State Road Transport Corporation Employees (Other than Officers)
Service Regulations, 1981 — Regulation 69, 69A

Citation : (2009) 11 UK CK 0016

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : Mangal Singh Chauhan, for the Appellant; V.B.S. Negi, for the Respondent

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—By means of this petition, moved under Article 226 of the Constitution of India, the Petitioner has sought writ in the nature of certiorari, quashing of the order dated 25-08-2006, passed by Respondent No. 1 (copy Annexure-11 to the writ petition), whereby the Petitioner has been removed from service.

2. Heard learned Counsel for the parties and perused the affidavit, counter affidavit and rejoinder affidavit, on record.

3. Brief facts of the case are that, the Petitioner was initially appointed as conductor with U.P. State Road Transport Corporation, in the year 1979. His services were confirmed on said post and he was posted in Tanakpur Depot. It appears that at the time when the impugned order was passed he was conductor with Uttaranchal Transport Corporation. It has been stated in the writ petition that the Assistant Regional Manager of Uttaranchal Transport Corporation (Respondent No. 1) vide order dated 13-05-2005 (copy Annexure-1 to the writ

petition) placed the Petitioner under suspension on 14-04-2005, on the charges that while he was on duty on Tanakpur-Bareilly route with Bus registration No. UA 04 0145, on checking, it was found that 30 passengers out of the 48 passengers were being taken by him without ticket. Not only this, on the same day, on the same route and on the same bus, by another checking team at the different point of journey, out of the 21 passengers, 9 passengers were found being taken without ticket. In para 5 of the writ petition, it has been stated that a show cause notice was given to the Petitioner and a charge sheet was served on him (copy of which is Annexure-2 to the writ petition). The Petitioner has further stated that he submitted detailed reply to the Enquiry Officer (copy of which is Annexure-3 to the writ petition). The explanation of the Petitioner in his reply is that due to breakdown of one bus of Pilibhit depot (belonging to different Corporation) 30 passengers were shifted in the bus in which the Petitioner was performing his duties as conductor, as such, there was no malafide intention on the part of the Petitioner in taking 30 extra passengers. Also, as to the 9 passengers found being taken without ticket, it has been stated that the Petitioner had to make entry in the waybill after issuing tickets to them. The enquiry was conducted by Assistant Regional Manager, Rishikesh, of the Respondent Corporation, who submitted his report (copy of which is Annexure-4 to the writ petition). Earlier a minor punishment was awarded to the Petitioner vide order dated 09-12-2005, passed by Respondent No. 1 (copy of which is Annexure-5 to the writ petition) and the Petitioner resumed his duties in Kotdwar depot. However, Respondent No. 2 issued office memorandum No. 376 dated 17-01-2006 (copy of which is Annexure-6 to the writ petition), whereby the report submitted by Assistant Regional Manager, Rishikesh, was rejected and fresh enquiry was ordered to be made by the Assistant Regional Manager, Uttaranchal Transport Corporation (Headquarters). It is pleaded by the Petitioner that the said office memorandum is illegal. It is stated that the Petitioner was again placed under suspension and a letter dated 19-01-2006 (copy of which is Annexure-7 to the writ petition) was issued to the Petitioner to appear for hearing on 01-02-2006, for the departmental enquiry. It is stated in the writ petition that the Petitioner filed a writ petition challenging the order dated 17-01-2006, which was disposed of vide order dated 21-02-2006, passed by this Court, whereby it was directed that the order dated 17-01-2006 shall remain in abeyance only to the extent it relates to suspension of the Petitioner, but the enquiry was allowed to be completed within three months (copy of said order is Annexure-8 to the writ petition). It is stated that the impugned order dated 25-08-2006 (copy of which is Annexure-11 to the writ petition) has been passed by the Respondent No. 1, removing the Petitioner from service. Challenging the validity of said order, this writ petition has been filed.

4. In the counter affidavit filed on behalf of Respondents it has been stated that the Petitioner had an alternative remedy under Regulation 69 of the U.P. State Road Transport Corporation Employees (other than officers) Service Regulations, 1981 and the writ petition is not maintainable. It is further stated that the

Petitioner's service record is very poor and he has been placed under suspension four times. It is further stated in the counter affidavit that the charge relating to the incident dated 14-04-2005, when he was taking 30 passengers without ticket and caught by the team of officers, namely Rambabu Gupta, Kishan Chand, Vijay Kumar Sangari and Naresh Kumar Duvedi and thereafter, on the same day at another place by another team of checking staff, namely S.S. Mehta and G.K. Saxena found taking 9 passengers without ticket, is grave and serious. It is further stated that the story of breakdown of another bus was not correct, as it was found in the enquiry that the passengers were allowed to travel in the bus by the Petitioner after charging money from them, without issuing any ticket. Not only this, according to the Respondents when the checking staff was checking the bus, the Petitioner ran away after snatching the papers. Notices dated 01-02-2006, 14-02-2006, 01-03-2006 and 24-03-2006 were issued to the Petitioner for personal hearing and last date fixed was 18-04-2006, but the Petitioner avoided the hearing for one reason or the other. Finally, he was served with the notice dated 22-03-2006 (copy of which is Annexure-C.A. 1 to the counter affidavit) where after, the impugned order removing the Petitioner from service was passed.

5. In the supplementary short counter affidavit filed on behalf of the Respondents it has been stated that the Managing Director was fully empowered under Regulation 69-A of the U.P. State Road Transport Corporation Employees (other than officers) Service Regulations, 1981, to direct fresh enquiry and to reject the report of the Enquiry Officer. It is also stated that the powers of the Chairman were delegated to the Managing Director and Additional Directors vide Resolution dated 16-01-2001 (copy of which is annexed as Annexure - C.A. 1 to the supplementary short counter affidavit).

6. In the rejoinder affidavit the Petitioner has reiterated the averments made in the writ petition and filed copy of letter purported to be given by the passengers of the bus of Pilibhit depot (copy of which is Annexure-2 to the rejoinder affidavit), in which they have stated that the conductor was not at fault.

7. Mr. M.S. Chauhan, learned Counsel for the Petitioner submitted that the Petitioner is an innocent person and the passengers found in excess of the number mentioned in the waybill were infact accommodated in the bus on humanitarian ground due to the failure of bus belonging to Pilibhit depot. It is further contended that Petitioner has wrongly been found guilty by the Enquiry Officer. It is argued that the punishment awarded to the Petitioner is also disproportionate to the fault found on the part of the Petitioner learned Counsel for the Petitioner also referred to the case of Om Prakash Srivastava v. U.P. State Road Transport Corporation (Writ Petition No. 3690 (S/S) of 2001) decided by this Court on 23-10-2007, in support of his case. I have gone through the judgment referred and found that in said case the conductor was found only negligent in performance of his duties. The present Petitioner's case is different to the one referred on his behalf. In the present case not only once but twice on

the same day by different teams of checking staff, the Petitioner was found carrying excess passengers. Not only this, the explanation given by the Petitioner that he was carrying the extra 30 passengers on humanitarian ground due to the failure of bus of Pilibhit depot, rightly appears to have been not accepted by the authorities, as the Pilibhit depot is not the depot run by the Respondent Uttaranchal Transport Corporation, but by U.P. State Road Transport Corporation. It is hard to believe that the Petitioner had taken those passengers free on humanitarian ground. Apart from this, snatching the papers from the authorities, on checking, itself shows malafide intention on the part of the Petitioner.

8. In writ jurisdiction, what this Court has to examine is, whether, the principles of natural justice or the rules applicable, are followed in conducting enquiry and awarding punishment to the employee, or not? Correctness of decision is not required to be seen by this Court in the writ jurisdiction. From the affidavits of the parties it is evidently clear that at every stage the Petitioner was given due notices and afforded proper opportunity of hearing before the impugned order is passed against him, removing him from the service.

9. It is argued on behalf of the Petitioner that the authorities concerned have erred in law in rejecting the earlier enquiry report and holding the enquiry afresh. It is further contended that under Regulation 69-A of the U.P. State Road Transport Corporation Employees (other than officers) Service Regulations, 1981, the Respondent authority was not competent to pass the impugned order. I have considered the submissions of learned Counsel for the Petitioner. The order dated 21-02-2006 (copy of which is Annexure-8 to the writ petition) passed by this Court, in Writ Petition No. 179 (S/S) of 2006, filed by the present Petitioner, in the earlier round of litigation, shows that the order dated 17-01-2006 (copy Annexure-6 to the present petition), by which the earlier report of the Enquiry Officer was rejected and fresh enquiry was directed, was questioned. This Court vide said order dated 21-02-2006, allowed the enquiry to proceed, but kept the suspension order in abeyance. After said order has attained finality, it is not open to the Petitioner to challenge same order dated 17-01-2006, in the present petition. Otherwise also, there is no prayer in the writ petition challenging said order. As far as the power of the Respondent No. 1 to pass the impugned order dated 25-08-2006 is concerned a supplementary counter affidavit has been filed on behalf of the Respondents annexing amendment in Regulation 69-A, incorporated vide IX amendment, passed in the year 2000, which empowers the officer subordinate to the Chairman and Managing Director to pass the order of dismissal/removal/reduction in rank, against an employee. A copy of Resolution dated 16-01-2001 has also been filed with said affidavit which shows that the Respondent No. 1 had the power to pass the order of removal against an employee of the Corporation learned Counsel for the parties did not raise any question before this Court as to application of the U.P. State Road Transport Corporation Employees (other than officers) Service Regulations, 1981, to the employees of the Respondent Corporation and both parties referred rules contained therein.

10. For the reasons as discussed above, this Court finds no force in this writ petition, which is liable to be dismissed. Therefore, the writ petition is dismissed. No order as to costs. (Interim Relief Application No. 3749 of 2007 also stands dismissed).