(2003) 3 AWC 1929 : (2003) 1 UPLBEC 154

Allahabad High Court

Case No: C.M.W.P. No. 17602 of 1990

Basant Lal Nimesh	APPELLANT
Vs	
U.P. State Roadways Transport Corporation and Others	RESPONDENT

Date of Decision: Oct. 25, 2002

Acts Referred:

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Industrial Disputes Act, 1947 - Section 2(3)

Citation: (2003) 3 AWC 1929 : (2003) 1 UPLBEC 154

Hon'ble Judges: Rakesh Tiwari, J

Bench: Single Bench

Advocate: Rajiv Joshi, for the Appellant; D.K.S. Rathore, for the Respondent

Final Decision: Dismissed

Judgement

Rakesh Tiwari, J.
Heard the learned counsel for the parties.

2. By means of the present writ petition, the petitioner has challenged the orders dated 8.9.1989 and 22.6.1989, passed by respondent Nos. 1 and 2, Annexures-7 and 5 to the writ petition respectively.

3. The petitioner was appointed as a Conductor on daily wages basis by the Regional Manager, Uttar Pradesh State Roadways Transport Corporation, Agra, by an order dated 23.11.1987 on compassionate ground as his father Ram Dayal Nimesh had died during the course of his employment.

4. The petitioner was charge-sheeted on 24.9.1988 by the Regional Manager of the Corporation at Agra as checking squad, namely, Sri Bharat Singh, Sri Madan Lal and Sri

S. N. Jaiswal found him carrying 11 passengers by issuing them tickets for less distance and an unbooked bicycle on 3.9.1988 while performing his duties on bus No. U.R.T./9703 on Kosi Barsana-Mathura route. He was charged with not only resultant financial loss to the Corporation but for tarnishing the image of the Corporation also.

5. The petitioner submitted his explanation on 17.11.1988 denying the charges leveled against him. A departmental enquiry was conducted into the charges and enquiry report was submitted by the inquiry officer against the petitioner. The petitioner also submitted the reply to the show cause notice, but the Regional Manager (Personnel), Uttar Pradesh State Roadways Transport Corporation, Agra, removed the petitioner from service on 22.6.1989. It is submitted that the orders passed by respondent Nos. 1 and 2 do not disclose any reason on the basis of which the charges against the petitioner are said to be established beyond doubt and further that unless the finding was recorded, major penalty cannot be imposed on the petitioner.

6. The petitioner filed an appeal before the General Manager, Uttar Pradesh State Roadways Transport Corporation, Agra, but the same was dismissed by the appellate authority on 8.9.1989.

7. Counter and rejoinder-affidavits have been exchanged between the parties. 1 have also gone through the records.

8. It is undisputed that the petitioner is a workman as defined u/s 2 (z) of the U. P. Industrial Disputes Act and proper forum for adjudication of dispute is labour court under the provisions of aforesaid Act. This Court will not exercise its powers under Article 226 of the Constitution of India and adjudicate upon a controversy, which requires findings of fact by appraisal of oral and documentary evidence. In these circumstances, it would be proper to relegate the petitioner to the alternative and efficacious remedy available to him before the labour court.

9. In Chandrama Singh v. Managing Director U. P. Corporation Union, Lucknow and Ors. 1991 (2) AWC 1005 : 1991 UPLBEC 898 the Full Bench of this Court in paras 9 and 13 of the judgment has held :

"Where a complete machinery/remedy for obtaining relief is provided in statute and such machinery and remedy fully covers the grievance of the petitioner then, unless extraordinary or exceptional circumstances exist or the machinery-remedy does not cover the grievance of the petitioner or the machinery or remedy is demonstrated and proved by the petitioner to be inadequate or inefficacious, the petitioner has to be relegated to the alternative remedy and the Court should not entertain the writ petition under Article 226 of the Constitution of India for redressal of grievance of the petitioner."

13. The decisions of the Hon''ble Supreme Court of India and this Court noted above, lead to an irresistible conclusion that the High Court must not allow its extraordinary jurisdiction under Article 226 of the Constitution of India to be invoked if the petitioner has

got an alternative remedy and proved to be inadequate or inefficacious or if it is not established from the material on record that there exist exceptional or extraordinary circumstances to deviate from the well-settled normal rule of relegating the petitioner to alternative remedy and permit him to by-pass the alternative remedy.

The hurdle of alternative remedy cannot be allowed to be skipped over lightly on a casual and bald statement in the petition that there is no other equally efficacious or adequate alternative remedy than to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India. The petitioner must furnish material facts and particulars to sustain such a plea."

10. In the case of Scooters India and Ors. v. Vijay E.V. Elder 1998 SCC (L&S) 1611, the Hon"ble Supreme Court in para 2 of the judgment has held :

"2..... there was no occasion for the High Court to entertain the writ petition directly for adjudication of an industrial dispute involving the adjudication of disputed questions of fact for which remedy under the industrial laws are available to the workman."

11. The decisions of the Apex Court are binding on all Courts under Article 141 of the Constitution. The U. P. Industrial Disputes Act, 1947 and Rules framed thereunder are adequate for settlement of any industrial dispute under the first, second or third schedule. These Act and Rules are complete Code for settlement and adjudication of disputes.

12. The jurisdiction of High Court under Article 226 of the Constitution cannot be permitted to be disputed on the ground of pendency of the writ petition for quite a period of time and the High Court may exercise its powers sparingly in cases.

13. In this view of the position of law, the writ petition is dismissed on the ground of alternative remedy. No order as to costs.

14. It Is, however, directed that if the petitioner raises an industrial dispute before the concerned Regional Conciliation Officer/Deputy Labour Commissioner within a month from today, the said authority will try to amicably settle the dispute. In case no settlement is arrived at, the matter shall be immediately referred by the competent authority to the labour court or Industrial Tribunal for adjudication as the case may be. The reference so made, shall be decided by the Court in the manner prescribed and time limits provided in Rule 12 of the U. P. Industrial Disputes Rules, 1957, for filing written statements, rejoinder, documents etc. If necessary, the proceedings may be held on day to day basis under Rule 12 (4) of the Rules and the case may be decided preferably within a period of six months from the date of receipt of reference.