

(2005) 11 AHC CK 0149

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 3476 of 2005

Ram Darash

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Nov. 18, 2005

Acts Referred:

- Constitution of India, 1950 - Article 226
- Road Transport Corporations Act, 1950 - Section 34
- Uttar Pradesh State Road Transport Corporation Employees (Other than Officers) Service Regulations, 1981 - Regulation 61, 62, 63, 64, 65

Citation: (2006) 2 AWC 1417 : (2006) 3 UPLBEC 2127

Hon'ble Judges: Rakesh Tiwari, J

Bench: Single Bench

Advocate: Rajesh Kumar Rao, for the Appellant; Ajay Singh and S.C., for the Respondent

Final Decision: Allowed

Judgement

Rakesh Tiwari, J.

Heard Counsel for the parties and perused the record.

2. The petitioner is driver in U.P. State Road Transport Corporation. On 6.7.2003, the petitioner along with Sri K.P. Pandey, co-driver and Sri Bhagwant Prasad, conductor was driving Bus No. 53 L 9585 from Delhi to Nichlaul. The bus was scheduled to take a halt at Sonauli, in the intervening night of 6/7.7.2003 and was to then proceed in the morning of 7.7.2003 to Nichlaul via Farenda.

The case :

3. It is admitted to the parties that before reaching Sonauli in the night of 6.7.2003, the journey was broken at New Shera Hotel for the refreshment of passengers and staff. After taking meals, the petitioner suffered severe stomach pains. In the circumstance, he handed over charge of the bus to co-driver Sri K.P. Pandey and

Conductor Sri Bhagwant Prasad. The petitioner was taken to Primary Health Centre by the Hotel proprietor- Sri Ujagar Singh. Thereafter, Sri K.P. Pandey, co-driver and Sri Bhagwant Prasad, conductor proceeded with the journey from Sonauli without night halt for Nichlaul.

4. The petitioner, in the meantime, was offended by the Medical Officer/in charge of the Primary Health Centre, Adda Bazar, who administered medicines to him and was advised to rest. When condition of the petitioner improved in the morning, he was taken back by the hotel owner his hotel where he got information through the local newspaper that the bus had met with an accident as a result whereof, the public had burnt the bus in retaliation.

5. It is submitted that the petitioner immediately rushed to the spot but did not find anyone there. He thereafter went to the Nichlaul Depot where he met the co-driver and the conductor. On enquiry, he was told that after proceeding from the hotel the bus got stuck in mud and when co-driver and the conductor tried to take out the bus to the road, it caught fire due to short circuit and First Information Report had been lodged by them.

The record :

6. The petitioner was placed under suspension vide order dated 9.7.2003 and was served with a charge sheet dated 19.7.2003 for the following charges :-

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,r}kjk vki ij fuEufyf[kr vkjksi yxk;s tkrs gS %&

;g fd fupykSy fMiks dh okgu la;k ;w0ih0 53@,y&9585 fnukad 6&7&2003 dks fnYyh ls vkdj jkf= esa lksukyh esa gkYV gksuh Fkh] vkSj fnukad 7&7&03 dks lqcg QjsUnk gksrs gq, fupykSy tkuk Fkk A mDr okgu ij vki ,oa Jh ds0ih0 ik.Ms; pkyd rFkk Jh HkxouR izlkn] ifjpkYd] fupykSu fMiks dk;Zjr Fks ! vki yxsxksa }kjk cl dks lksukyh esa gkYV u djds fnukad 6&7&03 dks gh jkf= esa lapkfyR djds ykbZ tk jgh Fkh vkSj okgu QjsUnk ckbZikl ij futZu lhu ij ykdj xhyh feV~Vh esa /kalk fn;k x;k A cl xhyh feV~Vh esa /kal tkus dsa ckn vki yxsxksa }kjk u"ks dh gkyr esa cl dks fudkyus dk dkQh iz;kl fd;k x;k ijUrQ cl fudy ugha ikbZ A cl u fudyusa ds dkj.k vki yxsxksa }kjk vius dqdR; dks fNikus ds fy, fdLh Toyu"khY inkFkZ dks mi;ksx djrs gq, cl esa vx xkdj tyk fn;k vkSj ihNs ds nksuksa Vkj; rFkk mlesa yxh LVsiuh ty x;k vkSj tks Vkj; jksM lkbZM esa Fks ogh Hkh iwjh rjg ls ty x;s Fks A lhVksa rFkk Cykd cksMZ dk fiNyK fgLLk iwjh rjg ls ty x;s Fks A vxks dk Vkj; Hkh tyk gS A cl dh ckMh Hkh vk/ks ls vf/kd fgLLs dk tyk gqvK ik;k x;k A mPpkf/kdkfj;ksa }kjk cl tyus ds dkj.k dk irk yxusa ds fy, QjsUnk Fkkus ls IEidZ fd;k x;k rks ;g ik;k x;k fd vki yxsxksa }kjk "kkVZ lfdZV dh lwpuk Fkkus esa ntZ djkbZ gS] tcfD okgu dh "kkVZ lfdZV fujh{k.k ds nksjku lgh ikbZ x;h rFkk vki yxsx cl tyus ds LFkku ls Qjkj ik;s x;s A bl izdkj vki yxsxksa }kjk okgu la;k ;w0ih0 53@9585 dks tkucw>dj tyk;k x;k gS vkSj fuxe dks



yxHkx 4 yk[k #i;s dh gkfu igqapkbZ x;h gS A

bl izdkj vki foHkkxh; vkns"kkksa ,oa funsZ"kks dh vogsyuk djus] fnukad 5&7&03 dks okgu la[k ;w0ih053@,y 9585 dks jkf= esa lksukSyh esa gkYV u djds euekus ax ls jkf= esa gh cl lapkfy djusa] okgu dks xhyh feV~Vh esa Qlk nsusa] okgu dks xhyh feV~Vh ls fudkyus dk iz;kl djusa] okgu u fudyusa ij mlesa fdlh Toyu"khy inkFkZ dks Mkydj okgu dks tyk nsusa] vius drZO;ksa ,oa nkf;Roksa dk fuoZgu lgh ax ls IEikfnr u djus] foHkkx dks yxHkx 4 yk[k #i;s dh gkfu igqapkusa] LosPNk iwoZd foHkkxh; dk;Z IEikfnr djusa] drZC;P;wr gksusa rFkk deZpkjh vkpj.k lafgrk dk mYys?ku djusa ds izFke n"V;k nks"kh ik;s tkrs gSa A



7. A show cause notice dated 6.2.2004 was also issued The petitioner submitted his replies to the charge sheets and show cause notice vide replies dated 7.8.2003 and 23.2.2004 respectively.

8. Sri R.R. Prajapati, Assistant Regional Manager (Finance), Gorakhpur- the enquiry officer conducted a detailed enquiry in the matter and found that at the time of accident, the petitioner was under treatment and was not responsible for the accident. Charges regarding accident were also not found proved against him. However, in the opinion of enquiry officer, the petitioner ought to have informed the competent authority regarding his illness through telephone in the night itself. The relevant extract of the enquiry report not finding the petitioner guilty of any of the charges levelled against him is as under :-

bl IEcU/k esa vkjksih Jh jkenj"K] pkyd ds fo: tkjh vkjksi i=] vkjksiksa dh IQkbZ esa izLrqr Li"Vhdj.k ,oa Li"Vhdj.k ds lkFk layXu vfHkys[ksa] tkWp vUrxZr lcwr lk{kh ds c;kj vkjksih }kjk iwNs x;s ,oa muds mRrj rFkk i=koyh ij miyC/k vU; vfHkys[kksa dk xgu v;;u fd;k x;k A ;gh ugha fo"K;xr ekeys esa okLrfodr dh rg rd igqWpusa ds fy, esfMdy vkQhlj bUpktZ] lh0,p0lh0 vMMk cktkj tuin egjktxat ls Hkh iwNrKN fd;k x;k rFkk fyf[kr mRrj izkIr fd;k x;k A ekeysa ls IEcU/kr izdj.k i=koyh esa laxZXu Jh ds0ih0 ik.Ms;] pkyd fupykSy fMiks dks Li"Vhdj.k fnukad 5&8&03 ,oa muds }kjk Fkkuk/;{k QjsUnk tuin egjktxat esa fy[kkbZ x;h izkFkfefd vkfn ds voyksdu ls ,oa mlds lw{e v;;u ls ;g ckr Li"V :i ls tkfgj gks jgh gS fd ?kVuk ds le; Jh ds0ih0ik.Ms; pkyd ekSds ij ekStwn Fks vkSj muds }kjk gh cl pykdj ys tk;h x;k Fkh tgkW fd cl tyh] muds Li"Vhdj.k ds i" B rhu ij vfUre iSjs esa ;g LV"V vafdr gS fd cl esa vkx yxus dh izFke lwpuK fjkVZ muds }kjk ;kfu Jh ik.Ms; }kjk gh QjsUnk Fkkuk esa ntZ dj;gh x;h og ?kVuk ds le; cl ds ikl ekStwn Fks A mUgksaus ;g Hkh fy[kk gS fd ?kVuk LFky dh feV~Vh cjkr ds dkj.k xhyh gks x;h Fkh ftlds ogt ls xhyh feV~Vh esa ifg;k Qal x;h u fd muds }kjk xhyh feV~Vh esa ifg;k dks /kalk fn;k x;k A Jh ik.Ms; ds Li"Vhdj.k ds X;kjgosa iSjs esa ;g vafdr gS fd IEiw.kZ ?kVuk dze dh tkWp iMrky IEcU/kr Fkkuk QjsUnk ds Fkkuk/;{k ,oa ogka ds flikfg;ksa }kjk dh x;h mu yksaxksa }kjk Jh ik.Ms; dk eqg [kqyokdj ns[kk x;k& lwW?kk x;k ijUrq fdlh izdkj dh egd ugh ik;h x;h A cl ds vUnj ?kwl dj ns[ks tkus ij cl ds vUnj dksbZ NksVk ;k cMk xSl


flysUMj ugha ik;k x;k vkSj u dksbZ Toyu"khy inkFkZ gh ik;k x;k A Jh ik.Ms; ds bl Li"Vhdj.k ls ;g fu%lUnsg ik;k tkrk gS fd Jh ds0ih0ik.Ms;] pkyd gh cl dks lksukyh ls ysdj x;s vkSj mUgha ds vfHkj{k.k esa cl tyh A muds }kjk tks ,Q vkbZ vkj fy[kok;k x;k gS mlesa ?kVuk ds le; Jh jke nj"K] pkyd o HkxouUn izlkn] ifjpkYd dh mifLFkfr u rks ntZ gS u gh mudk dksbZ fooj.k gh ntZ fd;k x;k gS ftlds vk/kkj ij vkjksih dh mifLFkfr ogha ij izekf.kr ugha gksrh gSA esfMdy vkQhlj fpfdRlkf/kdkjh leqnkf;d LokLFk dsUnz vMMk cktkj egjktxtat }kjk tks fyf[kr rgjh nh x;h gS mlds vuqlkj vkjksih Jh jkenj"K pkyd] fupykSy fMiks fnukad 6&7&03 dks mDr fpfdRlkf/kdkjh ds vkokl ij isV nnZ dh gkyr esa x;s Fks tgkW mUgSa fpfdRld ds vkokl ij gh nok nh x;h ,oa vkjke djus dh lykg fn;k A vkjksih ds vuqlkj iw.kZ LoLF; gksus ds i"pkr og fnukad 7&7&03 dks ?kVuk dh lwpuk ,su&dsu izdkj.k ikdj og egjktxtat igqWpk tgkW mldh eqykdkr pky Jh ds0ih0ik.Ms; ifjpkYd Jh HkxouUn izlkn ls gqbZ A bl izdkj miyC/k vfHkys[kksa ,oa lQkbZ lk{; ds c;ku ds voyksdu ,oa ifj"Khyu ls ;g Li"V ik;k tk jgk gS fd ?kVuk ds le; tU; ifjLFkfro"K vkjksih Jh jkenj"K pkyd ekSds ij ekStwn ugha Fks vkSj u rks buds }kjk cl ogkW pykdj ys tkbZ xbZ Fkh vkSj u gh muds vfHkj{k.k esa cl tyh ijUrQ bruk vo"; gS fd vkjksih dh rch;r xksj[kiqj ls lksukSyh tksr le; [kjc gqbZ ftlds mijkUr cl NksMdj vius mipkj gsrq vLirky x;s A vkjksih dk nkf;Ro Fkk fd bldh lwpuk nwjHkk"K ls fMiks esa l{ke vf/kdkjh dks nsrs tks muds }kjk ugha fd;k x;k A vr% vkjksih mDr ds fy, nks"kh ik;k tkrk gS

g0 viBuh;

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lgk;d {ks=h; izcU/kd foRr tkap vf/kdkjh

8. The petitioner was thereafter reinstated in service by the Regional Manager and was awarded the punishment for forfeiture of arrears of salary for the period of suspension; his three increments were withheld with cumulative effect. The authority also directed recovery of 1/3rd amount of the loss suffered by the Corporation as token amount to be recovered from the salary of the petitioner. The relevant extract of the impugned order dated 5.3.2004 is as under:-

leLr i=koyh ds voyksduksijUr@fopkjsijUr eSa bl fu"d"KZ ij igwWpk gwW fd ;|fi tkWp fjiksVZ ds vk/kkj ij vkjksih ?kVuk LFky ij mifLFkfr ugh Fks fQj Hkh tkWp vf/kdkjh }kjk Hkh mUgSa LVs"ku bzpktZ dks le; ls lwpuk u nsus ds fy, nks"kh ekuk gS A isV nnZ tSlS ekeysa esa budks ofj"B dsUnz izHkkjh dks lwpuk nsuh pkfg, Fkh A pkgs foyEc ls nsrs ijUrQ nsuk pkfg, Fks A ;wWfd ekeys esa ljdkjh MkDVj esfMdy vkQhlj] Lh0Vh0lh0 vMMk cktkj egjktxtat }kjk esfMdy lVhZfQdsV fn;k x;k gS A ftldh iqf"V fpfdRld usa tkWp ds le; i= esa fy[kk gS vr% esfMdy lVhZfQdsV ij fo"okl u djusa dk iz"u ugh mBrk A tkWp vf/kdkjh us Fkkus Lrj] vLirky Lrj ij O;fDrxr :i ls izR;sd fcUnq ij tkWp djkbZ gS A vr% mudh tkWp fjiksVZ ls lEcU/k gksus ds ckotwn Hkh muds }kjk fn;s x;s fu"d"KksZ esa vkaf"kd nks"kh dh i"BHkwfe esa vkjksih dh Hkwfedk lafnX gS A vr% izLrkfor n.M vuq;i Jh jke nj"K pkyd fupySy fMiks dks fuyEcu vof/k esa vo"ks"K osru dks tCn djrs gq, mUgSa orZeku osru dze esa rhu osrudze Hkfo"; izHkko ds lFk uhps mrkjtk tkrk gS rFkk fuxe dks igqaph {kfr dk dqy 1@3 /kujkf"K dh Vksdsu fjdojh n.M Lo:i osru ls olwyh djrs gq, mUgSa lsok esa cgky fd;k tkrk gS vkSj izdj.k fuLrkfjr fd;k tkrk gS A /kkujkf"K dk

vkadyu lgk;d {ks=kh; izcU/k foRr vius Lrj ls fu;ekuqlkj djsaxs vkSj lqfuf"pr /kujkf"k l{ke
vf/kdkfj;ksa dks lwfpr djsaxsa A

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9. The petitioner preferred statutory appeal against the aforesaid order dated 5.3.2004 under Regulation 69 of the U.P. State Road Transport Corporation Employees (other than Officers) Service Regulations, 1981 before the appellate authority on 15.3.2004. The appeal was dismissed by the Chief Manager (Personnel) vide order dated 6.10.2004 holding that the appellant had not given any such argument or evidence which may warrant any modification or variation .

The contention of petitioner

10. It has been urged by Counsel for the petitioner that the U.P. State Road Transport corporations incorporated under the Road Transport Corporation Act, 1950 (hereinafter referred to as "the Act") which in itself is a complete Code regarding entire functioning of the Corporation. He submits that u/s 34 of the Act, the Corporation is empowered to frame Regulations regarding recruitment, conditions of service, training of its employees, wages to be paid to them etc. The U.P. State Road Transport Corporation has accordingly framed U.P. State Road Transport Corporation Employees (other than Officers) Service Regulations, 1981 and that Regulations 61 to 69 deal with the conduct, punishment and appeal for the employees of the Corporation. Under the aforesaid provisions, the order passed by the appellate authority is final.

11. It is vehemently urged by the Counsel for the petitioner that from the perusal of records, report of the enquiry officer and findings recorded by the disciplinary authority, etc., the charges of accident of bus and loss suffered by the Corporation alleged to be result of misconduct of the petitioner were not proved against him. The Counsel, therefore, submits that the order passed by the appellate authority is not supported by record. According to him the order impugned is an example of arbitrariness and non-application of mind as the same is in clear contradiction to the report of the enquiry officer and the findings recorded by the disciplinary authority. It is further urged that the punishment awarded to the petitioner does not commensurate to the gravity of the charges levelled against him which admittedly had not been proved. In support of his contention, he placed implicit reliance on the decisions in [Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate](#), ; [Regional Manager, Shri Gandhi Ashram and Others Vs. Labour Court and Another](#), [Ram Prasad Prajapati Vs. Labour Court and Another](#), and [Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc.](#),

Respondents case

12. A preliminary objection was raised by Counsel for the respondents that the petitioner has an alternative remedy for redressal of his grievance by way of filing revision under Regulation 69-A of the U.P. State Road Transport Corporation Employees (other than Officers) Service Regulations, 1981 before the Chairman/Managing Director, U.P. State Road Transport Corporation, Lucknow as well as of raising an industrial dispute under the U.P. Industrial Disputes Act, 1947 which has not been exhausted by him, as such, the writ petition is not maintainable. He supported his argument by placing reliance on decisions of Hon"ble the Apex Court in K. Vidya Sugar v. State of U.P. and Ors. (2005)5 SCC 590 ; [Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Others Vs. Sahngoo Ram Arya and Another](#), and [Central Coalfields Ltd. Vs. State of Jharkhand and Others](#),

13. On merits, he contended that the petitioner, his co-driver and the conductor acted against the instructions to halt at Sonauli for night on 6.7.2003; they consumed liquor and due to their drunken position deliberately got the wheel of the bus struck in the mud, hence with motive to conceal their misconduct, they put fire to the bus and subsequently a false F.I.R was lodged by them at Farenda Police Station and that the fire by which the bus was burnt was caused due to short-circuit. He also submits that when inspection team of the Corporation reached the spot, all the three persons ran away but, however, it was found by the inspection team that the cause of fire was not short-circuit and the bus was deliberately burnt down by them. It is strenuously urged by him that as a result of aforesaid misconduct the Corporation suffered a loss of Rs. 4 lacs and the petitioner along with other aforesaid staff were fully responsible for it. He submitted that the punishment awarded to the petitioner is not disproportionate but commensurate with the charge proved against him.

Conclusions

14. Having heard rival submissions and perused the enquiry report as well as the subsequent orders passed by the punishing authority and the appellate authority, there is no dispute about the fact that the petitioner was under medical treatment and confined to bed at Sonauli. He was attended by Government doctor at Government hospital who gave in writing that he had administered medicine to the petitioner and had advised him rest for the night on 6.7.2003. In fact, the enquiry officer has given a categorical finding of fact that on the basis of documentary and oral evidence, it is evident that the petitioner/charged employee, due to circumstances beyond his control was not driving the bus nor it was burnt in his presence nor the bus was in his charge as he was under medical treatment at the relevant time. These findings of facts have also been endorsed and approved by the punishing authority. The charge that petitioner along with other staff " on bus had deliberately got the bus struck in the mud in drunken condition and to conceal this misconduct had burnt down the bus, is not only not proved but also falsified by the Police as well as departmental enquiry. It also appears to be frivolous. How could

the burning of the bus conceal the drunkenness of the accused? There was neither any evidence of drunkenness nor any inflammable material found and proved by the department in support of the charge. It is an admitted fact that the petitioner was not on spot due to his being under medical treatment, hence, the charge that he absconded from the site of accident also was not proved .

15. As regards the punishment of token recovery of 1/3 amount if loss suffered by the Corporation from the salary of the petitioner, the authorities below have failed to apply their judicious mind to the fact that there was no charge against the petitioner that he had not informed the authorities about his illness and petitioner has not been found responsible for it in the enquiry, he cannot be held liable to recovery of any amount for the alleged loss to the Corporation. It appears that recovery is not of token amount but of equal division on the petitioner, the co-driver and the conductor.

16. The Court in the circumstances is not inclined to relegate the petitioner to alternate remedy in the instant case where the miscarriage of justice is apparent on face of record. Once the Court is satisfied that a gross injustice has been caused to the petitioner by the arbitrary and whimsical orders, impugned in the present petition, The Court, under Article 226 of the Constitution is duty bound to not only ensure that justice is done but is also bound to see that there is no miscarriage of justice.

17. For the reasons stated above, the writ petition succeeds and is allowed. The impugned orders dated 5.3.2004 passed by respondent No. 3 and dated 6.10.2004 passed by respondent No. 2 are quashed. The petitioner shall be entitled to full salary with 10% simple interest from the due date till the date of payment during the period of his suspension and the respondents shall also not recover any amount from the salary of the petitioner. Cost of Rs. 5000/- is assessed on the respondents payable to the petitioner within two months from today.