U.P. State Road Transport Corporation Vs State of U.P., Presiding Officer and Harish Chandra

Court: Allahabad High Court

Date of Decision: Aug. 12, 2008

Acts Referred: Industrial Disputes Act, 1947 â€" Section 11A

Citation: (2008) 119 FLR 710

Hon'ble Judges: Rakesh Tiwari, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Rakesh Tiwari, J.
Heard counsel for the petitioner and the standing counsel.

2. This petition has been filed challenging the validity and correctness of the award dated 1.7.1996 passed by labour court (II), U.P., Ghaziabad in

adjudication case No. 17 of 1992. The aforesaid award was enforced by publication on the notice board on 15.11.1996 and has come into force

after thirty days of its publication as provided u/s 6-A(3) of U.P. Industrial Disputes Act, 1947.

3. The facts in nutshell as culled out from the record, are that respondent No. 3 was working on the post of conductor in petitioner corporation.

On 18.12.1989, he was deputed on bus No. UPP 9096 on Gulawati Syana route. The bus was checked enroute and it was found by the checking

party that out of 36 passengers, 23 passengers were travelling without ticket and about 100 Kgs. of luggage which was being carried on the bus,

had not been booked. When checking party demanded way bill, the respondent workman refused to hand over the same. It also appears on the

same day when the said bus was returning from Syana to Bulawati, it was again checked and it was found that out of tickets and that the

respondent workman also created obstruction during the second checking. A report is said to have been submitted by the checking party in this

regard.

4. The appointing authority being of the opinion that misconduct of the workman concerned may result into a major punishment, placed the

workman under suspension vide order dated 16.3.1989. Subsequently, a charge sheet dated 3.5.1989 was issued to the workman, to which he

filed his reply and thereafter departmental enquiry was initiated against him. The Inquiry Officer who was a retired District Judge found that charges

against the workman were not proved. The said enquiry report has not been filed alongwith the writ petition.

5. It further appears that punishing authority disagreed with the report of Inquiry Officer and though noting that inspection report submitted by the

checking squad/inspector was incomplete, yet held that both charges against the workman concerned were proved from the record and

accordingly awarded punishment of removal from service vide order dated 12.1.1990.

6. The workman concerned raised an industrial dispute which was referred to the labour court aforesaid. Parties thereafter filed their written

statement and evidence. After appreciation of pleadings and evidence and hearing the parties, the labour court came to a conclusion that domestic

enquiry by the employers was fair and proper but while considering misconduct and quantum of punishment for the purposes of relief, the labour

court came to the conclusion that neither of the charges against the workman were proved by the employers beyond reasonable doubt.

7. The labour court further held that the workman could prepare tickets as it was found that the bus while enroute to its destination, the passengers

were boarding the bus and also disembarking on bus stops, as such there was little time for the workman to issue tickets and fill up the way bill.

8. The contention of the counsel for the petitioner is that respondent No. 3 had failed to follow the principle of Pay and Board which in itself was a

misconduct serious enough to warrant the punishment of removal. It is further contended that labour court has failed to appreciate that in violation

of rule, the corporation is exposed to financial loss and the conductors knowing fully well about the aforesaid rule only leads to an inescapable

conclusion that the violation was for oblique motives. The conclusion of the labour court that the charges of misconduct had not been proved

beyond doubt is absolutely perverse arbitrary and illegal.

9. As regard the first charge the labour court has held as under:

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10. Similarly in respect of the second charge the labour court has recorded finding of fact as follows:

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11. With regard to quantum of punishment, it appears from the award that way bill was filled up by the workman and only totalling remained to be

done when the bus was checked. Considering all facts and circumstances in totality, a finding of fact has been given by the labour court that

charges against the workman are not proved beyond doubt and accordingly discharged the workman of both the charges, as such there is no

question of awarding any punishment to him.

12. It is an admitted fact that the Inquiry Officer has not found workman concerned guilty of any charges in the enquiry proceedings. The

employers could have proved charges before the labour court, but there too the court has recorded a finding of fact that charges have not been

proved and he has been discharged of the charges.

13. Counsel for the petitioner has relied on decision of the Apex Court in Regional Manager, RSRTC v. Ghanshyam v. Sharma, (2002) 1 LLJ 234

SC

In the aforesaid case the Apex Court has held that discretion exercised by the labour court should be judicious. In that case, conductor of the bus

was carrying passengers without issuing tickets and he was awarded punishment of removal from service by the employer. The labour court in

exercise of the powers u/s 11-A of the Industrial Disputes Act 1947 while upholding the finding that respondent was guilty of misconduct, directed

his reinstatement with continuity of service but without back wages.

14. In the aforesaid backdrop, the Apex Court interfered with the matter and held that interference by the labour court by reinstating the workman

when charges had been proved, was not proper.

15. In the present case, Inquiry Officer in the domestic enquiry as well as the labour court both have come to the conclusion that removal of

workman from service was not fair, proper, and justified. Therefore, facts of the present case are clearly distinguishable from the facts of the case

cited by the counsel for petitioner.

16. Moreover, the case cited by the counsel for petitioner was one in which provisions of Section 11-A were considered. The scope of Section

11-A is only limited and different from the scope of Section 4-K of U.P. Industrial Disputes Act, 1947.

17. No illegality or infirmity has been established in the impugned award, therefore, findings of fact recorded by the labour court should not be

interfered with for only small discrepancies shown by the counsel for petitioner.

18. For the reasons stated above, this petition fails and is accordingly dismissed. No order as to costs.