

(2004) 09 AHC CK 0259

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 14920 of 1993

Rashid Ahmad

APPELLANT

Vs

U.P. State Road Transport

RESPONDENT

Corporation and State of U.P.

Date of Decision: Sept. 22, 2004

Acts Referred:

- Constitution of India, 1950 - Article 254
- Road Transport Corporations Act, 1950 - Section 3
- Uttar Pradesh Industrial Disputes Act, 1947 - Section 2, 25F, 3(5), 5J, 6N
- Uttar Pradesh State Road Transport Corporation Employees (Other than Officers) Service Regulations, 1981 - Regulation 17(2), 17(3)

Citation: (2005) 6 AWC 5537 : (2005) 2 ESC 1308 : (2005) 105 FLR 473

Hon'ble Judges: V.C. Misra, J

Bench: Single Bench

Advocate: Y.K. Sinha, for the Appellant; Samir Sharma and S.C., for the Respondent

Judgement

V.C. Misra, J.

Heard Sri Y.K. Sinha, learned counsel for the petitioner, learned Standing Counsel & Sri Samir Sharma learned counsel appearing for the respondents.

1. This writ petition has been filed challenging the impugned award dated 27.10.1992 (Annexure No. 8 to the writ petition) passed in Adjudication case No. 328 of 1998 by the respondent No. 3- Labour Court in favour of the employer- U.P. State Road Transport Corporation (hereinafter referred to as "the UPSRTC")- respondent No. 1 holding termination of the services of the petitioner with effect from 21.3.1988, as legal and valid.
2. The facts of the case in brief are that the petitioner was employed as Driver in the department of U.P. Roadways and subsequently absorbed in UPSRTC, which was

constituted w.e.f. 1.6.1974, u/s 3 of the Road Transport Corporation act, 1950. In 1987, the petitioner was directed to be examined by the Chief Medical Officer, Bulandshahr. On the basis of the said medical report wherein it had been found that the petitioner was not medically fit and could not perform his duties as driver of the motor vehicle due to ill health, the respondent No. 1- U.P.S.R.T.C. cancelled the licence of the petitioner granted under the Motor Vehicles Act. Thereafter, services of the petitioner were terminated by the respondent No. 1 exercising powers under the Regulations 17(2) & (3) of the Uttar Pradesh State Road Transport Corporation (other than Officers) Service Regulations, 1981 (hereinafter referred to as "the Regulations") and in lieu of notice he was paid one month's wages by Cheque dated 1.3.1988, since there was no alternative work available in the establishment and he could not be continued any further in service. Being aggrieved the petitioner raised an industrial dispute and the State Government referred the industrial dispute for adjudication by labour court. Ultimately, the labour court after hearing the parties placing reliance on the decision rendered in Jamuna Prasad and Ors. v. Rajasthan State Road Transport Corporation (1990 (61) F.L.R. 475) passed the impugned award dated 27.10.1992 (Annexure No. 8 to the writ petition) and held that the petitioner-workman's services was validly terminated, in accordance with the law and there was no violation of the provisions of Section 6-N of the U.P. Industrial Disputes Act. Being aggrieved, the petitioner filed the present writ petition.

3. Learned counsel for the respondents corporation has submitted that in view of Section 5-J of the Industrial Dispute Act (Central) the right and liability of the employer and workman in so far as they relate to lay off and retrenchment had to be determined in accordance with the provisions of Chapter V-A of the Industrial Dispute Act and in view of Section 2(oo)(c) of the Central Act, the term "retrenchment" does not include "termination" of service of workman on the ground of continued ill health. It has been submitted by the learned counsel for the petitioner that the respondent-corporation has paid the workman one month's salary by way of abundant precaution. The services of the petitioner had been terminated in exercise of power under Regulation 17 (2) (3) of the Regulations framed for the corporation and since no alternative job was available to the same had not been given to him and the term "retrenchment" defined under the Industrial Dispute Act (Central) did not cover the termination of service of the workman due to continued ill health under the provisions of Central Act. Further submitted that the view of proviso under Article 254 of the Constitution of India, read with Section 25F of the Central Industrial Dispute Act (Central), Section 6N of the U.P. Industrial Dispute Act was not applicable to the petitioner, though by way of abundant precaution, the Corporation paid him one month's salary through Cheque No. 112318, dated 1.3.1988 and that the view taken by the labour court while passing the impugned award was based on the principal laid down by Hon"ble the Supreme Court, reported in 1991 (56) FLR 475.

4. I have looked into the record of the case and find that the provisions of Section 2(s) of the U.P. Industrial Disputes Act, 1947 are applicable to the case of the petitioner and the provisions of Section 2(oo)(bb) of the Central Industrial Disputes Act would not be attracted inasmuch as there is no provision akin to it in the U.P. Industrial Disputes Act. Section 2(oo) is not applicable in the State of U.P. It is conspicuous by the absence of the provisions of Sub-clause (c) of Clause (oo) of the Section 2 of the Industrial Disputes Act (Central), in the U.P. Industrial Disputes Act u/s 2(s) that the legislature has not intended to make it applicable in the State of Uttar Pradesh, at all, as now settled by the apex Court in U.P. State Sugar Corporation Ltd. v. Om Prakash Upadhyaya, 2002 I LLJ 241 (SC) "Retrenchment" has been defined u/s 3(5) of the Central Act and there is no mentioned therein that the person, whose services have been terminated on account of illness would not be covered by the definition of "retrenchment" whereas as defined u/s 2 (s), the retrenchment means the termination by the employer of the service of a workman or any reason as punishment inflicted by way of disciplinary action of the U.P. Industrial Dispute Act, which shall not be applicable in the present case and this court after taking into consideration the facts admitted by the petitioner to the effect made by respondent No. 1 that the petitioner had been given one month salary in lieu of notice may be even by way of abundant precaution would be treated to be a notice u/s 6 N of the Industrial Dispute Act, 1947 and the services would not be treated to have been terminated under the provisions of Central Act.

5. In view of the said facts and circumstances of the case, the petitioner-workman shall be entitled to get the retrenchment benefit u/s 6-N of the U.P. Industrial Disputes Act, 1947 along with all retiral benefit available to him, in accordance with law, by the respondents. Accordingly, the respondent No. 1 is hereby directed to make the payment of the entire dues to which the petitioner is entitled to, preferably within a period of two months from the date a certified copy of this order is produced before the respondent No. 1. The impugned award dated 27.10.1992 (Annexure No. 8 to the writ petition) passed by the respondent No. 2 is quashed. The writ petition is allowed to the extent indicated above. No order as to costs.