

(2004) 12 AHC CK 0229**Allahabad High Court****Case No:** C.M.W.P. No. 248 of 1989

U.P. State Road Transport
Corporation

APPELLANT

Vs

State of U.P. and Others

RESPONDENT**Date of Decision:** Dec. 10, 2004**Acts Referred:**

- Road Transport Corporations Act, 1950 - Section 2, 3
- Uttar Pradesh Industrial Disputes Act, 1947 - Section 6N
- Uttar Pradesh State Road Transport Corporation Employees (Other than Officers) Service Regulations, 1981 - Regulation 17(2), 17(3)

Citation: (2005) 5 AWC 4273 : (2005) 2 ESC 844**Hon'ble Judges:** V.C. Misra, J**Bench:** Single Bench**Advocate:** S.K. Sharma and Sameer Sharma, for the Appellant; V.K. Singh and Lalji Pandey and S.C., for the Respondent**Final Decision:** Allowed**Judgement**

V.C. Misra, J.

Heard Sri S.K. Sharma, learned Counsel for the petitioner and learned Standing Counsel on behalf of respondent No. 1 and Sri Lalji Pandey, learned Counsel for respondent No. 3/1 are present.

2. This writ petition has been filed challenging the impugned award dated 30.8.1988 (Annexure 10 to the writ petition) by which the termination of the service of the workman vide Order dated 30.4.1985 had been declared Illegal and set aside and he was directed to be reinstated with continuity in service and full back wages.

3. The facts of the case in brief are that respondent No. 3 was appointed as a driver in the erstwhile U.P. Government Roadways on 11.6.1965 and was subsequently confirmed on the post of driver w.e.f. 1.4.1972. The U.P. Road Transport

Corporation was constituted w.e.f. 1.6.1972 u/s 3 of the Road Transport Corporation Act, 1950 and it acceded in toto to the assets and liabilities of the erstwhile U.P. Government Roadways. The workman met with an accident while he was driving the bus of the petitioner on 9.3.1977 and received injuries. He was admitted to the hospital and after his release he was again taken back on light duty, but thereafter vide Order dated 30.4.1985 the services of the petitioner were terminated after giving three months" notice on the ground that he was found unfit to ply the bus as driver, as he was found to have a very weak eye-sight in terms of the Regulation 17 (2) (3) of the U.P. State Road Transport Employees (Other than Officers) Service Regulations, 1981 (hereinafter referred to as the Regulation) applicable to the workman-respondent No. 3/1. Regulation 17 (2) reads as under :

"17 (2)--A person appointed to the post of Driver, will be required to undergo a medical test particularly vision test every year or at such interval as may be prescribed by the General Manager from time to time.

(3) The services of a person who falls to pass the fitness test referred to in the sub-regulation (2), may be dispensed with; provided that a person whose services are so dispensed with, may, in the discretion of the corporation, be offered alternative job."

4. The workman being aggrieved raised an industrial dispute and the matter was referred to the Labour Court respondent No. 2 on 23.12.1986, as under :

"Whether the services of the workman had been rightly and legally terminated w.e.f. 30.4.1985, if not into what relief is the workman is entitled to along with other consequential reliefs".

5. An Adjudication Case No. 10 of 1987 was registered and after hearing the parties respondent No. 2 passed an award dated 30.8.1988 and declared the termination of the services of the workman respondent as illegal and reinstated him with full back wages with continuity in service. The employer-Corporation being aggrieved preferred the present writ petition, which was admitted. The operation of the award was stayed provided; the petitioner paid respondent No. 3 the entire retrenchment compensation in accordance with the circular dated 19.12.1986. The main ground in this case is that the Labour Court had failed to appreciate that the service of the workman had been terminated mainly on the ground of continuity of ill health and as such the provisions of Section 6-N of the Act were not applicable, and the Labour Court had also wrongly held that the termination on the ground of continuity of ill health amounted to retrenchment and he had been incapacitated from discharging his normal duties due to physical injuries and also refused to accept an alternative job. Moreso, since the termination of the service of the workman was not passed by way of punishment, as such, it was not necessary to afford him any opportunity of hearing.

6. During the pendency of the writ petition, the workman-respondent No. 3 died and in his place his legal heir/representative has been substituted.

7. I have looked into the record and heard learned Counsel for the parties at length and find that in the present case the petitioner was unable to ply the bus due to weak and poor eye-sight, which is found in the medical report given by the then Chief Medical Officer and the workman respondent No. 3 was not entitled to reinstatement on the post of driver. It has also been admitted by the workman in paragraph 13 of the counter affidavit that he had refused the offer of alternative job vide letter dated 31.12.1985 had issued by the then Regional Manager, as required under the Regulation 17 (3) which he did not accept. The workman respondent No. 3 was not entitled to reinstatement on the post of driver as also held by Hon'ble Supreme Court in the case of U.P. State Road Transport Corporation and another Vs. Mohd. Ismail and others, that the Proviso of Regulation 17 (3) gives a discretion to the Corporation to offer an alternative job, but it does not create any legal right in favour of the present (Workman) as per the provision of Section 2 (s), which reads as under :

(s) "Retrenchment" means the termination by the employer of the service of a workman or any reason whatsoever otherwise than as punishment inflicted by way of disciplinary action, but does not include--

(i) voluntary retirement of the workman; or

(ii) retirement of the workman or reaching the age of superannuation if the contract of employment between the employer and workman concerned contains a stipulation in that behalf;

8. However, I find, that the workman was entitled to retrenchment compensation under the provisions of Section 6-N of the U.P. Industrial Disputes Act. It has been admitted by respondent No. 3/1 that the workman respondent No. 3 had received the retrenchment compensation from the petitioner in compliance of the Interim Order dated 17.1.1989 passed by this Court. The Labour Court has committed an error in allowing reinstatement of the petitioner on the post of driver, even though he had become unable to function as such and discharge its duty as driver effectively. The workman was, thus, also not entitled to any back wages, which have been wrongly awarded. The impugned award is, thus, liable to be quashed.

9. In view of the facts, circumstances of the case and observations made hereinabove, the impugned award dated 30.8.1988 is hereby quashed, the writ petition is allowed. No Order as to costs.