

**(2004) 01 AHC CK 0228****Allahabad High Court****Case No:** C.M.W.P. No. 2479 of 1989

U.P. State Road Transport  
Corporation

**APPELLANT**

Vs

State of U.P. and Others

**RESPONDENT****Date of Decision:** Jan. 27, 2004**Acts Referred:**

- Uttar Pradesh Industrial Disputes Act, 1947 - Section 4K, 6H(1)

**Citation:** (2004) 3 AWC 2159**Hon'ble Judges:** Rakesh Tiwari, J**Bench:** Single Bench**Advocate:** S.K. Sharma, for the Appellant; Rajesh Tewari and A.K. Singh, S.C., for the Respondent**Judgement**

Rakesh Tiwari, J.

Heard counsel for the respective parties and perused the record.

2. This writ petition has been filed praying, inter alia, to issue a writ of certiorari quashing the impugned order dated 26.10.1988 (Annexure-6 to the writ petition) passed by the Deputy Labor Commissioner, Ghaziabad and the award dated 13.2.1986 (Annexure-1 to the writ petition) passed by the labour court.

3. Respondent No. 4 was working as a Conductor in the Petitioner-Corporation. He was removed from service by an order dated 16.3.1983 as serious charges of misconduct are said to have been proved against him. Against removal of his services Respondent No. 4 preferred an appeal before the Regional Manager, Ghaziabad on 12.12.1983. The Regional Manager vide its order dated 29.10.1984 is alleged to have taken a lenient view by directing to afford a fresh chance to Respondent No. 4 to serve the Corporation without giving benefit of his past services and back wages.

4. Respondent No. 4 accepted his fresh appointment in pursuance of the said order dated 29.10.1984 and was thus given a fresh chance to serve the Corporation and was posted in Blandisher Depot of the Corporation in Ghaziabad Region. It appears that Respondent No. 4 behind the back and concealing from the Corporation filed an application before the Regional Conciliation Officer, Ghaziabad on 28.1.1985 claiming the benefits of his past services and back wages, whereupon the Regional Conciliation Officer submitted a failure report and the State Government in exercise of its powers u/s 4K of the U. P. Industrial Disputes Act referred the following dispute for adjudication on 1.11.1985:

5. The labour court without verifying the service of the summons on the employers proceeded to determine the reference ex parte on the assumption that the employers had been served with the summons and held as under:

6. The dispute was registered as Adjudication Case No. 217 of 1985 before the labour court, U.P., Ghaziabad. Respondent No. 4 filed his written statement before the labour court on 22.1.1986. As no one appeared on behalf of the Corporation, the labour court passed an order to proceed ex parte against the Corporation. On 13.2.1986 the award was signed and was forwarded to the State Government and was published on 17.3.1986. By the impugned award the labour court has set aside the order of removal of Respondent No. 4 from service and also directed his reinstatement with continuity of service and full back wages.

7. The Regional Manager, Ghaziabad received a certified copy of the ex parte award on 26.4.1986 and forwarded the same to the Labour Law Adviser, Ghaziabad on 24.5.1986 to inspect the records and to take necessary steps. After inspection of the records and after obtaining certified copies of the relevant documents on 2.6.1986 the Regional Manager came to know about the following facts:

(a) Respondent No. 4 has filed an application before the Regional Conciliation Officer, Ghaziabad on 28.1.1985 claiming the benefits of past services and past wages. The Regional Conciliation Officer submitted a failure report and the State Government in exercise of its powers u/s 4K of the U. P. Industrial Disputes Act referred the above quoted dispute on 1.11.1985. Accordingly Adjudication Case No. 217 of 1985 was registered before the labour court, U.P., Ghaziabad.

(b) A written statement was filed by Respondent No. 4 on 22.1.1986 before the labour court but as no one appeared on behalf of the Corporation the labour court passed an order to proceed ex parte against the corporation and 6.2.1986 was fixed. On 6.2.1986 an affidavit was filed on behalf of Respondent No. 4 and the award was reserved. On 13.2.1986 the award was signed and forwarded to the State Government. On 17.3.1986 the award was published.

8. The Regional Manager, Ghaziabad after seeking opinion from the law department filed the instant writ petition.

9. In the meantime on 6.11.1987 Respondent No. 4 filed an application u/s 6H(1) of the U. P. Industrial Disputes Act, before the Deputy Labour Commissioner, U. P., Ghaziabad claiming Rs. 29,350 as arrears. The Deputy Labour Commissioner decreed the claim and issued a recovery certificate on 26.10.1988 for recovery of Rs. 16,350 as arrears of land revenue.

10. The order of removal dated 15.12.1983 had admittedly been set aside by appellate order dated 29.10.1984 on the basis of which Respondent No. 4 had been reappointed and the order of removal dated 15.12.1983 was not in existence. Respondent No. 4 had been reappointed in the Corporation on the basis of the said appellate order dated 29.10.1984 and having taken benefits under the same he was stopped from agitating the same matter again.

11. At the time of admission the following interim order was passed by this Court on 16.2.1989:

Issue notice.

Shri S.K. Sharma, learned Counsel for the Petitioner, states that in pursuance of the award dated 13.2.1986 Sri Ashok Kumar, Respondent No. 4 has been reinstated by the U. P. State Road Transport Corporation. If this be correct, till further orders the operation of the order dated 26.10.1988 passed by the Deputy Labour Commissioner in so far as it directs the Petitioner to pay to the workman concerned the back wages shall remain stayed.

Sd/- S.K. Dhaon, J.

16.2.1989.

12. The counsel for the Petitioner contends that since the Petitioner had not been served with summons, therefore, they had no knowledge of the tendency of the reference/ Adjudication Case No. 217/85 before the labour court and as such they could not appear before it.

13. The labour court held that the removal of the workman from service was illegal and directed the employers to reinstate him in service from the date of the award with continuity of service and with consequential benefits and to pay full back wages.

14. The counsel for the Respondent workman contends that when a reference is made the order of reference is sent by the State Government by registered post. It is also stated that when the reference order is received by the labour court the first summons is sent by registered post or through peon of the labour court and in this case the State Government had sent the reference order by registered post and the labour court had also sent the necessary intimation to the Regional Manager. The next contention of the counsel for the Respondent workman is that the writ petition has been filed in 1989, i.e., almost after three years of the award when all the

proceedings had come to an end.

15. From the record it appears that Respondent workman has continuously worked in the corporation since the date of his appointment even though he is said to have been given appointment afresh in terms of the order dated 29.10.1984. This is insignificant and of no consequence in view of the facts and circumstances of the case as in spite of it there was no factual break in service of the Petitioner. It appears from the record that the employers have denied to have received any summons of the reference from the labour court. The workman had continuously been working. The workman had not gone with clean hands before the labour court and had not stated that he had been given re-appointment afresh. Due to concealment of this fact the labour court has granted the relief of continuity in service with full back wages to the workman under the award. Even from a perusal of the impugned order dated 26.10.1988 in the recovery proceedings which has also been challenged along with the award ; no reasons appear to have been given by the Deputy Labour Commissioner, U.P., Ghaziabad for paying a sum of Rs. 16,350 to the workman by the Corporation in proceedings u/s 6H(1) of the U. P. Industrial Disputes Act, 1947.

16. In the peculiar facts and circumstances of this case when more than 14 years have already been passed and the workman has been re-instated, it would not be proper to set aside the award for being challenged after more than three years when the recovery had been issued against the employers. However, since the workman has obtained the award by concealment of facts the same is liable to be quashed to the extent that the workman will not get any increment of the aforesaid period as claimed by him u/s 6H(1).

17. In this view of the matter, the petition is partly allowed. The impugned order dated 26.10.1988 for recovery of Rs. 16,350 in pursuance of the award is quashed. The award is modified to the extent stated above and the relief is molded to the extent that the Petitioner shall continue in service but will not be entitled to any back wages.