

CASE NO.:  
Appeal (civil) 471 of 2008

PETITIONER:  
Regional Manager Uttaranchal Rd. Tpt. Corpn.

RESPONDENT:  
Than Singh & Anr.

DATE OF JUDGMENT: 17/01/2008

BENCH:  
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:  
J U D G M E N T  
(Arising out of SLP (C) 3762 OF 2006)  
Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment rendered by a learned Single Judge of the Uttaranchal High Court allowing the writ petition filed by the respondent No.1 (hereinafter referred to as the \021employee\022). Challenge before the High Court was to the award dated 27.7.2004 passed by the Presiding Officer, Industrial Tribunal, and Labour Court Haldwani (in short the \021Tribunal\022) in Adjudication Case No. 21 of 1995.

3. Background facts in a nutshell are as follows:

Respondent No.1 was appointed as a conductor on 21.11.1989 under the Appellant-Corporation, hereinafter referred to as the \021Corporation\022). On 8/9.9.1990 the appellant was the conductor in Bus No. UP 78-9254. The Transport Inspector as a part of the checking operation stopped the bus. There were 48 passengers traveling in the bus and out of them 20 did not have any ticket and there was no entry made in the

Way Bill for 23 passengers. The employee made a statement that he could not issue tickets though he had collected the fares from 20 persons. The conductor was made to issue tickets to passengers to whom tickets had not been issued. The inspector made an entry for closing of ticket issuance and he also directed the employee to make an entry in respect of the 23 passengers in the way bill. Proceedings were initiated against the erring employee and his services were terminated on the basis of the materials collected during departmental enquiry. A reference was made under the Uttar Pradesh Industrial Disputes Act, 1947 (in short the \021Act\022) at the prayer of the respondent. The Tribunal came to hold that the order of termination was legal and justified and the concerned workman was not entitled to any relief. It is to be noted that the enquiry officer had in the enquiry report noted that the conductor had issued the tickets later though there were no entries in the way bill.

4. The High Court in the writ petition filed by the respondent came to hold that the concerned employee had taken fare from 20 passengers in presence of checking staff. It was also noted that when the bus was checked, the tickets were issued to the passengers but only entries were not made

in the way bill. Accordingly the impugned award before it was set aside by the High Court and the respondent No. 1-Employee was directed to be re-instated in service with continuity of all retrial benefit but without back wages.

5. In support of the appeal, learned counsel for the appellatant-Corporation submitted that the findings recorded by the High Court are clearly contrary to record. It was not a fact that the tickets had been issued as observed by the High Court. As a matter of fact, after detection by the checking staff direction was given by the Traffic Inspector to issue tickets and to make entries in the way bill for regularizing the travel of the passengers.

6. Learned counsel for the respondent with reference to the report of the enquiry officer submitted that the High Court has correctly recorded the facts.

7. It appears from the statement of the respondent No.1-employee that he himself accepted that though he had collected the fare, he had not issued tickets to 20 passengers and had only issued tickets to three passengers. The confusion appears to have arisen because the High Court apparently proceeded on the basis that after the tickets were issued only the entries in the way bill were to be recorded. This is really not so, because the respondent No.1 himself had accepted that tickets had not been issued to 20 passengers. The material on record also shows that the checking staff with a view to regularize the entries and regularizing the travel of the passengers had directed issuance of tickets to those 20 passengers to whom respondent No.1 had not issued tickets. This is evident from the fact that the Tribunal had categorically noted that 20 passengers were issued tickets by the checking staff and the respondent No.1 was directed to make entries in the way bill. Issuance of tickets on the basis of the instructions of the checking staff cannot legalize the illegality committed by the respondent No.1-employee. That being so, the approach of the High Court was clearly wrong and the conclusions drawn are contrary to the materials on record. Since the High Court has not considered the materials in the proper perspective, the impugned order is set aside and the matter is remitted to the High Court for fresh consideration in accordance with law.

8. The appeal is allowed to the aforesaid extent without any orders as to costs.