

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2476 OF 2008

U.P.STATE ROAD TRANSPORT CORPORATION

APPELLANT(S)

VERSUS

ABRAR AHMAD

RESPONDENT(S)

J U D G M E N T

KURIAN JOSEPH, J.

The appellant is aggrieved by the judgment dated 03.08.2005 passed by the High Court of Uttaranchal at Nainital in Writ Petition No.5112 of 2001. Originally, the petition was filed before the High Court of Judicature at Allahabad as Writ Petition No.32288 of 1996. The appellant challenged the award passed by the labour court, Dehradun in Reference No.166 of 1991. In the award dated 25.03.1996, the labour court had set aside the order of dismissal of the respondent and had awarded reinstatement with 50% back wages, with substituted punishment of stoppage of two annual increments with cumulative effect. It is seen from the counter affidavit filed by the

respondent before this Court that after the award was passed, the respondent has been reinstated and has continued in service.

Learned senior counsel for the State has vehemently contended that the Labour Court upheld the inquiry, went wrong in modifying the punishment of dismissal. It is a case where the respondent was found permitting 26 passengers to travel without tickets at the relevant time in 1987 it cost Rs.13/-. It is submitted that whether it is Rs.13/- or Rs.3/-, a person who has been dishonest in the discharge of his duties was not liable to be reinstated in service. Reference is invited to some of the decisions of this Court in this regard, Regional Manager, U.P.S.R.T.C. Vs. Hoti Lal [(2003) 3 SCC 605], U.P. State Road Transport Corporation Vs. Suresh Chand Sharma [(2010) 6 SCC 555] and U.P. State Road Transport Corp. & Anr. Vs. Gopal Shukla & Anr. [2015 (9) SCALE 567].

Heard learned counsel appearing for the respondent also.

We are afraid that the submission made by learned senior counsel cannot be appreciated in the factual matrix of the present case. Each case has to be analysed on the factual position obtaining in the case. Merely because one

is engaged as a conductor that does not mean that he should be dismissed from service in case it is found that there were passengers travelling in the bus without ticket. There cannot be any uniform principle or theoretical formula in matters of punishment. Punishment does not depend on how a judge views over an offence or a misconduct, it will depend on how the law treats it. It will all depend on the facts of each case and if the judicial tribunal which has the last word on facts having analysed the facts and reaches a finding, it is not permissible for the Court to upset the same except for perversity. It would be profitable to extract the peculiar facts of this case as appearing from the award of the Labour Court, which reads as follows:

"In this case fact is important that this bus was city bus service wherein the passengers used to board the bus at small-small distances and it is crowded. The distance between BHEL Sector 4 and the hospital is three kilometers and these 26 without ticket passengers were ladies and girls who had board the bus between Sector 4 and hospital. In the end of reply to the show cause notice and explanation to the chargesheet the petitioner workman has admitted that after plying about a kilometer, the vehicle was checked when he was busy in distributing the tickets and before he could have given tickets to all the passengers and make entries on the way bill, checking has been done. The passengers to whom ticket

could not be issued, the inspectors treated them without ticket passengers. It is also important that ticket per person was 50 paisa and the fare of 26 passengers became only Rs.13/-. Therefore in these circumstances the punishment of removal from service is harsh. It would be sufficient to impose minor punishment."

Having regard to the above peculiar facts only, the Labour court thought it appropriate in exercise of its discretionary jurisdiction to modify the punishment under Section 6 of the U.P. Industrial Disputes Act, 1947 to substitute the punishment to that of withholding of two annual increments without cumulative effect. The High Court also thought it fit to endorse the findings as recorded by the Labour Court and hence declined to interfere with the discretion exercised by the Labour Court.

Having regard to the position as above, we are not persuaded to take a different view based on the contention raised by learned senior counsel placing reliance on the judgments referred to above. As we have already indicated, the facts in the present case make all the difference. However, we do not find any justification for the award of back wages for the period he was actually in service. After all the respondent was subjected to

disciplinary action which has culminated in the award of punishment. In that view of the matter it would be unjust to award back wages for the period he was actually not in service, when the process of disciplinary action was going on. Therefore, the appeal is partly allowed making it clear that the respondent shall not be entitled to any back wages for the period he was not in service during the pendency of disciplinary proceedings and the litigations. For all other purposes the respondent shall be treated to be in service and he shall also be paid the back wages for the period he has actually discharged his duties.

However, we make it clear that we are not interfering with the punishment of the stoppage of two annual increments without cumulative effect as awarded by the Labour Court.

.....J
[KURIAN JOSEPH]

.....J
[AMITAVA ROY]

September 15, 2015
New Delhi.

ITEM NO.102

COURT NO.11

SECTION XV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 2476/2008

U.P.STATE ROAD TRANSPORT CORPORATION

Appellant(s)

VERSUS

ABRAR AHMAD

Respondent(s)

(with interim relief and office report)

Date : 15/09/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE KURIAN JOSEPH
HON'BLE MR. JUSTICE AMITAVA ROY

For Appellant(s)

Mr. Pradeep Misra, Adv.
Mr. Suraj Singh, Adv.

For Respondent(s)

Mr. G.D. Ahmed, Adv.
Ms. Priya Kashyap, Adv.
Dr. Kailash Chand, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The civil appeal is partly allowed in terms of the
signed order.

(Ashok Raj Singh)
Court Master

(Tapan Kumar Chakraborty)
Court Master

(Signed order is placed in the file)