

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6722 OF 2010  
(Arising out of SLP(C) No.7661 of 2009)

Uttarakhand Transport Corporation ... Appellant(s)  
Versus  
Shiv Dutt Sanwal ... Respondent(s)

ORDER

1. Leave granted.

2. This appeal is directed against order dated 24.7.2008 by which the learned Single Judge of Uttarakhand High Court dismissed the writ petition filed by the appellant against award dated 27.10.1998 passed by the Presiding Officer, Labour Court, Haldwani in I.D. Case No.102 of 1992.

3. The respondent joined service of Uttar Pradesh State Road Transport Corporation (for short, 'the corporation') (predecessor of the appellant) in August, 1963. While he was holding the post of Junior Station Incharge, the respondent was retired from service vide order dated 1.3.1990 issued by Deputy Chief Manager, North Zone, Bareilly under rule 38 of U.P. State

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Road Transport Corporation Employees (other than Officers) Service Rules, 1981.

4. The industrial dispute raised by the respondent was referred by the State Government to the Labour Court at Haldwani. The terms of reference incorporated in the order passed by the State Government were as follows:

"Whether the termination of services by the employer of their workman Sh. Shiv Dutt Sanwal, S/o Sh. Uma Dutt Sanwal, Junior Station Incharge with effect from 01.03.1990 is valid and justified. If not, the benefit, the workman is entitled for with other benefits."

5. In the statement of claim filed by him, the respondent pleaded that his compulsory retirement was totally illegal, arbitrary and unjustified and there was no basis for forming an opinion that he was not fit to be continued in service. He also pleaded that in the garb of compulsory retirement, the

Corporation had terminated his service by way of punishment.

6. In the written statement filed on behalf of the Corporation, an objection was taken to the very maintainability of the reference on the ground that the respondent was not covered by the definition of 'workman' contained in Section 2(z) of the Uttar Pradesh Industrial Disputes Act. On merits, it was pleaded that the respondent was retired on the

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recommendations of the Screening Committee which had, after scrutinizing his record, opined that he was not suitable for being continued in service.

7. The learned Presiding Officer, Labour Court, Haldwani rejected the objection raised on behalf of the Corporation to the maintainability of reference by observing that even though respondent was designated as Junior Station Incharge, his work was of clerical nature and as such he is covered by the definition of the term 'workman'. On the merits of the respondent's challenge to the order of pre-mature retirement, the learned Presiding Officer, Labour Court observed that the adverse entries recorded in his Annual Confidential Reports prior to 28.6.1986 must have been satisfactory and that is why, he was promoted to Junior Station Incharge. He then referred to the remarks recorded in the Annual Confidential Reports of the respondent for the years 1986-87 to 1989-90 and concluded that the same were not sufficient for pre-maturely retiring him and accordingly passed award dated 27.10.1998, the operative portion of which reads as under:-

"On the basis of the facts and circumstances of the case, this Court is of the view that the order of compulsory retirement dated 01.03.1990 passed by the employers to the concerned workman Shiv Dutt Sanwal is improper and illegal and since the concerned workman has completed 58 years the age of retirement of service hence the period w.e.f. the date of his

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compulsory retirement till the actual date of retirement will be treated as continuous service, but he will be entitled to the salary of 50% only for this period. Remaining 50% salary is adequate punishment for his adverse entry. Both the parties shall bear their own cost."

8. The Corporation challenged the award of the Labour Court in Writ

Petition No.1396 of 2007. On the formation of the State of Uttarakhand, the writ petition was transferred to the High Court of Uttarakhand. The learned Single Judge dismissed the writ petition by a cryptic order, the relevant portions of which read as under:

"The employers took the plea before the Labour Court that the services of the workman were not found satisfactory according to his service record. There were several adverse entries in his character roll. Despite several warning he did not improve his work. The decision taken by the Screening Committee giving him compulsory retirement is legal and valid according to rules.

I have heard the learned counsel for the parties at length and perused the impugned award. The Labour Court has recorded its finding on the basis of fact and evidence. Considering the facts and circumstances of the case, I am of the considered opinion that the award does not suffer from any illegality or infirmity."

9. We have heard learned counsel for the appellant and perused the record. Since the respondent has not appeared despite service of notice, we do not have the advantage of hearing him or his counsel.

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10. In Baikuntha Nath Das and another v. Chief District Medical Officer, Baripada and another (1992) 2 SCC 299, a three-Judge Bench of this Court reviewed the existing case law on the subject and culled out the following propositions:

"(i) Whenever the services of a public servant are no longer useful to the general administration, he can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weight in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration."

11. In the light of the above, we shall now examine whether there was some tangible material which could be relied upon for the purpose of forming an opinion that the respondent had outlived his utility for public

service. A perusal of the record shows that the respondent was retired from

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service on the recommendations of the Screening Committee. The learned Presiding Officer, Labour Court did advert to this aspect of the matter but misdirected himself in assuming that the respondent's retirement from service was by way of punishment. He did not appreciate the distinction between compulsory retirement from service by way of punishment which can be inflicted only after following the procedure prescribed in the rules regulating the disciplinary proceedings and compulsory retirement, which is effected on the premise that the employee is no longer fit to be continued in service. Another serious error committed by the learned Presiding Officer, Labour Court was that he proceeded to decide the matter by assuming that as a result of his promotion to the post of Junior Station Incharge all the previous adverse entries recorded in the Annual Confidential Reports of the respondent stood washed off and the same could not have been taken into consideration by the Screening Committee for the purpose of forming an opinion on his continued suitability for public service. Although, the material placed before this Court does not show as to what was the criteria for making promotion from the post of Traffic Inspector Grade-I to the post of Junior Station Incharge and the record of how many years was considered for adjudging the suitability/merit of the eligible candidates, we shall proceed to decide the matter by assuming that the respondent was promoted

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to the post of Junior Station Incharge after due consideration of his suitability for the post. We may also assume that while promoting the respondent, the concerned authority must have taken into consideration the adverse entries recorded in his Annual Confidential Reports. If the respondent had not earned adverse remarks in his Annual Confidential Reports subsequent to promotion, his pre-mature retirement could have been quashed on the ground of arbitrary exercise of power by the competent authority. However, the fact of the matter is that after his promotion as Junior Station Incharge, the respondent earned the following adverse remarks in the Annual Confidential Reports of the years 1986-87 and 1989-90:

1986-1987: "Good conduct. Competent to control subordinate employees. Does not listen to the grievances and problems of the passengers at the station. Work unsatisfactory."

1989-1990: "When he was assigned duty at city station Tanakpur on 18.02.1988, he was found guilty of not working properly on his post and did not ensure arrival and departure of DD Hat Bareilly service from Tanakpur. His conduct is unsatisfactory."

For the year 1987-88 also he was rated as average workman with very ordinary performance.

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12. In our view, the competent authority is not only entitled but is duty bound to consider the entire service record including the Annual Confidential Reports of an employee/officer for the purpose of forming an opinion whether he should be continued in service after attaining the particular age or completing the specified period of qualifying service. Once an employee/officer is promoted to the higher post, the adverse remarks recorded in his Annual Confidential Reports get substantially diluted and if there are no adverse remarks after promotion, the earlier remarks cannot be made basis for forming an opinion that the concerned employee/officer has outlived his utility for public service. If on the other hand, an employee/officer earns adverse remarks before and after promotion, then the same can be looked into for deciding whether or not he should be retained in service. In *D. Ramaswami v. State of Tamil Nadu* (1982) 1 SCC 510, this Court considered a somewhat similar issue and observed "if there was some entry, not wholly favourable to the appellant after his promotion, one might hark back to similar or like entries in the past, read them all in conjunction and conclude that the time had arrived for the government servant to quit government service."

A glance at the adverse remarks recorded in the Annual Confidential Reports of the respondent for the years 1986-87 and 1989-90 shows that his superior

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officer had found his work and conduct to be unsatisfactory. In the ACR of 1987-88, he was described as average workman and his performance was treated as very ordinary. These entries could certainly be looked along with the adverse entries recorded in pre 28.6.1986 period for the purpose of deciding whether it would be in the interest of service and public interest to

retain the respondent in service. Therefore, the decision taken by the competent authority to pre-maturely retire the respondent cannot be dubbed as arbitrary or declared as vitiated due to consideration of irrelevant or extraneous material.

13. In view of the above discussion, it must be held that the pre-mature retirement of the respondent did not suffer from any infirmity and the learned Presiding Officer, Labour Court was not justified in nullifying the same.

14. Insofar as the order of the High Court is concerned, the least which can be said is that the learned Single Judge did not at all apply his mind to the issues raised in the writ petition and dismissed the same in a most casual manner by using the stock words and phrases. Therefore, the same cannot be sustained by applying any yardstick of rationality.

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15. In the result, the appeal is allowed. The impugned order as also the award passed by the Labour Court, Haldwani are set aside and the reference made by the State Government is answered against the respondent.

.....J.  
[G.S. Singhvi]

.....J.  
[Asok Kumar Ganguly]

New Delhi,  
August 16, 2010.

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ITEM NO.48

COURT NO.11

SECTION XV

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil)  
No(s).7661/2009  
(From the judgement and order dated 24/07/2008 in WP No.  
1396/2007 of The HIGH COURT OF UTTARAKHAND AT NAINITAL)

UTTARAKHAND TRANSPORT CORP. Petitioner(s)  
VERSUS  
SHIV DUTT SANWAL Respondent(s)

(With prayer for interim relief and office report)

Date: 16/08/2010 This Petition was called on for hearing  
today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI  
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s) Ms. Rachana Srivastava, Adv.

For Respondent(s)

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

Leave granted.

In terms of signed order, the  
appeal is allowed. The impugned order as also  
the award passed by the Labour Court, Haldwani  
are set aside and the reference made by the  
State Government is answered against the  
respondent.

(A.D. Sharma)  
Court Master

(Phoolan Wati Arora)  
Court Master

(Signed Order is placed on the file)