

Neutral Citation No. - 2024:AHC-LKO:76423-DB

Reserved

Chief Justice's Court

Case :- SPECIAL APPEAL DEFECTIVE No. - 548 of 2024

Appellant :- U.P. State Road Transport Corporation Hq Lko,
Thru. Its M.D. And 3 Others

Respondent :- Aditya Kumar Mishra

Counsel for Appellant :- Ratnesh Chandra

Counsel for Respondent :- Mohd. Ali

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Jaspreet Singh, J.

(Per Justice Jaspreet Singh)

1. The instant special appeal has been preferred under Chapter VIII Rule 5 of Allahabad High Court Rules, 1952 calling in question the judgment dated 08.07.2024 passed by the learned Single Judge in Writ A no.91 of 2022 (Aditya Kumar Mishra vs U.P. State Road Transport Corporation and ors) whereby the writ court has allowed the writ petition of the respondent setting aside the order dated 31.08.2021 passed by the Revisional Authority, who is the Chairman of the Uttar Pradesh State Road Transport Corporation (hereinafter referred to as the Corporation), directing the Corporation to withhold four increments of the respondent and denying him the financial benefits for the period he was out of service on account of the punishment order dated 07.10.2014. The writ court further directed the appellants to pay the respondent his full salary along with other allowances for the period he was out of service along with interest @ 6% p.a within a period of three months from the date of the judgment.

2. Sri Ratnesh Chandra learned counsel for the appellant has assailed the impugned order dated 08.07.2024 primarily on the ground that the findings recorded by the learned Single Judge is against the weight of the material on record. It is submitted that there was ample evidence on record to indicate that the Traffic Superintendent, who had led the inspection team, had found that the respondent who was the Conductor allowed nine persons to travel on the bus without ticket though the respondent had charged the fare and did not account for it and thus was involved in mal practice and dereliction of duty.

3. It was further urged that the respondent was given ample opportunity to contest the departmental proceedings and though he participated but could not lead any worthwhile evidence to dispel the charges levelled against him. In such circumstances, the charge which stood proved was not liable to be disturbed by the writ court in as much as the writ court does not act as a Court of Appeal and the scope of interference in the order passed by the Disciplinary Authority being narrow, the writ petition ought to have been dismissed.

4. It was also submitted that the learned Single Judge erroneously held that the department had failed to prove the charge, in as much as, the witnesses were examined on behalf of the Corporation who despite their cross examination withstood their statement and it was clear from the record that the defence as raised by the respondent was not proved. Moreso, the respondent admitted that nine persons were travelling in the bus in question without ticket and at the time of inspection, some of the passengers orally stated that they had paid the fare to the Conductor (the respondent) but no ticket was issued and in this fashion the respondent was clearly guilty of defalcation of funds.

5. It was urged that the respondent did not raise any issue of non grant of adequate opportunity nor did he raise any objection that the inquiry was not done in accordance with rules and law. In absence of such plea, the interference in the order of punishment passed by the Disciplinary Authority dated 07.10.2014 removing the respondent from service did not require any interference.

6. It was lastly urged that as per law the Corporation was not required to examine the co-passengers as witnesses in the departmental proceedings and merely on this ground the findings returned by the Inquiry Officer could not have been ignored. The Revisional Authority as well as the writ court were not justified in entering the arena of examining the quantum of punishment viz-a-viz the charges levelled and proved against the respondent and the order could not have been set aside holding the punishment to be disproportionate to the proved charge against the delinquent employee i.e. respondent. Thus, for all the aforesaid reasons, it is urged that the judgment passed by the learned Single Judge dated 08.07.2024 cannot be sustained and as such is liable to be set aside.

7. In support of his submissions the learned counsel for the appellants relied upon the decisions of the Apex Court in ***Uttar Pradesh State Road Transport Corporation and another vs Gopal Shukla and another; (2015) 17 SCC 603*** and ***Uttar Pradesh State Road Transport Corporation and another vs Gajadhar Nath; (2022) 3 SCC 190***.

8. Sri Mohd. Ali learned counsel for the respondent while refuting the aforesaid submissions had urged that the respondent was employed as a Conductor with the Corporation. On 01.11.2013 while the respondent was on duty in a 32 seater Bus no.UP57T2765 plying on the Gorakhpur-Padrauna route, the bus was inspected by a team led by the Transport

Superintendent, Gorakhpur Region and it was alleged that nine passengers were travelling in the said bus without ticket, though they had paid the fare to the respondent.

9. In pursuance of the report submitted by the inspection team on 02.11.2013 disciplinary proceedings were initiated against the respondent and by means of the order dated 19.11.2013, a charge sheet was served on the respondent. It was urged that the respondent had filed his statement of defence and explained that the nine passengers who were allegedly travelling without paying their fare were students who had refused to pay and despite the respondent having taken measures to stop the bus but on account of verbal spat with the said student and on insistence of the other passengers, the bus was not stopped to de-board the said students. In the aforesaid circumstances, the respondent was not guilty of any charge which was levelled against him and as such the inquiry proceedings should be dropped.

10. The Inquiry Officer submitted his report on 08.01.2014 wherein the charges against the respondent were found proved. Thereafter, a show cause notice dated 09.01.2014 was served on the respondent which was duly replied, however, it did not find favour with the Disciplinary Authority and by means of the order dated 07.10.2014, the punishment order was passed removing the respondent from service.

11. The respondent filed a departmental appeal filed against the punishment order which was dismissed on 16.11.2015 and, thereafter, the respondent filed a revision before the Chairman of the Corporation (the Revisional Authority).

12. It is urged that the Revisional Authority after taking a holistic view found that the charges against the respondent were not proved. However, it noticed that since nine persons were admittedly travelling in the bus without paying the fare hence,

this amounted to some negligence on the part of the respondent, hence, for the aforesaid reason, it concluded that the punishment of removal from service was not commensurate as the said charges were not proved, consequently, it partly allowed the revision setting aside the punishment of removal from service treating it to be disproportionate to the conduct of the respondent, and instead ordered to withhold four increments of the respondent.

13. It is in the aforesaid context that the petitioner preferred the writ petition before the learned Single Judge and it was urged that since the charges levelled against the respondent were not established and there was no worthwhile evidence to suggest that the respondent had accepted the fare and yet not issued the tickets to nine passengers or the nine passengers had paid the fare to the respondent hence, in such circumstances, it was not for the Revisional Authority to have imposed the punishment of withholding four increments.

14. It was further urged that once the Revisional Authority came to the conclusion that in absence of any evidence the charges as levelled against the respondent were not made out then the entire punishment order ought to have been set aside and it was not appropriate to modify the punishment order by directing withholding of four increments on the ground of negligence of the respondent though no charge was framed in this regard.

15. It was further urged that the findings recorded by the Revisional Authority was never challenged by the Corporation, hence, in so far as the Corporation is concerned, the same attained finality. In such circumstances, the only issue before the writ court was as to whether in absence of any evidence, it could be held that the respondent was negligent and a punishment of withholding four increments could be awarded.

16. It was submitted that the writ court taking note of the aforesaid facts and circumstances found that the Revisional Authority was not justified in withholding four increments. The writ court also found that no charge was proved against the respondent as held by the Revisional Authority, hence, the respondent was entitled to his full salary and allowances for the period he was out of service on account of the punishment order dated 07.10.2014, alongwith interest @ 6% p.a., payable to the respondent within three months.

17. It was urged that the grant of financial benefit was a direct outcome of the findings recorded by the Revisional Authority as the charges framed were not proved and only on account of the punishment order which was bad in the eyes of law, the respondent remained out of service and that too, without his fault. Accordingly, the writ petition was allowed. It is urged that the findings recorded by the writ court do not suffer from any error which may entail any interference in this Special Appeal, consequently, the appeal deserves to be dismissed.

18. The Court has heard learned counsel for the parties and also perused the material on record.

19. In light of the respective submissions advanced by the learned counsel for the parties, if the material on record before the Court is perused it would reveal that on 01.11.2013 the respondent was on duty as a Conductor of 32 seater Bus no.UP57T2765 plying on Gorakhpur-Padrauna route and in mid route the said bus was inspected by the Transport Superintendent. As per the inspection report dated 02.11.2013, it recorded that nine passengers were travelling on the bus without ticket. It was also recorded by the Superintendent that the Conductor of the bus had received the fare from the said nine passengers, consequently, the Conductor i.e respondent was directed to deposit Rs.4,588/-. It also recorded that oral

statements were given by the ticketless passengers, but they refused to give a signed written statement.

20. On 19.11.2013, a chargesheet was served on the respondent who submitted his reply on 26.11.2013 and the Inquiry Officer in terms of his report dated 08.01.2014 found that the charges levelled against the respondent were proved. A show cause notice was, thereafter, issued on 09.01.2014 which was also replied but it did not find favour with the Disciplinary Authority who pass the punishment order dated 07.10.2014 removing the respondent from service.

21. The departmental appeal of the respondent was dismissed on 16.11.2015 by the Appellate Authority. Thereafter, the matter was further escalated before the Revisional Authority who by means of its order dated 31.08.2021 partly allowed the revision and the order of punishment was set aside holding the charges were fictitious and the punishment was disproportionate to the conduct of the respondent and then it directed stoppage of four increments of the respondent and that the respondent was not entitled to any financial benefits for the period he was out of service.

22. This Court upon perusal of the order passed by the Revisional Authority, (a copy of which has been brought on record at running page-121 of the paper book) finds that a specific finding was recorded by the Revisional Authority that the charges levelled against the respondent were false, fabricated, without basis, concocted and misleading.

23. It also recorded a finding that all the passengers were having valid tickets. It also noticed that the contention that nine passengers were travelling from Gorakhpur to Padrauna without ticket was not accurate as the alleged nine passengers who were said to have been travelling without ticket were students of

Kushinagar Degree College who had gone to attend a N.C.C Camp.

24. It also noticed that the respondent had required the said students to pay the fare but they misled the respondent and despite an attempt made by the respondent to stop the bus to deboard such students but on account of insistence of other passenger the bus could not be stopped, hence, the revisionist was not responsible or guilty of the charges framed and the punishment awarded was completely disproportionate to his conduct. However, it also held that four increments be stopped and the respondent would not be entitled to the financial benefits for the period he was not in service. For ready reference, the relevant portion of the order passed by the Revisional Authority is being reproduced hereinafter:-

"अधोहस्ताक्षरी द्वारा प्रकरण पत्रावली में उपलब्ध समस्त अभिलेखों का परिशीलन किया गया परिशीलनोपरान्त यह पाया गया कि उसके विरुद्ध लगाये गये आरोप असत्य, काल्पनिक, निराधार, मनगढ़न्त एवं भ्रामक है। रिवीजनकर्ता द्वारा परिचालित वाहन में सभी यात्रियों के पास वैध टिकट उपलब्ध थे, कोई भी यात्री बिना टिकट नहीं था। परिचालित वाहन 32 सीटर छोटी बस थी, जिसमें निरीक्षणकर्ताओं द्वारा स्वयं 45 यात्री दर्शाया गया है, इससे भी यह स्पष्ट होता है कि परिचालित वाहन में कुल यात्रियों की संख्या वाहन की क्षमता से कहीं बहुत अधिक यात्री बैठें हैं। निरीक्षणकर्ताओं की रिपोर्ट के आधार पर यह भी प्रमाणित है कि 36 यात्रियों के पास वैध टिकट उपलब्ध थे, जो स्वतः प्रमाणित होता है। वाहन में क्षमता के अनुरूप टिकट सहित यात्री उपलब्ध थे तथा वाहन में तब तत्समय 04 स्टाफ भी उपस्थित थे। रिवीजनकर्ता को 09 यात्री बिना टिकट गोरखपुर से पड़रौना पाया जाना दर्शाया गया है, यह सत्य नहीं है, क्योंकि वह सभी जिन्हें 09 यात्री कहा गया है वह कुशीनगर डिग्री कालेज के छात्र थे, और एन०सी०सी कैम्प, जो रामपुर में लगा था वहीं से वो सवार हुए थे, लेकिन रिवीजनकर्ता द्वारा बार-बार किराया मांगे जाने पर उन छात्रों द्वारा किराया न देकर परिचालक को भ्रमित किया जा रहा था। रिवीजनकर्ता द्वारा वाहन के चालक से बार बार गाड़ी रोकने का अनुरोध करने पर यात्रियों द्वारा गाड़ी न रोकने की हठ करते हुए वाहन संचालित करायी गयी। ऐसी स्थिति रिपोर्टकर्ताओं का यह कर्तव्य था कि उन छात्रों से किराया वसूल कर

परिचालक को देते हुए टिकट बनवाते, जो कि निरीक्षणकर्ताओं द्वारा नहीं किया गया, फिर भी वाहन में 09 यात्री बिना टिकट होने से इन्कार नहीं किया जा सकता जिसके लिए रिवीजनकर्ता दोषी है, परन्तु इतना नहीं कि उसे सेवा से पृथक कर दिया जाए, रिवीजनकर्ता को दिया गया दण्ड आरोपों की तुलना में अत्यधिक कठोर है।

अतएव श्री आदित्य मिश्र, भूतपूर्व परिचालक, गोरखपुर डिपो, गोरखपुर क्षेत्र के विरुद्ध क्षेत्रीय प्रबन्धक, गोरखपुर के दण्डादेश संख्या-15741 दिनांक 07.10.2014 एवं प्रधान प्रबन्धक (वि० एवं वा०), परिवहन निगम मुख्यालय, लखनऊ के अपीलीय आदेश संख्या-984 रोडी/15-217 अपील/2014 दिनांक 16.11.2015 को निरस्त करते हुए रिवीजनकर्ता की 04 वर्ष की वार्षिक वेतनवृद्धि बिना भविष्य प्रभाव के रोकते हुए सेवा बहाल किया जाता है तथा सेवा से बाहर रहने की अवधि का कोई वित्तीय लाभ देय नहीं होगा, परन्तु सेवा की तारतम्यता बनी रहेगी।

उपरोक्तानुसार श्री आदित्य मिश्र, भूतपूर्व परिचालक, गोरखपुर डिपो, गोरखपुर क्षेत्र द्वारा प्रस्तुत रिवीजन दिनांक 07.01.2016, का अन्तिम रूप से निस्तारण किया जाता है।”

25. Having taken note of the aforesaid and relevant portion of the order passed by the Revisional Authority what is important to notice is the fact that these findings were recorded in favour of the respondent but were never challenged by the appellant before any Court. Consequently, the said findings attained finality and the impact of such findings is that they are immune from any attack in the instant special appeal at the behest of the appellants.

26. It is not disputed by the counsel for the appellant that the said findings of the Revisional Authority were never assailed by the Corporation before any Court. In view thereof, once the said findings had attained finality the only issue before the writ court was whether the imposition of a punishment of stoppage of four increments was justified especially the Revisional Authority had itself noticed that the allegations and the charges levelled against the respondent were false, concocted and were not proved.

27. The writ court was seized of the matter with the given facts and admitted position that the findings recorded by the Revisional Authority had not been assailed and till such time the said findings remained intact, no fault could be attributed to the respondent. The writ court considered the aforesaid aspect and noticed that the respondent was kept out of service on account of the act of the employer i.e. the appellant and as the charges against the respondent were not proved, no fault could be attributed to the respondent, hence, the appellant was directed to reinstate the respondent with all benefits.

28. Apparently this Court finds that no error can be found in the judgment passed by the learned Single Judge for the reason that the finding of the Revisional Authority had attained finality and it was found that no charge as levelled against the respondent was proved, thus the disciplinary proceedings initiated against the respondent were bad and for the said reason, the moment the punishment order of removal of service was set aside, the necessary consequence would be that the respondent would be entitled to continue in service without any break and would be entitled to all consequential benefits.

29. In this view of the matter, the submissions of learned counsel for the appellant does not impress this Court, in as much as, an attempt is being made to attack and get over the findings of the Revisional Authority indirectly which is not permissible in law by this Special Appeal as the same were never challenged by the Corporation by assailing it before the competent Court.

30. As far as the decision of ***Gajadhar Nath*** (*supra*) is concerned, it would reveal that it is also on an altogether different set of facts. The proposition held therein that the Tribunal or the High Court could not reject the evidence led by the employer in respect of misconduct of the Workman merely

for not lodging of FIR or non initiation of criminal proceedings has no bearing to prove the misconduct in departmental proceedings, is not attracted in the instant case. Moreover, the said decision does not come to the aid of the learned counsel for the appellant as in the instant case, neither there was any evidence to indicate that the respondent had received the fare and yet without issuing tickets it had carried nine passengers. The bus driver was also not examined and in absence of any cogent evidence the Revisional Authority categorically recorded a finding that the charges against the respondent were not proved and this finding was not assailed by the appellant which had attained finality. Similarly, the decision of the Apex Court in *Gopal Shukla (supra)* also does not come to the aid of the appellant for the reasons as mentioned above.

31. The Corporation cannot be permitted to attack findings of the Revisional Authority in this Special Appeal when it did not assail it in a petition which could be filed by the Corporation. Moreover, permitting the appellant to do so in this Special Appeal would be jeopardizing the rights of the respondent who would be placed at a much disadvantageous position than he would have been had the respondent not filed the writ petition in the first place.

32. For all the aforesaid reasons, this Court does not find that there is any merit in the appeal which is, consequently, **dismissed** and the decision rendered by the writ court dated 08.07.2024 passed in Writ A no.91 of 2022 (Aditya Kumar Mishra vs U.P.S.R.T.C and others) is affirmed. In the facts and circumstances, there shall be no order as to costs.

Order Date :-20th November, 2024

Harshita

(Jaspreet Singh, J.) (Arun Bhansali, C.J.)