



2026:AHC:206027

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Reserved : 24/09/2026

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HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 25559 of 2019

U.P State Road Transport Corporation and another

.....Petitioner(s)

Versus

Vinod Kumar and another

.....Respondent(s)

Counsel for Petitioner(s)	: Sunil Kumar Misra, Vivek Saran (elevated)
Counsel for Respondent(s)	: Ajay Kumar Srivastava, C.S.C.

Court No. - 36

HON'BLE SAURABH SHYAM SHAMSHERY, J.

1. The petitioner before this Court is UP State Road Transport Corporation (for short “**employer-Corporation**”) and has filed this writ petition against impugned award dated 11.12.2018 (published on 29.01.2019) passed by Presiding Officer, Labour Court, Varanasi whereby a referred industrial dispute was decided that order of dismissal from service passed against respondent-workman was illegal and it was directed that respondent-workman be reinstated on post of Conductor with continuity of service and entire backwages. Relevant parts of impugned award are quoted below :-

“पक्षों के अभिकथनों के आधार पर तत्कालीन पीठासीन अधिकारी द्वारा दि० 23-07-2009 को निम्नलिखित प्रारंभिक वाद विन्दु सृजित किया गया:-

क्या कर्मकार के विरुद्ध संस्थित विभागीय जांच निष्पक्ष व समुचित रीति से सम्पन्न हुई?

उक्त प्रारम्भिक वाद के संबंध में सेवायोजक की ओर दस्तावेजी साक्ष्य के रूप में वरिष्ठ केन्द्र प्रभारी बादशाहपुर की रिपोर्ट दि० 1.05.98, श्री के०एम० मिश्रा यातायात अधीक्षक की रिपोर्ट दि० 1.05.98 व मार्गपत्र, निलंबन आदेश दि० 1.05.98, आरोप पत्र दि० 16.06.98, आरोप पत्र का उत्तर दि० 16.07.98, जांच अधिकारी निर्गत बुलावा पत्र दि० 30.11.98, 31.12.98, 13.01.99, जांच कार्यवाही दौरान दर्ज प्रश्नोत्तर, जांच रिपोर्ट, कारण बताओ नोटिस दि० 27.03.99, श्रमिक का प्रार्थना पत्र दि० 23.07.99, सेवा से पृथक् आदेश दि० 4.09.99 व अपील अस्वीकृति आदेश दि० 9. 10.2000 एवं प्रदर्श ई-15 के रूप में एक अभिलेख की छायाप्रति प्रस्तुत की गई।

श्रमिक की ओर से दस्तावेजी साक्ष्य के रूप में आरोप पत्र दि० 20.01.97, आरोप पत्र का उत्तर, आरोप पत्र दि० 16.06.98 के विरुद्ध श्रमिक का उत्तर, कारण बताओ नोटिस दि० 27.01. 99, सेवा समाप्ति आदेश दि० 4.09.99, सेवा समाप्ति के विरुद्ध प्रस्तुत अपील एवं अपील निरस्तीकरण आदेश दि० 9.10.2000 की छायाप्रतियां प्रस्तुत की गई।

श्रमिक श्री विनोद कुमार ने डब्लू०डब्लू०-1 के रूप में अपना सशपथ बयान दि० 22.02. 2010 को अंकित करवाया।

सेवायोजक गवाह श्री राम नरायन प्रसाद ई०डब्लू०-1 जो निगम में कार्यालय सहायक प्रथम के पद पर कार्यरत है ने अपना सशपथ बयान दि० 31.10.2011 को अंकित करवाया।

प्रारम्भिक वाद बिन्दु पर दोनों पक्षों के विद्वान अधिकृत प्रतिनिधियों की बहस सुनने के उपरांत तत्कालीन पीठासीन अधिकारी ने अपने आदेश दि० 19.01.2012 में यह निष्कर्ष निकाला है कि घरेलू जांच की कार्यवाही समुचित रीति से सम्पन्न नहीं की गई है और तदनुसार प्रारम्भिक वाद बिन्दु का निर्णय नकारात्मक में करते हुए यह मत व्यक्त किया जाता है कि कर्मकार के विरुद्ध संस्थित विभागीय जांच समुचित रीति से सम्पन्न नहीं की गई है।”

“उपरोक्त विश्लेषण के आधार पर मैं इस निष्कर्ष पर पहुंचता हूं कि सेवायोजक साक्षी के बयान के अनुसार दि० 30.04.1998 को सहायक क्षेत्रीय प्रबंधक, जौनपुर डिपो की उपस्थिति में अपने सहयोगी निरीक्षक श्री लालमनि के साथ उन्होंने 15.50 बजे महाराजगंज पहुंचते-पहुंचते बस सं० यू.ए.क्यू-9821 का निरीक्षण किया था उसमें 6 यात्री यात्रा करते हुए पाये गये थे जिनमें से 3 यात्री बिना टिकट थे और 2 यात्री स्वतंत्रता संग्राम सेनानी पाये गये थे। बिना टिकट 3 यात्रियों के बारे में श्रमिक श्री विनोद कुमार ने स्पष्टीकरण दिया है कि वह 3 यात्री चेकिंग के समय ही कुछ क्षण पहले बस में चढ़े थे जिसकी वजह से चेकिंग के समय तक वह उनके टिकट नहीं बना रुका था। यह बयान संभव स्वभाविक हो ऐसा होना क्योंकि यात्री जब बस में सवार होता है तो उनके टिकट बनाने में कुछ समय लगता है। उल्लेखनीय है कि उसी दौरान बस की चेकिंग हो जाये तो स्वभाविक है कि 2-3 यात्रियों का टिकट नहीं बना सका हो। मेरे पूर्वाधिकारी ने इस संबंध में घरेलू जांच कार्यवाही को पूर्णतया दूषित पाया है। यातायात अधीक्षक श्री के०एम० मिश्र के बयान की पुष्टि अन्य किसी साक्षी

से नहीं कराया गया है जबकि बस के निरीक्षण के दौरान सहायक क्षेत्रीय प्रबंधक, जौनपुर डिपो एवं यातायात निरीक्षक श्री लालमणि भी मौजूद थे, किन्तु सेवायोजक की तरफ से इन्हें भी न्यायालय में बयान हेतु पेश नहीं किया गया है अतः मेरी राय में जॉच अधिकारी की जॉच आख्या के आधार पर श्रमिक को सेवा से निकाले जाने का आदेश पूर्णतया अवैधानिक, अनुचित एवं त्रुटिपूर्ण पाया जाता है और श्रमिक श्री विनोद कुमार बेकारी अवधि के सम्पूर्ण वेतन के साथ अपने पूर्व पद पर बहाल होने योग्य पाया जाता है।”

2. Sri Sunil Kumar Misra, learned counsel for petitioners/employer-Corporation has submitted that one of Members of Inspection Squad was examined before Labour Court, therefore, inspection was proved. On inspection it was found that respondent-workman was carrying 3 passengers without ticket and failed to provide any explanation and same was adequately proved before Labour Court.
3. Learned counsel further submitted that an explanation that passengers were boarded the bus just before checking, therefore, tickets could not be prepared cannot be found a satisfactory explanation since there was nothing on record or proved by respondent-workman about the distance between places when passengers boarded bus and place where inspection was conducted.
4. Learned counsel has placed reliance upon a judgment passed by this Court in **UPSRTC vs. Sri Chhotelal and another, 2026:AHC:168675** that upon an order of reinstatement, an order of full backwages would not be an automatic order. Learned counsel has further submitted that respondent-workman was not reinstated after award was passed and he has already crossed age of superannuation.
5. Learned counsel has also referred statement of witness appeared on behalf of employer-Corporation who was part of Inspection Squad.
6. Per contra, Sri Sameer Sharma, learned Senior Advocate assisted by Sri Himanshu Agrawal, learned counsel for respondent-workman has placed reliance upon **Pradeep S/o Rajkumar Jain vs. Manganese Ore (India) Limited and others, (2022) 3 SCC 683** that if it is found that termination was unjustified and improper, an order of reinstatement with

full backwages can be passed and for reference, paragraph 12 of **Pradeep (supra)** is quoted below :-

“12. It is, undoubtedly, true when the question arises as to whether the back wages is to be given and as to what is to be the extent of back wages, these are matters which will depend on the facts of the case as noted in Deepali Gundu Surwase [Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya, (2013) 10 SCC 324 : (2014) 2 SCC (L&S) 184] . In a case where it is found that the employee was not at all at fault and yet, he was visited with illegal termination or termination which is actually activated by malice, it may be unfair to deny him the fruits of the employment which he would have enjoyed but for the illegal/malafide termination. The effort of the Court must be to then to restore the status quo in the manner which is appropriate in the facts of each case. The nature of the charges, the exact reason for the termination as evaluated and, of course, the question as to whether the employee was gainfully employed would be matters which will enter into the consideration by the Court.”

7. Learned Senior Advocate has further placed reliance upon **Maharashtra State Road Transport Corporation vs. Mahadeo Krishna Naik, (2025) 4 SCC 321** and referred its paragraph 48 and 49 which are quoted below :-

“48. After the employee pleads his non-employment and if the employer asserts that the employee was gainfully employed between the dates of termination and proposed reinstatement, the onus of proof would shift to the employer to prove such assertion having regard to the cardinal principle that “he who asserts must prove”. Law, though, seems to be well settled that if the employer by reason of its illegal act deprives any of its employees from discharging his work and the termination is ultimately held to be bad in law, such employee has a legitimate and valid claim to be restored with all that he would have received but for being illegally kept away from work. This is based on the principle that although the employee was willing to perform work, it was the employer who did not accept work from him and, therefore, if the employer's action is held to be illegal and bad, such employer cannot escape from suffering the consequences. However, it is elementary but requires to be restated that while grant of full back wages is the normal rule, an exceptional case with sufficient proof has to be set up by the employer to escape the burden of bearing back wages.

49. We hasten to add that the courts may be confronted with cases where grant of lump sum compensation, instead of reinstatement with back wages, could be the more appropriate remedy. The courts may, in such cases, providing justification for its approach direct such lump sum compensation to be paid keeping in mind the interest of the employee as well as the employer."

8. Learned Senior Advocate has also submitted that since official who has inspected the bus has not entered into witness box, the entire inquiry would be vitiated being illegal. He has placed reliance upon paragraph 14 of **Dinesh Chandra Sharma vs. Bhartiya Paryatan Vikas Nigam Ltd.**, 2025 SCC OnLine SC 3003 which is quoted below :-

*"14. In the present case, termination of service was of a regular workman after 13 years of service. Usually, in a case where high degree of technical skill is not required, employment opportunities fade with age. Here reference notification was made in the year 1997 and the award was ultimately passed in late 2015. During writ proceedings, affidavit on behalf of the workman was filed stating that he was not gainfully employed in the interregnum. There was no evidence in rebuttal thereof. Taking that into account as also the decision of this Court in **M.L. Singla v. Punjab National Bank, (2018) 18 SCC 21 : (2019) 1 SCC (L&S) 805** where, in a similar situation, 50% of back wages was allowed by this Court, the learned Single Judge of the High Court awarded 50% towards back wages, while observing as under:*

"14. Having noticed above, this court finds that the respondent-workman, who was to be reinstated, has not been reinstated by the petitioners although there was no interim order passed by this Court. The respondent-workman has attained superannuation and no benefit on attaining superannuation has been granted to the respondent-workman. The respondent-workman was also not paid subsistence allowance during the period of suspension as has been noticed by the Labour Court. Keeping in view the statement which has come on record before this court in affidavit that the respondent-workman has not been in gainful employment and also considering his age now that he has attained superannuation, an inference can be drawn that he was not in gainful employment. Keeping in view thereto, this Court is of the view that considering that the hotel 'Jaipur Ashoka' is no more under the control of ITDC, interest of justice could be served in granting 50% of back wages to the respondent-workmen by

calculating salary from the date as directed by the Labour Court i.e., from the date of raising the dispute before the Conciliation Officer till the date of passing of the award. From the date of passing of the award, the respondent-workman shall be entitled to actual wages and all retiral benefits including gratuity and other benefits as are admissible. Payment to the workmen shall be made by notionally reaching to the salary without deleting 50% back wages for the purpose of calculation of salary last drawn. The award of the Labour Court dated 22/12/2015, impugned herein, is modified to the aforesaid extent.”

9. An explanation that respondent-workman was in process of issuing tickets to passengers boarded just before inspection was a plausible explanation and he has placed reliance upon following relevant paragraphs of **Mohinder Singh vs. Delhi Transport Corporation, Civil Appeal No. 10926/2025 decided on 20.08.2025 :-**

“10. There is no dispute as regard the fact that the vehicle in which checking was conducted was travelling from Bareilly to Pilibhit. There would therefore be stoppages in between. The evidence on record is that those who were found ticket less, had boarded from different points. Admittedly, 29 passengers were found with tickets. The defence of the appellant was that he was in the process of issuing tickets to those who boarded from different points. It is not the charge that the appellant was found with extra cash and that he was letting the passengers go without tickets after taking cash from them.

11. In the aforesaid circumstances, the defence taken by the appellant was a plausible defence and once that defence was accepted by the Labour Court, in absence of any evidence of passengers who were not issued tickets, the same did not call for interference in exercise of powers of judicial review under Article 226/227 of the Constitution of India.”

10. I have considered above submissions and perused the records.

11. The Labour Court has given a decision on preliminary issue that domestic inquiry was not proper, therefore, the employer-Corporation was granted opportunity to prove the charge levelled against respondent-workman. Admittedly, only one witness entered into witness box on behalf of employer-Corporation and since he was not able to prove that

he has actually participated in inspection, his evidence was not found substantial, however, respondent-workman has not denied that an inspection was conducted but he has given explanation that passengers who was found without ticket. No one boarded just before the checking was conducted and in the light of Mohinder Singh (*supra*), it can be considered a plausible explanation, therefore, order of reinstatement is upheld.

12. Now question would be since now respondent-workman has already crossed age of superannuation and no reinstatement was made during pendency of writ petition despite there was no interim order, he cannot be reinstated now, therefore, only issue left is about back wages or one time lumpsum compensation and for that Court takes note of judgment of **Maharashtra SRTC (*supra*)** and its relevant paragraphs are mentioned below :-

“43. Close on the heels of *Hindustan Tin Works [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53]* came another seminal decision on entitlement to back wages by another three-Judge Bench in *Surendra Kumar Verma v. Labour Commr. [Surendra Kumar Verma v. Labour Commr., (1980) 4 SCC 443 : 1981 SCC (L&S) 16]* Hon'ble O. Chinappa Reddy, J. (as his Lordship then was) in his Lordship's inimitable style remarked : (*Surendra Kumar Verma case [Surendra Kumar Verma v. Labour Commr., (1980) 4 SCC 443 : 1981 SCC (L&S) 16]* , SCC p. 447, para 6)

“6. ... Semantic luxuries are misplaced in the interpretation of “bread and butter” statutes. Welfare statutes must, of necessity receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the court is not to make inroads by making etymological excursions. “*Void ab initio*”, “invalid and inoperative” or call it what you will, the workmen and the employer are primarily concerned with the consequence of striking down the order of termination of the services of the workmen. *Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too.* But there may be exceptional circumstances which make it

impossible or wholly inequitable vis-à-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the court to make appropriate consequential orders. The court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. *The court may deny the relief of award of full back wages where that would place an impossible burden on the employer.* In such and other exceptional cases the court may mould the relief, but, *ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown.* True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted.”

(emphasis supplied)

44. There have been decisions of this Court rendered thereafter where a shift in approach on awarding full back wages is clearly discernible. However, a coordinate Bench of this Court in *Deepali Gundu Surwase* [*Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya*, (2013) 10 SCC 324 : (2014) 2 SCC (L&S) 184] considered a dozen precedents on award of back wages upon reinstatement (referred to in paras 13 and 14). Speaking through Hon'ble G.S. Singhvi, J. (as his Lordship then was), the legal position was neatly summed up in the following words : (SCC pp. 344 & 356-58, paras 22 & 38)

“22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children

are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. *The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.*

38. The propositions which can be culled out from the aforementioned judgments are:

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a

positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Articles 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. *The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.*

38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or

penalised. *It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement.* The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in *Hindustan Tin Works (P) Ltd. v. Employees* [*Hindustan Tin Works (P) Ltd. v. Employees*, (1979) 2 SCC 80 : 1979 SCC (L&S) 53] .

38.7. The observation made in *J.K. Synthetics Ltd. v. K.P. Agrawal* [*J.K. Synthetics Ltd. v. K.P. Agrawal*, (2007) 2 SCC 433 : (2007) 1 SCC (L&S) 651] that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three-Judge Benches [*Hindustan Tin Works (P) Ltd. v. Employees*, (1979) 2 SCC 80 : 1979 SCC (L&S) 53] , [*Surendra Kumar Verma v. Labour Commr.*, (1980) 4 SCC 443 : 1981 SCC (L&S) 16] referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.”

(emphasis supplied)”

13. The respondent-workman was appointed as daily wager on 30.05.1990 and he was regularized vide order dated 27.05.1994 and finally terminated vide order dated 04.09.1999 i.e. he has worked only for 9 years. A submission is on record that during period of 9 years, respondent-workman was allegedly involved in other misconducts, however, no punishment was awarded. Since there was no interim order, therefore, proceedings were initiated for recovery and it is placed on record vide order dated 19.09.2026, a recovery of Rs. 20,50,166/- was determined.

14. In aforesaid circumstances, Court takes note of an argument of learned Senior Advocate that since it was not a fault of respondent-workman and he has given a statement that he was not gainfully employed, therefore, he is entitled for entire backwages.

15. Court also takes note of judgments cited by learned Senior Advocate for respondent-workman as well as submission that backwages should be determined between 50% and 75% of entire backwages.

16. The respondent-workman was terminated in 1999, therefore, it cannot be believed that he has not done any job for more than 2-1/2 decades and that only on basis of a statement that he was not employed, it cannot be construed that he was not employed gainfully though this issue was not dealt with by Labour Court and employer was not asked to give any evidence to rebut it.

17. In aforesaid circumstances and taking note of judgments of **Maharashtra SRTC** and **UPSRTC (supras)** and that respondent-workman has only worked for 9 years, therefore, instead of full back wages or part of it, in the interest of justice and to take care of grievance of both parties, an order of one time lumpsum compensation of Rs. 5,00,000/- is passed and said respondent shall be paid to respondent-workman by employer-Corporation within six weeks.

18. With aforesaid modification of impugned award, this writ petition is **disposed of**.

(SAURABH SHYAM SHAMSHERY, J.)

October 01, 2026

<Nirmal>