CASE NO.:
Appeal (civil) 3536 of 2006

PETITIONER:
U.P.S.R.T.C.

RESPONDENT:
Mitthu Singh

DATE OF JUDGMENT: 18/08/2006

BENCH:
C.K. Thakker & Markandey Katju

JUDGMENT:
JUDGMENT

C.K. Thakker, J.

Leave granted.

This appeal is filed against an order passed by the High Court of Judicature at Allahabad on August 12, 2004 in Civil Miscellaneous Writ Petition No. 49182 of 2000 by which the High Court dismissed the petition filed by Uttar Pradesh State Road Transport Corporation ('Corporation' for short) confirming the order passed by the Labour Court, U.P., Varansai on September 21, 1999 in Adjucation Case No. 157 of 1997.

Few relevant facts of the case are that the sole respondent herein was working as Driver with the appellant Corporation. It was the case of the appellant that the respondent had committed misconduct at several times and was punished. It was alleged that on April 25, 1994 while the respondent was driving Bus No. U.P. 65/223 on Varanasi-Kota route, the checking aquad, at about 4.00 p.m., near Dibulganj, gave signal to stop the bus for checking. The respondent, however, did not stop the bus and no checking could be made by the squad. Again, on May 15, 1994, the respondent was driving the same bus on Shakti Nagar route and at about 2.30p.m., a signal was given near Chopan to stop the bus for checking. The respondent, however, ignored the signal and went away. Again on September 21, 1994, the respondent was driving Bus No. U.P. 65/6689 on Shakti Nahar route and in spite of giving signal by checking squad near Rihand Bridge at about 4.00 p.m., he not stop the bus. In view of the conduct and behaviour of the respondent, on August 26, 1996, the checking squad submitted reports against the respondent in respect of the above three incidents. Enquiry was initiated against the respondent, charge sheet was issued, the respondent filed reply denying the allegations, the Enquiry Officer gave full opportunity of defence to the respondent and submitted enquiry report holding the charges proved. A show cause notice was thereafter issued to the respondent enclosing therewith a copy of the enquiry report. The respondent filed reply to the show-cause notice which was considered by the appointing authority and by an order dated November 4, 1996, the appointing authority, after considering entire material, passed an order terminating the services of the respondent. The appeal filed by the respondent also came to be dismissed. The respondent approached the Labour Court, Varanasi in 1997 pursuant to reference was made in respect of following dispute for adjudication.

"Whether the termination of services by the employers of their Workman Mitthu Singh S/o Shiv Murat Singh, Driver w.e.f. 04.11.1996 is legal and/or valid? If not, then to what relief the workman is entitled.?

It was the case of the respondent-workman before the Labour Court that he was working as a Driver for the last 25 years and the Traffic Superintendent and Traffic Inspector, due to malice, submitted wrong reports against him. Reporting Officer could not appear before the Enquiry Officer, and could not be examined. The Corporation, in its reply; stated that the respondent was dismissed even earlier in 1975 but by taking a lenient view, he was reinstated by giving another chance to improve. Even thereafter, several times, punishments were awarded and warnings had been issued as he was not improved. He refused to stop the bus at all the three occasions in spite of signal given by the checking squad. A fair and proper enquiry was held wherein the charges were found duly proved. After giving an opportunity to defend, an action was taken which could not be said to be illegal or contrary to law and hence the workman was not entitled to any relief.

The Labour Court, however, allowed the petition holding that in absence of evidence of the Reporting Officer, it could not be said that the charges leveled against the workman were proved. No independent witness, according to the Labour Court, had been examined and here the workman was entitled to reinstatement. The Labour Court also proceeded to observe that even if it was assumed that a signal was given to the workman to stop the bus and he did not stop it, it could have been chased by the staff car, but that course was not adopted. From that, according to the Labour Court, it was clear that the checking squad was not sure whether the driver had intentionally not stopped the bus. Therefore even if the allegation was correct, there was not ill-intention on the part of the driver. Regarding the last incident, the Labour Court observed that there were several passengers and it was possible that a singal might have been given by the checking squad but it might not have been noticed by the workman. The Labour Court noted that the members of the checking squad had submitted a report against the workman. It also held that the workman had filed to prove that the checking squad had enmity with them. The Court then stated;

> "Therefore, I am agreeable to the contention of Enquiry Officer to the extent that the signals must have been given but it is not proved that the Driver intentionally did not stop the bus on those signals."

The Labour Court proceeded to observe that if certain passengers were allowed to board the bus without tickets, besides the driver, proceedings ought to have been initiated against the Conductor also but it was not done. In the circumstances, according to the Labour Court, there was no justification for giving hard punishment of termination from service to the driver. At the most, it would be sufficient to give him warning for the future. In view of above reasoning by the Labour Court, the workman was reinstated with continuity in service and back wages during the period of unemployment.

The Corporation approached the High Court by filing a petition which was dismissed by the court observing that the Labour Court passed the order on the basis of evidence on record and all findings were findings of fact. According to the High Court, the award did not suffer from any illegality on the face of the record and no interference was called for. Accordingly, the petition was dismissed.

On January 31, 2005, this Court issued notice "limited to the question of back wages". The respondent thereafter appeared and filed his counter-affidavit.

We have heard the learned counsel for the parties. The learned counsel for the appellant-Corporation submitted that the Labour Court as well as the High Court had committed an error of law and of jurisdiction in interfering with the order passed by the appointing authority and confirmed by the appellate authority. It was submitted that all throughout the service record of the workman was unsatisfactory. Before about 30 years, he was dismissed form service but a chance was given to him so that he may improve. He was, therefore, taken back but he was not improved. There were several lapses on the part of the workman even in the past prior to three incidents in question for which proceedings had been initiated. It was submitted that the jurisdiction of the Labour Court was not appellate in nature. Moreover, the Labour Court was not exercising jurisdiction in a criminal case which required proof 'beyond reasonable doubt.' When reports were submitted by checking squad and the Labour Court recorded a finding that the workman could not show any enmity and on the basis of such reports, an action was taken by the disciplinary authority which was confirmed by the appellate authority, there was no reason for the Labour Court to enter into correctness or otherwise of such findings and to hold that the action of the authority was not proper. The order passed by the Labour Court, therefore, required interference. It was submitted that the High Court also committed the same error by not exercising judicial power in consoance with law and the appeal, therefore, deserves to be allowed.

The learned counsel for the respondent, on the other hand, supported the order passed by the Labour Court and confirmed by the High Court. He submitted that on the basis of the evidence produced by the parties, the Labour Court recorded certain findings which cannot be said to be perverse or unreasonable which deserve interference by this Court when those findings were not disturbed by the High Court. He, therefore, submitted that the appeal deserves to be dismissed.

Having heard the learned counsel for the parties and keeping in view the limited notice issued by this Court regarding payment of back wages, we are clearly of the opinion that the appeal deserves to be partly allowed. In our view, the submission of the learned counsel for the Corporation is well founded that such matters required to be disposed of on the doctrine of 'preponderance of probability' and not proof 'beyond reasonable doubt.' Considering the facts in their entirely, it is clear that not once, not twice but at three occasions, the checking squad asked the workman to stop the bus so as to enable them to undertake checking, the workman had not stopped the bus. A report was, therefore, submitted and charge-sheet was issued to the Driver. After considering the evidence of Vanshraj Singh, Traffic Superintendent and the attenuating circumstances and the report as also the explanation put forward by the driver-workman, a finding was recorded by the Enquiry Officer that the allegations against the workman were ground proved. When the respondent-workman was not in a position to show why checking squad had falsely implicated him without there being any enmity and it was believed by the Labour Court, in our view, the Labour Court had committed serious illegality as well as jurisdictional error in interfing with the finding of guilt recorded by the Enquiry Officer and the order passed by the disciplinary authority and confirmed by the appellate authority. The Labour Court was also clearly wrong in observing that it was possible that signal might have been given by the checking squad but it might not have been noticed by the driver. According to the workman, the case was got up, concocted and falsely filed against him. Similar was the observation by the Labour Court regarding absence of initiation of proceedings against the Conductor. It was a totally irrelevant and non-existent consideration. According to the Labour Court, if checking squad was of the view that passengers were taken by the Conductor without issuing tickets, enquiry ought to have been initiated against the Conductor also, but it was not done. The Labour Court had failed to appreciate the most material and vital fact that unless the bus was stopped by the respondent-workman and checking squad had undertaken checking, no action could have been taken against Conductor as it was only on the basis of checking that the checking squad could be able to know whether passengers were travelling without tickets. When the bus was not stopped and could not be checked, there was no occasion for the authorities to initiate proceedings against the Conductor and no such proceedings in law could have been initiated. Another factor considered by the Labour Court was that if the respondent-workman did not stop the bus in spite of singal being given by the checking squad, the checking squad could have chased the bus. In our view, the question was not whether checking squad could have chased the bus. The allegation against the workman was that in spite of signal given by the checking squad to stop the bus, he failed to do so. In our opinion, therefore, in the facts and circumstances, the Labour Court could not have interfered with the orders passed by the disciplinary authority and confirmed by the appellate authority. The award passed by the Labour Court, hence, deserved to be quashed and set aside. The High Court committed an error in confirming the award of the Labour Court.

Since limited notice was issued with regard to payment of back wages, we do not enter into the larger question whether the action of terminating the services of the respondent was legal, proper and in consonance with law. But we are fully satisfied that in the facts and circumstances of the case, back wages should not have been awarded to the respondent-workman. In several cases, this Court has held that payment of back wages is a discretionary power which has to be exercised by a court/tribunal keeping in view the facts in their entirety and neither straight jacket formula can be evolved nor a rule of universal application can be laid down in such cases.

In General Manager, Haryana Roadways v. Rudhan Singh, [2005] 5 SCC 591, this Court held that there is no rule of thumb that in each and every case, where a finding is recorded by Court or Tribunal that the order of termination of service was illegal that an employee is entitled to full back wages. A host of factors must be taken into account.

The Court stated:

"There is no rule of thumb that in every case where the Industrial Tribunal gives a findings that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of actors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year."

Again, in Allahabad Jal Sansthan v. Daya Shankar Rai, [2005] 5 SCC 124, after considering the relevant cases on the point, the Court stated"

> "We have referred to certain decisions of this Court to highlight that earlier in the event of an order of dismissal being set aside, reinstatement with full back wages was the usual result. But now with the passage of time, it has come to be realized that industry is being compelled to pay the workman for a period during which he apparently contributed little or nothing at all, for a period that was spent unproductively, while the workman is being compelled to go back to a situation which prevailed many years ago when he was dismissed. It is necessary for us to develop a pragmatic approach to problems dogging industrial relations. However, no just solution can be offered but the golden mean may be arrived at."

Recently, in U.P.S.R.T.C. Ltd. v. Sarada Prasad Misra, [2006] 4 SCC 733 JT (2006) 5 SC 114 one of us (C.K. Thakker, J.) had an occasion to consider a similar issue. Referring to earlier case-law, it was observed :

> From the above cases, it is clear that no precise formula can be adopted nor 'cast iron rule' can be laid down as to when payment of full back wages should be allowed by the court or Tribunal. It depends upon the facts and circumstances of each case. The approach of the Court/Tribunal should not be rigid or mechanical but flexible and realistic. The Court or Tribunal dealing with cases of industrial disputes may find force in the contention of the employee as to illegal termination of his services and may come to the conclusion that the action has been taken otherwise than in accordance with law. In such cases obviously, the workman would be entitled to reinstatement but the question regarding payment of back wages would be independent of the first question as to entitlement of reinstatment in service. While considering and determining the second question the Court or Tribunal would consider all relevant circumstances referred to above and keeping in view the principle of justice, equity and good conscience, should pass an appropriate order.

Thus, entitlement of a workman to get reinstatement does not necessarily result in payment of back wages which would be independent of reinstatement. While dealing with the prayer of back wages, factual scenario and the principles of justice, equality and good conscience have to be kept in view by an appropriate Court/Tribunal.

In the instant case the record clearly reflects that the services of the respondent-workman were never found to be satisfactory. In fact, before more than 30 years, his services were terminated but he was taken back by giving a chance to improve. Unfortunately, however, the respondent did not utilise it. Even prior to the three incidents in question, at several times, the respondent-workman was warned. It was, therefore, not a fit case to grant back wages and the Labour Court and the High Court were not right in granting the said prayer. To that extent, therefore, the order deserves interference.

For the foregoing reasons, the appeal is partly allowed. The order passed by the Labour Court and confirmed by the High Court is set aside to the extent of granting back wages and it is held that the respondent-workman is not entitled to back wages. The appeal is accordingly disposed of. In the facts and circumstances of the case, however, there shall be no order as to costs.