

**Reserved on 23.07.2024**

**Delivered on 23.08.2024**

**Court No. - 33**

**Case :-** WRIT - C No. - 33663 of 2007

**Petitioner :-** The U.P.S.R.T.C.

**Respondent :-** Hari Shankar Verma

**Counsel for Petitioner :-** Vivek Mishra, Ayush Mishra, Mukesh Kumar Singh, Ramanuj Pandey, Sunil Kumar Misra

**Counsel for Respondent :-** Dinesh Chandra Srivastava, Dr. Rajesh Kumar Srivastava, Lalit Kumar, S.C.

**Hon'ble Chandra Kumar Rai, J.**

1. Heard Mr. Sunil Kumar Mishra, learned Counsel for the petitioner and Dr. Rajesh Kumar Srivastava, learned Counsel for respondent No. 1/1 to 1/4.

2. Brief facts of the case are that respondent No.1 was appointed on the post of Conductor in the petitioner/Corporation in the year 1980. On 12-11-1988, respondent No. 1 was driving bus number USY-8753 on Khurja-Haridwar route. The bus was checked and 12 passengers were alleged to be found traveling without ticket and in the checking made on 25-03-1989 in the aforementioned bus and 4 passengers were again alleged to be found traveling without ticket. In disciplinary proceeding, charge sheet was issued to respondent

No.1 and reply was submitted by respondent No.1. The Disciplinary Authority/ Regional Manager vide order dated 14-04-1991 passed the order of removal of service of respondent No.1. An industrial dispute raised by respondent No.1 was referred for adjudication vide reference order dated 23-08-1993 as to whether the order of removal of service of respondent No.1/Hari Shankar Verma Conductor dated 11-04-1991 is just and legal. The aforementioned reference was registered as Adjudication Case No.462 of 1993 before Labour Court (Ist) U.P. Lohia Nagar, Ghaziabad. Petitioner/ employer and respondent No.1 filed their written statement as well as oral and documentary evidences in support of their cases. Vide award dated 1-12-2006 as published on 23-02-2007 reinstated the respondent No.1 in service with 50% of back wages and other allowances from the date of dismissal of service upto date of reinstatement in service withholding two annual increments permanently. Hence this writ petition on behalf of petitioner for following relief.

***"(i) to issue a writ, order or direction in the nature of certiorari quashing the impugned award/judgment and order dated 21.03.2007 (Annexure 5 to the writ petition) in Adjudication Case No.462 of 1993 passed by labour Court I Ghaziabad."***

3. This court vide interim order dated 26-07-2007 entertained the matter and stayed the execution of the impugned award dated 1-12-2006 provided petitioner ensure compliance of section 17-B of the U.P. Industrial Dispute Act.

4. During pendency of the writ petition, respondent No. 1/Hari Shankar Verma has expired on 3-9-2015 accordingly, two sons, widow and a daughter have been substituted as respondent Nos. 1/1 to 1/4 respectively in the writ petition.

5. A counter affidavit along with application for vacation of interim order was filed on behalf of respondent No.1/1 to 1/4 to the writ petition stating specifically in paragraph No. 21 of the counter affidavit that deceased respondent No.1 has filed an application for his joining in the corporation in pursuance of the impugned award of labour court as well as interim order dated 26-07-2007 passed by this court in the instant writ petition. The copy of application for joining filed by deceased-respondent No.1 before employer along with affidavit stating that deceased-respondent No.1 was not in any employment is annexed as Annexure No. CA-1 to the counter affidavit dated 2-12-2015.

6. No rejoinder affidavit has been filed on behalf of petitioner to the counter affidavit dated 2-12-2015.

7. This court dismissed the instant writ petition for non-prosecution on 25-10-2017 but on restoration application of the petitioner the order dated 25-10-2017 was recalled vide order dated 27-05-2019.

8. This court on 23-02-2021 passed another order which runs as follows.

***"This Court while entertaining the petition on 26.7.2007 has passed the following order:***

***"Petitioner is permitted to implead Labour Court-I, U.P. Ghaziabad through Presiding Officer as respondent no.2 during the course of the day.***

***Learned Standing Counsel represents respondent no.2 Sri D.C. Srivastava, Advocate has accepted notice on behalf of respondent no.1. They pray for and are granted three weeks time to file counter affidavit. Rejoinder affidavit may be filed within a week thereafter.***

***List on 18th September, 2007.***

***It is contended that the workman was employed as Conductor***

*in U.P. State Road Transport Corporation, Ghaziabad and on two occasions he was caught carrying bus with passengers, who were travelling without ticket. After departmental proceedings, his service were brought to an end. Orders passed by the employers in that regard have been set aside under the impugned award on hyper technical ground without referring to departmental proceedings, and were pleaded before the Labour Court.*

*Petitioner has made out a prima facie case for grant of an interim order.*

*Till the next date of listing execution of the impugned award dated 1st December, 2006 passed in Adjudication Case No.462 of 1993 shall remain stayed provided the petitioner to ensure compliance of Section 17-B of the U.P. Industrial Disputes Act."*

*Nothing has been brought on record as to whether Section 17-B of the U.P. Industrial Disputes Act has been complied with by the petitioner or not.*

*Learned counsel for the petitioner at this stage seeks time to file affidavit regarding compliance of the order of this Court.*

*List this case on 24.3.2021 to enable Regional Manager, UPSRTC to file an affidavit showing compliance of Section 17-B of the U.P. Industrial Disputes Act.*

*It is made clear that in the event of non compliance of the order dated 26.7.2007, the Court would take serious view of the matter.*

*List this case on 18.3.2021. "*

9. In pursuance of the order dated 23-2-2021, petitioner/Employer filed a Civil Miscellaneous Modification Application No. 14 of 2021 dated 18-03-2021 for modification of the interim order dated 26-07-2007 as well as affidavit of compliance of the order dated 23-02-2021. Respondent No. 1/1 to 1/4 have filed their counter affidavit to the modification application as well as compliance affidavit filed by petitioner/Employer.

10. Learned Counsel for the petitioner/Corporation submitted that respondent No.1 was habitual in carrying the passenger without ticket but Labour Court has illegally ordered for reinstatement with

50% of back wages. He further submitted that respondent No. 1 was held guilty in the disciplinary proceeding for carrying passengers without ticket but Labour Court has illegally held that Respondent No. 1 is to be reinstated in service. He further submitted that Labour Court has failed to consider the oral and documentary evidence adduced by the parties in support of their cases. He placed following two judgments passed by this Court in support of his argument.

**1. Writ C No. 32426 of 2019**

**Tufani Yadav Vs. State of U.P. and 2 others**

**with**

**Writ C No. 15450 of 2019**

**M/S Hindalco Industries Limited Vs. State of U.P. and 3 others**

**Judgment dated 18-01-2024**

**2. Writ Petition No. 6444 of 2010**

**U.P. State Road Transport Corporation and another Vs. Mohan Singh and others**

**Judgment dated 17-05-2023.**

11. On the other hand, learned counsel for respondent No. 1/1 to 1/4 submitted that respondent No. 1 was performing his duty as conductor in the U.P. Roadways since 1980. He submitted that domestic inquiry was conducted against the respondent No. 1 in illegal and arbitrary manner accordingly, punishment imposed against the respondent No. 1 was also illegal. He submitted that Labour Court has rightly exercised his jurisdiction for reinstatement in service with 50% of back wages, withholding two annual increments permanently. He submitted that in spite of the conditional interim order of this Court, petitioner has not reinstated the respondent No.1 since 26-07-2007 and respondent No.1 has expired also on 3-09-2015, as such writ petition filed by petitioner

is liable to be dismissed with costs. He further submitted that deceased-respondent No. 1 tried his best for joining in pursuance of the impugned award but petitioner have not reinstated the deceased-respondent No. 1 in spite of the interim order passed by this Court in the instant petition filed by petitioner himself. He submitted that Labour Court has passed the impugned award in just and proper manner, as such there is no illegality in the impugned award even on merit.

12. I have considered the argument advanced by learned counsel for the parties and perused the record.

13. There is no dispute about the fact that Labour Court vide impugned award reinstated the respondent No. 1 in service with 50% of back wages and other allowances from the date of dismissal of service upto the date of reinstatement in service withholding two annual increments permanently. There is also no dispute about the fact that this Court has passed the conditional interim order dated 26-07-2007 but petitioner has not reinstated the respondent No. 1 who ultimately expired on 3-09-2015. There is also no dispute about the fact that petitioner has filed modification application on 18-03-2021 in respect to the interim order dated 26-07-2007 and 23-02-2021.

14. The perusal of the relevant finding of fact recorded by Labour Court while passing the impugned award will be necessary which is as under:

"न्यायालय प्रथम उत्तर प्रदेश, गाजियाबाद  
अभिनिर्णय विवाद संख्या 462/93

मै उत्तर प्रदेश राज्य सड़क परिवहन निगम खुर्जा द्वारा सहायक क्षेत्रीय प्रबन्धक (2)  
मै० उ०प्र० राज्य सड़क परिवहन निगम गाजियाबाद द्वारा क्षेत्रीय प्रबन्धक तथा

उनके श्रमिक श्री हरीशंकर वर्मा पुत्र श्री गेंदा लाल निवासी मोहल्ला सराय शेष आलम, खुर्जा जिला बुलन्द शहर के मध्य उत्पन्न औद्योगिक विवाद ।

### उपस्थिति

सावंत सिंह .....पठासीन अधिकारी

### पक्षकारों के प्रतिनिधियों के नाम

1. सेवायोजक पक्ष की ओर से ..... श्री पी०डी० वर्मा
  2. श्रमिक पक्ष को जोर से .....श्री सर्वेश कुमार
  3. उद्योग-परिवहन निगम
  4. जिला-बुलन्दशहर
- दिनांक: 01-12-04

### अवार्ड

1. अपर सभायुक्त, गाजियाबाद के सन्दर्भित संख्या 4262/67/गा०वा० (सन्दर्भ) सीपी० वाद संख्या 20/92 दिनांक 23-8-93 के द्वारा अभिनिर्णय हेतु इस श्रम न्यायालय को प्रेषित किया गया है औद्योगिक विवाद का विवरण निम्नवत है:-

1. क्या सेवायोजको द्वारा अपने श्रमिक श्री हरिशंकर वर्मा पुत्र गेंदा लाल पद परिचालक की सेवाये दिनांक 11-4-91 से समाप्त किया जाना उचित तथा वैधानिक हेतु यदि नहीं तो संबंधित श्रमिक किस हित लाभ/क्षति पूर्ति प्राप्त करने का अधिकारी है, अन्य किस विवरण सहित ।

.....  
.....  
.....  
.....

12. श्रमिक श्री तरफ से यह भी तर्क प्रस्तुत किया गया है कि मय दिनांक 12-11-88 और 25-3-89 को बस को पेश किया गया उस समय यह नियम था कि हर एक सवारी परि-चालक से उसकी सीट पर ही जाकर टिकट लेगी। निरीक्षण के दौरान यह नहीं पाया गया कि श्रमिक ने किसी भी सवारी से पैसा ले लिया था और टिकट नहीं दिया था यह कि बस खतौली से थोड़ी दूर ही चली थी और बस को चेक कर लिया गया था। निरीक्षणकर्ताओं ने बिना टिकट यात्रीयों के टिकट बना दिये थे और उनके द्वारा धनराशि निगम कोष खतौली में जमा करा दी गयी थी उस प्रकार कोई आर्थिक हानि नहीं हुई है। श्रमिक की सेवा समाप्ति का आदेश प्रदर्श ई-13 बहुत ज्यादा कठोर है। न्यायालय दण्डादेश प्रदर्श-13 को संसोधन करने में सक्षम है। परिचालक की सेवा समाप्ति उचित तथा वैधानिक नहीं मानी जा जा सकती। इस संबंध में विधि व्यवस्था प्रस्तुत की गयी है :-

(1) एफ०एस०आर० 19881571 पृष्ठ 719 (माननीय उच्चतम न्यायालय)

(2) एफ०एस०आर० 19961721 पेज 41। मा० इला० उच्च न्यायालय ।

13- उपरोक्त तर्क के खण्डन में सेवायोजक पक्ष की तरफ से यह तर्क प्रस्तुत

किया गया है कि यह परिचालक का कर्तव्य था कि खतौली से बस को तभी आगे चलाना चाहिए था जब सारी सवारियों की टिकट बना दी होती। श्रमिक का इरादा यात्रियों को बिना टिकट ले जाने का था और अगर बस चेक नहीं होती तब श्रमिक बिना टिकट यात्रियों से पैसा लेकर अपने पास रख सकता था और इस प्रकार निगम को आर्थिक हानि पहुँचायी जा सकती थी। श्रमिक की सेवा समाप्ति उचित है और सन्दर्भ निरस्त किये जाने योग्य है। इस संबंध में निम्न विधि व्यवस्था प्रस्तुत की गयी है:-

(1) 1998 सुप्रीम कोर्ट केसेज (एल एण्ड एस) पेज 11941 मा० इला० उच्च न्यायालय। उपरोक्त विधि व्यवस्था का लाभ सेवायोजक पक्ष को नहीं पहुँचता है क्योंकि उपरोक्त विधि व्यवस्था में दिये गये तथ्य प्रस्तुत संदर्भ में दिये गये तथ्यों से भिन्न है। प्रस्तुत विधि व्यवस्था के अनुसार श्रमिक की एक बार पहले भी सेवा समाप्त की गयी थी और उसे पुनः सेवा में लिया गया था और बाद में श्रमिक को पुनः सेवा से पृथक कर दिया गया था। इस प्रकार पुनः सेवा समाप्ति को माननीय उच्चतम न्यायालय ने उचित ठहराया था।

14. पत्रावली पर उपलब्ध साक्ष्य एवं प्रतिनिधियों के तर्कों को ध्यान रखते हुए वे इसी निष्कर्ष पर पहुँचता हूँ कि श्रमि से विरुद्ध पारित दण्डादेश प्रदर्श-13 एकदम कठोर है। दण्डादेश संशोधित किये जाने योग्य है। श्रमिक की दिनांक 11.4.91 से सेवा समाप्ति उचित तथा वैधानिक नहीं है। प्रस्तुत संदर्भ की वाब्दा यही निर्णीत किया जाता है कि दण्डादेश प्रदर्श ई-13 संशोधित किया जाता है। श्रमिक की पुरानी सेवा के क्रम में बहाल किया जाये। श्रमिक की केवल दो वार्षिक वेतन वृद्धि स्थायी तौर पर रोक ली जाये। श्रमिक सेवा समाप्ति की तिथि से सेवा में बहाल किये जाने की अवधि का वेतन तथा अन्य भत्तों का केवल 50% पाने का अधिकारी होगा।

ह० अप०

1.12.06

( सावंत सिंह )

पीठासीन अधिकारी।"

15. Perusal of the finding of fact recorded by Labour Court as quoted above fully demonstrate that there is no illegality in the impugned award.

16. It is also material that in spite of the interim order dated 26-07-2007 passed by this Court in the instant petition filed by petitioner themselves, the petitioner has not reinstated the respondent No. 1 in service and respondent No. 1 has expired on 3-9-2015, as such, writ petition filed by petitioner is also liable to be dismissed due to non-compliance of the condition mentioned in the interim order.



Mere quotation of wrong provision of interim order will not make the interim order redundant. Hon. Apex Court in case reported in **(2007) 8 SCC 449 Prestige Ltd. v. State Bank of India** has held that an order passed by competent court, interim or final, has to be abided without any reservation and if such order is violated, the Court may refuse the party violating such order to hear him on merit.

17. Considering the peculiar facts and circumstances of the case to the effect that respondent No. 1 was not reinstated in service in spite of the interim order dated 26-07-2007 passed in the instant petition and ultimately respondent No. 1 has expired on 3-09-2015, **the writ petition is dismissed with following direction:**

(i). Petitioner shall release the arrears of 50% of back wages of deceased-respondent No. 1 in favour of respondent No. 1/1 to 1/4 from the date of termination (11-04-1991) to the date of passing of interim order dated 26-07-2007 within period of two months from today.

(ii). Petitioner shall release the arrears of full wages of deceased-respondent No. 1 from the date of passing of interim order dated 26-07-2007 till the date of his death (3-09-2015) within period of 3 months from today.

(iii). In case of non-payment of arrears of wages in aforementioned period, the petitioner shall pay interest to the respondent Nos. 1/1 to 1/4 at the rate of 6% per annum on the aforementioned amount.

18. No order as to costs.

**Order Date :- 23.8.2024**

PS\*