

Bihar State Road Transport Corpn.

Vs

Kameshwar Prasad Thakur

Civil Appeal No. 4201 of 1992

(S. B. Majmudar, M. Jagannadha Rao JJ)

05.02.1998

ORDER

1. This appeal has been preferred by the Bihar State Road Transport Corporation against the judgment of the High Court of Patna dated 8-2-1991 dismissing the writ petition.
2. The incident with regard to which the respondent, who was working as a conductor in the appellant-Corporation, was charge-sheeted is dated 29-4-1973. It is stated that the bus of which the respondent was a conductor was found carrying 10 unbooked passengers. A charge-sheet was issued on 24-5-1973 and an order of discharge was passed on 1-8-1973. The appeal preferred by the respondent to the appellate authority was rejected on 14-11-1973. It appears that initially, the respondent filed a writ petition before the High Court and the same was dismissed as withdrawn, but subsequently a dispute was raised under Section 10(1) of the Industrial Disputes Act, 1947 which was referred to the Labour Court at Muzaffarpur. The Labour Court passed an order on 30-9-1988 setting aside the order of discharge and directing reinstatement of the respondent with full back wages holding that the Standing Orders did not permit discharge and that the Divisional Manager was not competent to dismiss the workman. Against the award passed by the Labour Court, the appellant filed a writ petition in the High Court which was dismissed on the ground that there is "no merit" in the application. It is against that order that this appeal has been preferred by the Bihar State Road Transport Corporation.
3. We have heard learned counsel for the appellant and the respondent. We find that the charge against the respondent was that when the vehicle was inspected on 29-4-1973 at 15.30 hours, it was found that 10 passengers out of 43 passengers were without ticket. It is disclosed from the order of the Labour Court that the Standing Orders of the appellant-Corporation which are of the year 1969 state that if the non-issuance of tickets relates to a number of passengers less than 25% of the passengers at the time of inspection, only fine is to be levied against the conductor. It was on this basis that the Labour Court found that the dismissal was wholly unjustified and directed reinstatement with full back wages.
4. After this appeal was preferred in this Court by the Corporation, stay of payment of back wages alone was granted on 20-7-1992. On 12-10-1993, the stay granted was ordered to continue. Thereafter, IA No. 2 filed by the respondent for vacation of the order in regard to stay of back wages came up before this Court on 16-8-1993 and was not disposed of, but was directed to be placed along with the SLP. Thereafter, no further orders were passed at the interlocutory stage.
5. It is stated by learned counsel for the appellant that the workman has not joined in spite of the fact that the stay granted by this Court was not in regard to reinstatement. On the other hand,

learned counsel for the respondent-workman has stated that this may be because the workman may have been under a belief that there is a stay of reinstatement also.

6. After examining the proceedings of this Court, we do not find much justification on the part of the workman not to have reported for duty after the order was passed by the Labour Court on 30-9-1988 or at any rate after the dismissal of the writ petition or after this Court granted limited stay only in regard to payment of back wages on 20-7-1992. Learned counsel for the appellant has contended that in any event, having regard to the conduct on the part of the respondent, this Court should pass a further order not allowing the respondent to have the benefit of full back wages inasmuch as the respondent had never reported to duty all these years.

7. After considering the submission of the counsel in this behalf, we are of the view that the following order would meet the ends of justice :

(1) If the respondent is interested in reinstatement, he should report to the Depot of the Bihar State Road Transport Corporation at Muzaffarpur within four weeks from today. Counsel for the appellant-Corporation has agreed to inform the Depot Manager at the abovesaid Depot to allow the respondent to join provided the respondent reports for duty within the period of four weeks from today above-mentioned.

(2) The respondent will be paid only 50% back wages from the date of discharge, namely, 1-8-1973 till the date he reports to duty.

(3) The respondent will file an undertaking in this Court within three weeks from today that he will report to duty within a period of four weeks as aforesaid.

(4) In the event of the respondent not reporting to duty within the said period, the order entitling him for 50% of back wages mentioned above will stand cancelled.

(5) In case the respondent reports to duty, it will be open to the appellant to deduct from the amount payable to the respondent such amount as may be required towards security deposit.

(6) On the respondent reporting to duty, the balance of the back wages, as stated above, will be released in his favour within a period of three months from the date of such reporting.

8. The appeal is disposed of accordingly. Interim order is vacated. No costs.