

REGIONAL MANAGER UTTARANCHAL RD. TPT. CORPN. A

v.

THAN SINGH & ANR.  
(C.A. No. 471 of 2008)

JANUARY 17, 2008

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.] B

*U.P. Industrial Disputes Act, 1947 – Bus conductor carrying passengers without issuing tickets though fare collected – Checking staff directing to issue tickets to passengers and make entries in way Bill – Tickets issued thereafter – Termination of service – Reinstatement by High Court – Held: Not correct – Issuance of tickets on basis of instructions of checking staff cannot legalize the illegality committed by employee – Thus, order of High Court set aside – Matter remitted back to High Court.* C D

**Transport inspector carried out checking operation and found that respondent no. 1-bus conductor though collected the fares from 20 passengers traveling in the bus but did not issue tickets nor made entry in way Bill for 23 passengers. The checking staff directed respondent no. 1 to issue tickets to those passengers and on issuance thereof, to make entries in the way bill. Thereafter, on departmental enquiry, service of respondent no.1 was terminated. Tribunal upheld the termination order. However, High Court holding that the tickets were issued to the passengers but only entries were not made in the bill, directed re-instatement. Hence the present appeal.** E F

**Allowing the appeal and remitting the matter to High Court, the Court** G

**HELD: Respondent No. 1 employee himself accepted that though he had collected the fare, he had not issued tickets to 20 passengers and had only issued tickets to** H

- A three passengers. The confusion arose because the High Court apparently proceeded on the basis that after the tickets were issued only the entries in the way bill were to be recorded. That was not so. Issuance of tickets on the basis of the instructions of the checking staff cannot
- B legalize the illegality committed by the respondent No. 1. That being so, the approach of the High Court was clearly wrong and the conclusions drawn were contrary to the materials on record, thus, the impugned order is set aside and the matter is remitted to the High Court. [Para 7] [816-
- C B, C, D, E]

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 471 of 2008.

- D From the final Judgment and Order dated 5.10.2005 of the High Court of Uttaranchal at Nainital in Writ Petition No. 690 (M/S) of 2005.

Sangeeta Kumar for the Appellant.

Brij Bhusan for the Respondents.

- E The Judgment of the Court was delivered by
- DR. ARIJIT PASAYAT, J.** 1. Leave granted.

- F 2. Challenge in this appeal is to the judgment rendered by a learned Single Judge of the Uttranchal High Court allowing the writ petition filed by the respondent No.1 (hereinafter referred to as the 'employee'). Challenge before the High Court was to the award dated 27.7.2004 passed by the Presiding Officer, Industrial Tribunal, and Labour Court Haldwani (in short the 'Tribunal') in Adjudication Case No. 21 of 1995.

- G 3. Background facts in a nutshell are as follows:

- H Respondent No.1 was appointed as a conductor on 21.11.1989 under the Appellant-Corporation, hereinafter referred to as the 'Corporation'). On 8/9.9.1990 the appellant was the conductor in Bus No. UP 78-9254. The Transport

Inspector as a part of the checking operation stopped the bus. There were 48 passengers traveling in the bus and out of them 20 did not have any ticket and there was no entry made in the Way Bill for 23 passengers. The employee made a statement that he could not issue tickets though he had collected the fares from 20 persons. The conductor was made to issue tickets to passengers to whom tickets had not been issued. The inspector made an entry for closing of ticket issuance and he also directed the employee to make an entry in respect of the 23 passengers in the way bill. Proceedings were initiated against the erring employee and his services were terminated on the basis of the materials collected during departmental enquiry. A reference was made under the Uttar Pradesh Industrial Disputes Act, 1947 (in short the 'Act') at the prayer of the respondent. The Tribunal came to hold that the order of termination was legal and justified and the concerned workman was not entitled to any relief. It is to be noted that the enquiry officer had in the enquiry report noted that the conductor had issued the tickets later though there were no entries in the way bill.

4. The High Court in the writ petition filed by the respondent came to hold that the concerned employee had taken fare from 20 passengers in presence of checking staff. It was also noted that when the bus was checked, the tickets were issued to the passengers but only entries were not made in the way bill. Accordingly the impugned award before it was set aside by the High Court and the respondent No. 1-Employee was directed to be re-instated in service with continuity of all retrial benefit but without back wages.

5. In support of the appeal, learned counsel for the appellant-Corporation submitted that the findings recorded by the High Court are clearly contrary to record. It was not a fact that the tickets had been issued as observed by the High Court. As a matter of fact, after detection by the checking staff direction was given by the Traffic Inspector to issue tickets and to make entries in the way bill for regularizing the travel of the passengers.

6. Learned counsel for the respondent with reference to

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A the report of the enquiry officer submitted that the High Court has correctly recorded the facts. \*

B 7. It appears from the statement of the respondent No.1-  
employee that he himself accepted that though he had collected  
the fare, he had not issued tickets to 20 passengers and had  
only issued tickets to three passengers. The confusion appears  
to have arisen because the High Court apparently proceeded  
on the basis that after the tickets were issued only the entries in  
the way bill were to be recorded. This is really not so, because  
C the respondent No.1 himself had accepted that tickets had not  
been issued to 20 passengers. The material on record also  
shows that the checking staff with a view to regularize the entries  
and regularizing the travel of the passengers had directed  
issuance of tickets to those 20 passengers to whom respondent  
No.1 had not issued tickets. This is evident from the fact that  
D the Tribunal had categorically noted that 20 passengers were  
issued tickets by the checking staff and the respondent No.1  
was directed to make entries in the way bill. Issuance of tickets  
on the basis of the instructions of the checking staff cannot  
legalize the illegality committed by the respondent No.1-  
E employee. That being so, the approach of the High Court was  
clearly wrong and the conclusions drawn are contrary to the  
materials on record. Since the High Court has not considered  
the materials in the proper perspective, the impugned order is  
set aside and the matter is remitted to the High Court for fresh  
F consideration in accordance with law. \*

8. The appeal is allowed to the aforesaid extent without  
any orders as to costs.

N.J.

Appeal allowed.

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