



IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2024

(ARISING OUT OF S.L.P (C) NO.10546 OF 2019)

**U.P. STATE ROAD TRANSPORT
CORPORATION & ORS.**

...APPELLANT(S)

VERSUS

BRIJESH KUMAR & ANR.

...RESPONDENT(S)

J U D G M E N T

PANKAJ MITHAL, J.

1. Leave granted.
2. Under challenge in this appeal by the Uttar Pradesh State Road Transport Corporation¹ is the order dated 12.09.2018 passed by the Division Bench of the Allahabad High Court in Letters Patent Appeal arising from a writ petition filed by the respondent wherein the learned Single Judge vide judgment and order dated

¹ In short 'UPSRTC'

12.01.2018 allowed the writ petition of the respondent after setting aside the order dated 30.01.2016 terminating the services of the respondent passed by the Assistant Regional Manager, Mathura, UPSRTC.

- 3.** The father of the respondent Bal Krishna was a regular conductor working with the appellant (UPSRTC) who died on 18.10.2003 while in service. At that time, the respondent was a minor. His mother moved an application for his compassionate appointment but in vain. The respondent attained the age of majority i.e. 18 years on 10.07.2008. He acquired the educational qualification of high school and intermediate. His mother, therefore, again moved an application seeking compassionate appointment for him under the Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974².
- 4.** There was no response to the above applications filed by the mother of the respondent. However, subsequently vide letter dated 19.10.2012, the appellant (UPSRTC) informed the respondent that in connection with his

² Hereinafter referred to as 'Dying in Harness Rules'

application for compassionate appointment, the corporation has decided to appoint him on preferential basis as a contract conductor. Accordingly, he was requested to report to the office and to deposit a security amount of Rs.10,000/-. It appears that in pursuance thereof the respondent submitted the security deposit and entered into an agreement with the appellant (UPSRTC) on 12.12.2012 to function as a contract conductor. The respondent, thus, joined as contract conductor.

- 5.** During his service as contract conductor, he was found guilty of carrying three passengers without ticket on two occasions and on one occasion was found carrying 500 kg of extra luggage without booking. His services were thus terminated on 30.01.2016 on the ground of misconduct.
- 6.** The respondent challenged the order dated 30.01.2016 terminating his services alleging that he was appointed on compassionate basis and, therefore, was a permanent employee whose services could not have been determined without holding a disciplinary inquiry.

- 7.** The writ petition challenging the termination order was allowed by the learned Single Judge vide judgment and order dated 12.01.2018 and the same was upheld by the Division bench by the order impugned herein dated 12.09.2018. The High Court concurrently held that the appointment of the respondent was on compassionate basis and as such he was a permanent employee whose services could not have been terminated on account of any misconduct without holding a disciplinary inquiry.
- 8.** In the above background, the appellant (UPSRTC) has come up in the present appeal.
- 9.** Heard Smt. Garima Prashad, learned senior counsel for the appellant and Shri Sudhir Kumar Saxena, learned senior counsel for the respondent.
- 10.** The submission of Smt. Garima Prashad, learned senior counsel for the appellant (UPSRTC), is that the respondent was never appointed on compassionate basis under the Dying in Harness Rules. His appointment was on contractual basis, independent of the Dying in Harness Rules. Since his appointment was on

contractual basis, his services have rightly been determined on the alleged misconduct.

- 11.** Shri Sudhir Kumar Saxena, learned senior counsel for the respondent, on the other hand defended the orders of the High Court contending that the compassionate appointments are always of permanent nature and the services of such employees cannot be terminated without holding a disciplinary inquiry. Therefore, the High Court has not committed any error of law in setting aside the termination order and holding that the services of the respondent are of permanent nature.
- 12.** There is no dispute to the legal proposition that any appointment made on compassionate basis is in the nature of a permanent appointment and is not liable to be treated as temporary or contractual. However, the fact remains whether in the instant case, the appointment of the respondent is under the Dying in Harness Rules or is independent of it on contractual basis.
- 13.** Undisputedly, the father of the respondent died on 18.10.2003 while working as a regular conductor with the appellant (UPSRTC). The mother of the respondent

had applied for his compassionate appointment but no such appointment was offered to him as he was a minor at that time. Even upon his attaining the age of majority on 10.07.2008, the respondent was never offered any compassionate appointment.

- 14.** The record reveals that instead of offering compassionate appointment to the respondent under the Dying in Harness Rules, the respondent was extended the benefit of the policy decision dated 09.08.2012 taken in the 188th meeting of the Board of Directors of the appellant (UPSRTC). The said policy envisages to offer preferential treatment in the matter of appointment on contractual basis to the dependents of the deceased employees. The scheme nowhere provides for compassionate appointment to the dependents. Accordingly, appellant (UPSRTC) vide letter dated 19.10.2012 offered contractual appointment to respondent as conductor pursuant to his application for compassionate appointment. He was called upon in the office of the appellant (UPSRTC) with the relevant documents and to deposit a security amount of Rs.10,000/-. The respondent duly accepted the said offer

and in response thereof submitted the security deposit and entered into a written agreement on 12.12.2012 accepting the contractual appointment as conductor.

- 15.** A plain reading of the policy decision as contained in letter dated 31.08.2012, the letter of offer dated 19.10.2012 and the agreement dated 12.12.2012, it is crystal clear that the respondent was appointed as a contract conductor on preferential basis being the son of the deceased employee. He was not appointed on compassionate basis. There is no reference of any compassionate appointment in any document.
- 16.** The mere fact that the respondent was appointed on contract basis pursuant to the application for compassionate appointment would not make his appointment to be one under Dying in Harness Rules.
- 17.** There appears to be no document on record to prove that the appointment of the respondent was on compassionate basis so as to treat him as a permanent employee of the appellant (UPSRTC). Despite repeated queries, no specific material was shown from the side of the respondent to establish that the respondent in fact was appointed on

compassionate basis. The respondent had accepted the offer of contractual employment with his open eyes and had even signed the agreement to that effect which is not disputed. Thus, his appointment was simply on contract basis and cannot be treated as permanent.

- 18.** In view of the aforesaid facts and circumstances, we are of the opinion that the learned Single Judge and the Division Bench manifestly erred in law in holding that the respondent was appointed under Dying in Harness Rules. The High Court, erroneously on complete misreading of the material on record, held that the appointment of the respondent to be on compassionate basis and that he is liable to be treated as a permanent employee. The High Court has erred factually in treating the appointment of the respondent under the Dying in Harness Rules, though, it is not so.
- 19.** The services of the respondent have been determined solely on the ground of misconduct as alleged but without holding any regular inquiry or affording any opportunity of hearing to him. The termination order has been passed on the basis of some report which probably

was not even supplied to the respondent. No show cause notice appears to have been issued to the respondent. Therefore, the order of termination of his services, even if on contractual basis, has been passed on account of alleged misconduct without following the Principles of Natural Justice. The termination order is apparently stigmatic in nature which could not have been passed without following the Principles of Natural Justice.

20. In the light of the above facts and discussion, we are of the opinion that the order dated 30.01.2016 terminating the services of the respondent is bad in law and cannot be sustained. It has rightly been set aside though on a different ground that the respondent is a permanent employee having been appointed on compassionate basis. The appointment of the respondent, in fact, is a contractual appointment entitling him to continue as such in service and to claim regularization if so advised in accordance with law.

21. The judgments and orders of the High Court dated 12.01.2018 and 12.09.2018 are set aside to the extent they hold the appointment to be on compassionate basis

under the Dying in Harness Rules and that of a permanent nature but quashing of the termination order is maintained.

22. The appeal is partly allowed as above.

..... **J.**
(PAMIDIGHANTAM SRI NARASIMHA)

..... **J.**
(PANKAJ MITHAL)

NEW DELHI;
AUGUST 28, 2024