(2014) 01 KAR CK 0100

In the Karnataka High Court

Case No : Writ Petition No''s. 16111 of 2008 (L-TER) and 22530 of 2009 (L-KSRTC)

Aswathnarayanachari APPELLANT

Vs

The Chief Traffic Manager, BMTC
 Bangalore Metropolitan Transport Corporation Vs Aswathnarayanachari RESPONDENT

Date of Decision : 02-01-2014

Acts Referred:
Industrial Disputes Act, 1947 — Section 10[4-A]

Citation : (2014) 01 KAR CK 0100

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : L. Shekar in W.P. No. 16111 of 2008 and Smt. H.R. Renuka in W.P. No. 22530 of 2009, for the Appellant; H.R. Renuka, Advocate in W.P. No. 16111 of 2008 and Sri L. Shekar, Advocate in W.P. No. 22530 of 2009, for the Respondent

Final Decision : Partly Allowed

Judgement

Ram Mohan Reddy, J.—Writ petition No. 16111/2008 is preferred by the Conductor, while writ petition No. 22530/2009 is preferred by the Karnataka State Road Transport Corporation [for short ''the Corporation''], calling in question the Award dated 22.7.2008 in I.D. No. 48/2001 of the III Additional Labour Court Bangalore, insofar as it relates to non entitlement to back wages to the Conductor and setting aside the order of dismissal dated 6.2.2001 and directing payment of monetary benefits to the workman with continuity of service upto the date of superannuation with consequential benefits, respectively. The Conductor while discharging duties during the period from January 1998 to 10.8.1998, [for short ''relevant period''], was found to have made interpolations over the entries of the numbers of the luggage tickets in the column provided in die conductor''s Way Bill Abstract [for short ''CWBA''], on 48 occasions. The Corporation, alleging that such alternations had resulted in misappropriation of traffic revenue of Rs. 2,460/-, initiated disciplinary proceedings, whence ample opportunity of hearing was extended to the conductor and the Enquiry Officer submitted a report holding the charges proved. The Disciplinary Authority, on an independent assessment of the facts, circumstances and evidence on record, accepted the findings of the Enquiry Officer and held the workman - conductor guilty of the charges and by order dated 6.2.2001, dismissed the conductor from service.

2. The workman filed a petition u/s. 10[4-A] of the Industrial Disputes Act, 1947, registered as I.D. No. 48/2001 on the file of the III Additional Labour Court, Bangalore, calling in question, the order of dismissal, which was opposed by filing counter statement of the Corporation, arraigned as second party, inter alia, denying the assertions in the claim petition and contending that the workman was guilty of misappropriation of traffic revenue due to alteration of the ticket numbers in the CWBA on 48 occasions.

3. In the premise of pleadings of parties, the Labour Court, framed issues, the first of which related to the validity of the domestic enquiry. The workman - conductor filed a memo conceding to the fairness of the domestic enquiry whence by consent the documents filed by the Corporation were marked as Exhibits. M1 to M69 and an order passed answering issue No. 1 in the affirmative, holding that the enquiry was fair and proper. There afterwards, the Labour Court, by Award dated 12.8.2006, directed reinstatement of the workman to the original post with continuity of service, consequential benefits, however, without back wages. That Award was called in question in writ petition No. 3123/2007, whence by order dated 10.4.2007, the petition was allowed and the Award quashed and proceeding remitted for consideration afresh.

4. On remand, the Labour Court, having extended reasonable opportunity of hearing to the parties and on a re-appreciation of the material on record i.e., evidence both oral and documentary, marshaled in the enquiry by the Corporation, observed that one Mallikarjuna the Reporting Officer, who submitted a report - Ex. M4 when examined, stated that on 48 occasions, the workman had made alterations in the CWBA in respect of luggage tickets while in the cross examination, admitted to the fact that in the Corporation there was no practice of checking CWBAs'' submitted by Conductors on a regular basis and that they would be subjected to an audit, in addition to the fact that the concerned section did neither verify the luggage tickets in view of shortage of employees nor indicate the latches in the alterations in the CWBAs'' though the conductor was orally informed of the same. That witness further admitted that the luggage tickets were in possession of the relevant/concerned section in the Corporation since 3.1.1998 and that the tickets would not be kept in the cupboards which are not locked, while there was no prohibition for anybody to enter the room and that his testimony was based upon records.

5. Regard being had to the fact that there was no evidence to establish an audit of the CWBAs on a daily basis, whenever they were submitted by the conductor who remitted the traffic revenue, the Labour Court, opined that there was lack of

evidence to establish the misconduct alleged, much less, the misappropriation. The Labour Court further observed that the conductor was victimized which amounts to unfair labour practice and that the order of dismissal was unsustainable and accordingly by the Award impugned, set aside the order of dismissal and extended all benefits to the workman, until the date of superannuation, however, without back wages.

6. Learned counsel for the Corporation asserts that the evidence, both oral and documentary, before the Enquiry Officer was ample and sufficient to establish the charge of misconduct and therefore the Labour Court was not justified in recording a contrary finding. In addition, learned counsel submits that the conductor having attained the age of superannuation on 28.2.2005, ought to have been denied the benefit of continuity of service and consequential benefits.

7. Per contra, learned counsel for the workman, while supporting the findings recorded by the Labour Court, however, submits that there was no justification to deny back wages.

8. Having heard learned counsel for the parties, perused the pleadings, evidence both oral and documentary and examined the Award impugned, the only question for decision making is,

Whether in the facts and circumstances of the case, the III Additional Labour Court was justified in recording a finding that the misconduct was not proved and in denying the back wages to the workman in question?

9. There can be no more dispute that Conductors in the Corporation are entrusted with the duty of collecting traffic revenue and deposit the same immediately after the completion of their duties along with the CWBA, recording the material particulars of the ticket numbers both passenger and luggage and the total amount of revenue collected and remitted which the Corporation has to verify the numbers on the tickets in the ticket tray of the conductor, with the entries in the CWBAs. In other words, closing number of tickets in the Way Bill Abstract will have to be checked, verified with the numbers on the tickets found in the possession of the workman so as to prepare the next way bill certifying the opening numbers of the tickets in that CWBA. Mallikarjuna examined as witness for the Corporation, before the Enquiry Officer, admitted to have not followed the said procedure in respect of luggage ticket numbers recorded in the CWBAs'' in question. Thus, the production of CWBAs'' certifying the opening numbers of the tickets was imperative to establish without doubt the alleged tampering of numbers of the tickets in the CWBAs in question and infer the alleged misappropriation of traffic revenue. A perusal of the entries in the CWBAs disclose the total number of luggage tickets issued to passengers and the fare collected by the conductor while when added to the fare collected by issue of other tickets, tantamounts to the total revenue received and remitted to the Corporation. The altered luggage ticket numbers tally with the fare collected and deposited by the Conductor along with the CWBAs of the relevant period.

However, it must be noticed that it is incumbent on the part of the conductor to justify the alterations in the ticket numbers in the CWBAs.

10. The allegation against the workman is misappropriation of Rs. 2,460/-, on the premise of alterations in the luggage ticket numbers, in the CWBAs. The alterations, by themselves, one cannot infer misappropriation of traffic revenue. In order to prove misappropriation, it was incumbent on the part of the Corporation to place before the enquiry not only the CWBAs'' in question recording the closing numbers of the tickets, which was submitted by the conductor on making the deposit of traffic revenue but also the CWBAs'' certifying the opening number of the tickets issued for the next journey in the absence of the said CWBAs'', it cannot be inferred that the workman had misappropriated traffic revenue from out of issue of luggage tickets. In my considered opinion, no exception can be taken to the reasons, findings and conclusions arrived at by the Labour Court in the Award impugned insofar as it relates to the failure on the part of the Corporation to establish the charge of misappropriation of traffic revenue.

11. There is considerable force in the submission of learned counsel for the Corporation that the Labour Court was not justified in recording a finding of victimization. In the absence of evidence on the part of the conductor when an opportunity was extended to place before court material to establish victimization, the allegation of misconduct cannot tantamount to victimization.

12. Regard being had to the fact that the conductor failed to justify the interpolations in the entries over the luggage tickets, it cannot but be said that the conductor''s conduct was inappropriate, in the matter of accounting traffic revenue belonging to the Corporation. Though the charge of misappropriation of traffic revenue is not proved, nevertheless, the fact that there are alterations in the entries in the CWBAs, based upon which the traffic revenue was remitted to the Corporation, is borne out from record.

13. In the circumstances, ends of justice would be met by denying the conductor 80% back wages while entitling him to 20%. In the result, writ petition No. 22530/2009 is allowed in part. The award impugned is quashed insofar it relates to finding of victimization is concerned, while writ petition No. 16111/2008 is also allowed in part insofar as denial of back wages and instead entitling the workman to 20% back wages. In all other aspects, the Award of the Labour Court remains unaltered. Compliance within two months.

