
(2011) 03 KAR CK 0300
In the Karnataka High Court
Case No : Writ Petition No. 23512 of 2005

Bangalore Metropolitan Transport Corporation	APPELLANT
Vs	
BMTC and State Transport	RESPONDENT

Date of Decision : 03-03-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (1) (d), 11 A

Citation : (2011) 130 FLR 116 : (2011) ILR (Kar) 2037 : (2011) 3 KarLJ 182 : (2011) 3 KCCR 228 SN : (2011) 4 LLJ 400 : (2011) LLR 844

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : H.R. Renuka, for the Appellant; L. Shekar, for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopala Gowda, J.—Challenge in this writ petition is to the legality of an Award passed by the Industrial Tribunal, Bangalore, accepting the Reference in part and reducing the punishment. Aggrieved, the employer-Corporation has filed this writ petition.

2. Background facts culled out from the record are as follows:

The workman - N. Shankar Rao, while on duty driving bus bearing registration No. KA-01/F-1139 on 8.6.99, on route No. 276:4, plying from Vidyaranyapuram to Kempegowda Bus Station, caused an accident resulting in the death of a scooterist and injuries to two children. Report of the accident having been received, Articles of Charge dated 18.6.1999 was issued by the Petitioner to the workman, to which a reply statement was submitted on 23.6.99. Not satisfied with the reply, a disciplinary enquiry was ordered against the workman. The enquiry Officer after holding the enquiry submitted the report dated 13.7.99, wherein it was held that, the workman was responsible for the occurrence of the accident, to the extent of 20%. Show-cause notice enclosing the enquiry report was issued to the workman, to which, he submitted a reply on 6.8.99. After

considering the findings of the enquiry officer and the gravity of the charge leveled against the workman, the Disciplinary Authority imposed punishment on 25.9.99 i.e., three increments of the workman were ordered to be withheld with cumulative effect. Aggrieved, the workman preferred an appeal on 24.1.2000, which was allowed in part on 14.11.2000, modifying the punishment to withhold two annual increments with cumulative effect. The workman raised a dispute and the Government by an order dated 17.6.02 referred the dispute to the Industrial Tribunal for adjudication u/s 10(1)(d) of the Industrial Disputes Act, 1947 (for short, "the Act"). The dispute was registered in I.D. No. 146/02 on the file of the Industrial Tribunal, Bangalore. The workman filed claim statement on 1.2.03 and the Management filed the counter statement on 25.10.04. The fairness of the enquiry held by the Management was conceded by the workman by filing a memo dated 27.11.04. With consent, the documents produced by the Management was marked as Exs. M1 to M6. The Industrial Tribunal despite holding that the workman has also contributed for the occurrence of the accident, examining the case with regard to proportionality of punishment, taking note of the fact that the workman had been issued with cash prize, appreciation letter, Chief Minister Gold Medal for having driven the bus for seven years without any accident, held that, the punishment imposed is not justified and reduced the punishment to one of withholding two increments without cumulative effect.

3. Smt. H.R. Renuka, learned Counsel appearing for the Petitioner by placing reliance on an order dated 3.3.05 passed in W.P. 15726/2001 (L-KSRTC) in the case of The Managing Director, Ksrtc, Bangalore v. J.B. Mahalingappa, Kolar, contended that, the Labour Court has no jurisdiction to exercise power u/s 11A of the Act in a case like the one on hand. Learned Counsel further contended that, Section 11A could be invoked only in case of penalty imposed being a discharge or dismissal of the workman and not in a case where the punishment imposed for the proved misconduct being one, to withhold the increments with cumulative effect.

4. Sri L. Shekar, learned Counsel appearing for the Respondent, on the other hand, contended that, the case made out against the workman being only one of contributory negligence, the punishment imposed being disproportionate, the Labour Court was justified in exercising its power u/s 11A of the Act and in reducing the punishment to one without cumulative effect.

5. In the light of the rival submissions and the record which I have perused, the point for consideration is:

Whether in the facts and circumstances of the case, the Labour Court is justified in exercising the power u/s 11A of the Act and in reducing the punishment?

6. Indisputably, for finding the employee guilty, the enquiry officer relied on the evidence adduced in the enquiry. The fairness of the domestic enquiry held was conceded by the workman before the Industrial Tribunal. The Tribunal has

concurred with the finding of guilt recorded in the enquiry. There is no allegation of victimization or unfair labor practice. In the absence of such allegation, the Tribunal has no power to interfere with the punishment imposed.

7. Section 11A of the Act gives power to the Labor Court/Industrial Tribunal to reappraise the evidence adduced in the enquiry and reconsider the decision of the employer in the matter of imposing punishment. The provision u/s 11A of the Act is applicable only in the case of punishment being dismissal or discharge of a workman.

8. In the case of Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. v. The Management reported in AIR 1973 SC 122, the power of Labor Court even in the absence of Section 11A was illustrated.

9. In the instant case, the punishment imposed on the workman for the proved misconduct being one, to withhold two annual increments with cumulative effect and not a case of dismissal or discharge, Section 11A of the Act has no application. As already noticed, the Tribunal has not recorded any finding that, the findings recorded in the enquiry, on which the Disciplinary and Appellate Authorities acted, as perverse.

10. In the case of J.B. Mahalingappa (supra), for the proved misconduct, the Management imposed the punishment, which having been questioned, the Government made reference to the Labor Court, wherein, after adjudication, the Reference was allowed in part and the Management was directed to withhold one increment for a period of two years. The said Award when questioned by the Management, it has been held as follows:

Admittedly, Section 11A of the I.D. Act is not available in a matter like this. Section 11A comes into picture only in the case of discharge or dismissal. The Labor Court has committed a serious error in the case on hand.

11. In the instant case, the occurrence of the accident on account of the contributory negligence of the Respondent-workman having been well founded and held as established, the punishment imposed being only to withhold two annual increments with cumulative effect, the Industrial Tribunal had no jurisdiction to exercise power u/s 11A of the Act and substitute the punishment. The Industrial Tribunal has committed illegality by interfering with the punishment imposed by the Management and in reducing the punishment.

In the result, writ petition is allowed and the impugned Award is quashed. The punishment imposed by the Appellate Authority on the workman - N. Shankar Rao, shall stand restored.

No costs.