

(2006) 02 KAR CK 0058

In the Karnataka High Court

Case No : Writ Petition No's. 23516 and 24299 of 2005

Bangalore Metropolitan Transport Corporation

APPELLANT

Vs

D. Kempanna

RESPONDENT

Date of Decision : 15-02-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (4-A)

Citation : (2006) 110 FLR 359 : (2006) 2 KarLJ 247 : (2006) 3 KCCR 161 SN

Hon'ble Judges : Mohan Shantanagoudar, J

Bench : Single Bench

Advocate : H.R. Renuka, in W.P. No. 23516 of 2005 and V.S. Naik, in W.P. No. 24229 of 2005, for the Appellant; V.S. Naik in W.P. No. 23510 of 2005 and H.R. Renuka in W.P. No. 23516 of 2005, for the Respondent

Judgement

Mohan Shantanagoudar, J.—By the impugned award, the Labour Court allowed the petition in part filed by the workman u/s 10(4-A) of the Industrial Disputes Act, 1947 ("Act" for short) and consequently, directed the Bangalore Metropolitan Transport Corporation ("Corporation" for short) to reinstate the workman into service with continuity of service, but without back wages. Assailing the correctness of the said award dated 6-12-2004 passed by the Additional Labour Court, Bangalore, in I.D. No. 25 of 2001, the management-KSRTC has filed Writ Petition No. 23516 of 2005, praying for setting aside the award passed by the Labour Court, whereas, the workman filed Writ Petition No. [24229] of 2005 praying for quashing of the award to the extent it denies back wages to him.

2. The charge levelled against the workman is that he secured the job of conductor in the establishment of "Corporation" by producing bogus marks-card and transfer certificate allegedly issued by Government Junior College, Doddaballapur. The Domestic Enquiry was conducted against the workman and in the said enquiry, the charge was not held to be proved, since certain relevant and vital documents (viz,, Annexures-G and H to the writ petition) were not

brought on record. Thereafter, the Corporation seems to have made certain investigation independently and secured two documents dated 21-1-1998 and 27-6-1999 issued by the Karnataka Secondary Examination Board and Government Pre-University College, Doddaballapur vide Annexures-G and H respectively. On the basis of those two documents, the Disciplinary Authority issued notice to the workman on 18-12-2000 calling upon the workman to show cause as to why action should not be taken against him for production of bogus documents while entering into service. After considering the statement of objections filed by the workman, the Disciplinary Authority dismissed the workman from his services. Assailing the correctness of said order of dismissal, the workman filed petition u/s 10(4-A) of the "Act" before the Labour Court.

3. During the trial before the Labour Court, one witness was examined on behalf of the "Corporation" and 20 documents were got marked. As against the same, the workman has not adduced any evidence. After appreciating the evidence on record, the Labour Court set aside the order of dismissal and passed the impugned award, directing the "Corporation" to reinstate the workman into service with continuity of service but without back wages.

4. Learned Counsel appearing on behalf of the Corporation firstly submits that the Labour Court has gravely erred in not framing the preliminary issue with regard to the fairness of Domestic Enquiry. According to her, had the said preliminary issue been framed, the Corporation would have been in a position to know as to whether evidence should be led independently before Labour Court.

The said first submission of the Counsel for the "Corporation" cannot be accepted inasmuch as, the question of framing of preliminary issue before the Labour Court arises only when the workman disputes the fairness of the enquiry. In this case, the workman has not disputed the fairness of the Domestic Enquiry and consequently, the Labour Court is justified in not framing the preliminary issue with regard to fairness of the enquiry.

5. Secondly, she contended that the Labour Court is not justified in observing that the Disciplinary Authority has not served the memorandum of reasons for the proposed disagreement with the findings of the Enquiry Officer, on the workman along with the show-cause notice. However, the copy of the reasons of the Disciplinary Authority for its proposed disagreement with the findings arrived at by the Enquiry Officer is produced along with this writ petition. The said reasons disclose that the workman has produced fake SSLC marks-card and Transfer Certificate for securing the job.

Thirdly, she contended that the two documents produced at Annexures-G and H, which were produced and marked before the Labour Court are not at all considered by the Labour Court and that therefore, great injustice is caused to the Corporation.

6. On the other hand, learned Counsel appearing for the workman submits that unless the Disciplinary Authority gives specific reasons in the show-cause notice

as to on what basis the findings of the Inquiry Officer were bad, it would be difficult for the delinquent official to satisfactorily explain or to give reasons to persuade the Disciplinary Authority to agree with the conclusions reached by the Enquiry Officer and that therefore, the Labour Court has rightly come to the conclusion that the workman is entitled for reinstatement into his service.

7. By perusing the impugned award it is clear that the Labour Court has not at all considered the relevant documents i.e., Annexures-G and H. On the other hand, the Labour Court has strongly relied upon the document Ex. M. 6, which is the letter written by the Principal of Government Pre-University College, Doddaballapur in support of the case of the workman. The said Ex. M. 6 directly runs contrary to the document produced at Annexure-H produced along with this writ petition.

The document produced at Annexure-H is issued by the Principal of the Government Pre-University College, Doddaballapur which clearly discloses that the register No. 20 of 1964-65 is in the name of a Muslim girl namely, Deeldar Begaum D/o. Abdul Sattar Khan and not in the name of the workman. The date of birth of said Deeldar Begum is 5-5-1953 and that she has failed in SSLC. It is also clear from the said document produced at Annexure-H that the respondent-workman was not a student of the said college in the year 1964-65.

The second document produced at Annexure-G which has been marked as Ex. M. 4 is the letter issued by the Secretary of the Karnataka Secondary Education Examination Board to the "Corporation" wherein it is clearly stated that the SSLC Certificate of the workman is not issued by the said examination board and that the contents of the said SSLC Certificate do not tally with the records maintained by the Board.

8. The aforesaid two documents which are produced at Annexures-G and H prima facie make it clear that the documents produced by the workman at the time of securing job were not issued from the concerned authorities and seem to have been concocted for the purpose of getting job. However, this Court cannot hold mini trial to arrive at specific conclusion at this stage in that regard.

9. Labour Court, mainly on the ground that the Disciplinary Authority has not assigned specific reasons in the show-cause notice to show on what basis the findings of the Enquiry Officer were bad, has proceeded to set aside the order of dismissal passed by the Disciplinary Authority. In other words, the Labour Court holds that an opportunity to show cause is denied to the workman by the Disciplinary Authority before passing order of dismissal.

In this case, admittedly, show-cause notice does not indicate the reasons to explain as to on what basis the Disciplinary Authority proposes to disagree with the conclusion reached by the Enquiry Officer. The contention of the management-Corporation is that the Disciplinary Authority had issued a separate letter to the workman stating the reasons for disagreeing with the conclusion arrived at by the Enquiry Officer. However, said contention is not found to be

correct by the Labour Court, as the same is not supported by any evidence. As the said finding given by the Labour is a finding of fact, I do not propose to probe into the same and consequently I concur with the finding arrived at by the Labour Court in that regard.

10. Merely because the show-cause notice was defective, in my considered opinion, the Labour Court is not justified in ordering reinstatement of the workman into service by setting aside the order of dismissal. If the show-cause notice issued by the Disciplinary Authority is defective, the best option be followed by the Labour Court is that it should have set aside the order of dismissal and thereafter would have directed the Disciplinary Authority to issue fresh show-cause notice to the workman in accordance with law for proceeding further with the enquiry proceedings from that stage onwards. In this regard it is beneficial to refer to the judgment of the Constitution Bench of the Apex Court in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., , wherein it is observed that:

Since the denial of the report of the Inquiry Officer is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory rules if any which deny the report to the employee are against the principles of natural justice and therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject.

The Courts/Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If the Court/Tribunal finds that non-furnishing of said report would prejudice the case of the employee, it should set aside the order of punishment and direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continue the enquiry afresh from the stage of furnishing him with the report and may also ordered for reinstatement for limited purpose of completing enquiry.

11. On the same analogy, in this case also, as the Disciplinary Authority has failed to furnish show-cause notice containing its dissenting views to the workman, the proper course that the Labour Court would have adopted was to issue direction to the Disciplinary Authority for fresh enquiry from the stage of supply of show-cause notice and order for reinstatement of dismissed-workman into service for the limited purpose of completing enquiry.

The aforesaid Constitution Bench judgment of the Apex Court is followed in the case of N.T.C. (WBAB and O) Ltd. and Another Vs. Anjan K. Saha, , wherein it is observed thus:

Therefore, the impugned orders of the High Court to the extent they direct reinstatement in service of the respondent with full monetary dues are set aside.

It is directed that in accordance with the legal position explained in para 31 of the case of B. Karunakar there would be a formal reinstatement of the employee for the limited purpose of enabling the employer to proceed with the enquiry from the stage of furnishing him with the copy of the enquiry report. The employer can place him under suspension for completing the enquiry. After conclusion of the enquiry in the manner as directed in the case of B. Karunakar, if the employee is exonerated, the authority shall decide according to law how the intervening period from the date of his dismissal to the date of his reinstatement shall be treated and what consequential benefits should be granted. If on the contrary, the employee is found to be guilty, before taking final decision he should be heard on the proposed penalty in accordance with Clause 14(4)(c) of the Industrial Employment (Standing Orders) Central Rules, 1946 on the quantum of punishment.

12. In view of the dictum laid down in the judgments cited supra, the Labour Court is not justified in directing the Corporation to reinstate the respondent-workman into service with consequential benefits and hence the same is liable to be set aside. Looking to the totality of the facts and circumstances of the case in my considered opinion interest of justice would be met if the Disciplinary Authority is directed to continue the proceedings from the stage of supply of show-cause notice by issuing fresh show-cause notice and till then, the workman shall be reinstated for the limited purpose for completing enquiry. In view of the aforesaid reasons, the following order is made.

The order of dismissal passed by the Disciplinary Authority bearing No. BMTC/CO/C-25/Depot/3/4416/2000-01, dated 20-1-2001 as well as the award dated 6-12-2004 passed by the third Additional Labour Court, Bangalore in I.D. No. 25 of 2001 vide Annexures-L and Q respectively are quashed. The Disciplinary Authority of the petitioner-Corporation is directed to continue with the enquiry from the stage of issue of show-cause notice by issuing fresh show-cause notice along with the dissenting views and thereafter proceed in accordance with law.

The workman shall be reinstated into service in the meanwhile for the limited purpose of completing the enquiry. After conclusion of the enquiry, if the worker is exonerated, the authority shall decide about the consequential benefits to be granted in favour of the workman. If on the contrary, the workman is found to be guilty of charges levelled against him, it is open for the Disciplinary Authority to impose punishment on him in accordance with law, without being influenced by any of the observations made during the course of this order.

Both the writ petitions are disposed of accordingly.