
(2001) 12 KAR CK 0033

In the Karnataka High Court

Case No : Writ Appeal No's. 50 and 51 of 2000

Bangalore Metropolitan Transport Corporation, Bangalore

APPELLANT

Vs

Kadiregowda

RESPONDENT

Date of Decision : 12-12-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 93 FLR 135 : (2002) ILR (Kar) 606 : (2002) 3 KarLJ 3

Hon'ble Judges : Manjula Chellur, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : Puttiga R. Ramesh, for the Appellant; R.N. Narasimha Murthy and K. Srinivas, for the Respondent

Final Decision : Allowed

Judgement

1. This intra-Court appeal is directed against the order dated25-10-1999 in W.P. Nos. 24024 and 32552 of 1999 passed by the learned Single Judge directing the appellant-Corporation to reinstate the respondent-driver into service with the benefit of continuity of service and consequential benefits including full back wages.

2. The question involved before the Labour Court was as to whether the respondent had secured employment in the establishment of appellant-Corporation on the post of Driver by producing forged School Transfer Certificate claiming that on the date of appointment he had the requisite educational qualification of passing 6th Standard, which is one of essential qualifications for appointment to the post of driver under the Karnataka State Road Transport Corporation (Cadre and Recruitment) Regulations, which are statutory in nature.

3. It is not in dispute that the respondent had applied for the post of driver in the establishment of the Karnataka State Road Transport Corporation and was appointed on temporary basis in the year 1984. Subsequently, on completion of his probation of two years, his original School Transfer Certificate was sought by

the appellant-Corporation for opening his service register. On receipt of the transfer certificate produced by the respondent-driver, the same was sent for verification to Headmistress, Gandhi Vidhyalaya Primary School, Malleshwaram, Bangalore, wherein the respondent-driver claimed to have studied in that school and passed 4th Standard during the academic year 1965-66.

4. According to the appellant-Corporation, they received a report from above said school stating therein that the respondent-driver had not at all studied in that school and the School Transfer Certificate furnished by him was not issued from that school. Based on the said report, the respondent-driver was subjected to disciplinary proceedings and on the article of charges found to have been duly proved, he was dismissed from service. Against the order of dismissal, an industrial dispute in ID. No. 58 of 1998 was raised before the Labour Court, Bangalore. During the adjudication of the dispute, respondent-driver filed a memo conceding the fairness of domestic enquiry initiated against him. Despite concession made by the respondent-driver, the Labour Court directed for reinstatement with 50% back wages, continuity of service and other consequential benefits on the ground that Headmistress of Gandhi Vidhyalaya was not examined before the enquiring authority and the letter written by the Headmistress of the School has not been produced before the Labour Court.

5. The above award of the Labour Court was questioned both by the Corporation and the workman by filing independent writ petition before this Court. The Corporation had sought for quashing of the award. Whereas, the workman had claimed that he is entitled to full back wages. The learned Single Judge agreeing with the findings of the Labour Court that because of non-production of the letter written by the Headmistress of the school in question before the Labour Court, the charge could not said to have been proved, modified the award of the Labour Court by directing full back wages.

6. Keeping in view the controversy involved herein, we secured the records of the Labour Court. The records reveal that the Corporation had filed certified copy of the 11 documents pertaining to appointment and the disciplinary proceedings undertaken against the respondent. The said documents include transfer certificate filed by the respondent, copy of article of charges and the letter written to the Headmistress of the School and the reply filed by the respondent to the article of charges. Copy of the article of charges shows that the respondent was furnished with Xerox copy of the Transfer Certificate submitted by him. Hence, the letter which was received from the Gandhi Vidhyalaya, Malleshwaram. In the reply filed by the respondent to the Article of charges he had not disputed genuineness of the letter written by the Headmistress to the Corporation pursuant to the query made by them. But the original-copy of the said letter was not filed before the Labour Court. Because of non-filing of this letter the Labour Court drew adverse inference and held that the finding of the disciplinary authority to be perverse. Consequently, the order of dismissal was set aside with direction of reinstatement and payment of back wages.

7. Sri P.R. Ramesh, learned Counsel appearing for the appellant-Corporation has stated before us that since fairness of the enquiry was specifically conceded by the respondent by filing a memo dated 10-9-1989 before the Court and he had also specifically stated that he had no objections to taking on record the documents filed by the Corporation it was not found necessary to lead further evidence. He also submitted that the letter written by the Headmistress could not be produced because of the original documents had been taken in custody by the police which was investigated in connection with the criminal case which had been instituted against the respondent.

8. In support of his submission, he has filed affidavit of the Deputy Law Officer of the Corporation wherein it has been stated that:-

"It is noticed from the records maintained in the case that after the workman was dismissed from the services of the Corporation, the Corporation had lodged a complaint with the jurisdictional police viz., Wilson Garden Police Station, Wilson Garden, Bangalore and had forwarded in all 14 documents in original to the jurisdictional police. The copy of the letter bearing No. BTS, C4. D5. 6235/94-95, dated 2-9-1994/15-11-1994 under which the documents were submitted is produced herewith with its English translation".

9. Certified copy of the order passed by the Criminal Court has also been produced which shows that the letter written by the Headmistress clearly shown as Ex. P. 3. The explanation offered by the Corporation for non-production of the letter by the Headmistress seems to be bona fide and acceptable.

10. One of the pleas raised before us is that since the respondent had remained in service for a considerable length of period, therefore, this Court in exercise of jurisdiction under Article 226 should not interfere even if it could be presumed that the appointment was obtained by practising fraud. We find it difficult to accept the plea. The Supreme Court in the case of Union of India v. M. Bhaskaran, AIR 1996 SC 686 has held that:-

"... fraudulently obtained appointment orders could be legitimately treated as voidable at the option of the employer and could be recalled by the employer and in such cases merely because the respondent-employees have continued in service for number of years on the basis of such fraudulently obtained employment orders cannot create any equity in their favour or any estoppel against the employer".

11. The Apex Court has further held that:-

"No Court should be a party to the perpetuation of the fraudulent practice".

12. Another plea raised on behalf of the respondent is that since he has been acquitted in criminal case instituted against him for identical charge therefore disciplinary proceedings, ipso facto gets nullified because the finding of the Criminal Court has to bind the finding of the disciplinary authority and the Tribunal as well. This argument is also equally fallacious and deserves to be

rejected in view of the clear enunciation of law by the Supreme Court on the issue.

13. In the case of Senior Superintendent of Post Offices, Pathanamthitta and Others Vs. A. Gopalan, it has been held that.-

"In a criminal case the charge has to be proved by the standard of proof beyond reasonable doubt while in departmental proceedings the standard of proof for proving the charge is preponderance of probabilities".

14. The above aspect has been dealt with by the Supreme Court in the case of State of Andhra Pradesh Vs. Sree Rama Rao, wherein it has been held that.-

The departmental authorities are, if the enquiry is otherwise properly held, the sole Judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution".

15. In the case of State of Rajasthan v B.K. Meena¹, it has been held that.-

"The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established, and if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different".

16. Accordingly, we set aside the order of the learned Single Judge and quash the award of the Labour Court and remand the matter to the Labour Court for fresh decision in accordance with law by permitting the Corporation to produce copy of the letter written by the Headmistress and if so desired by the parties, they may be permitted to lead further evidence. We further direct that the Labour Court should dispose of the case within 3 months from the date of communication of this order.