

(1994) 11 KAR CK 0011
In the Karnataka High Court
Case No : Writ Petition No. 31287 of 1994

B.G. Karikannanavar

APPELLANT

Vs

Managing Director, Karnataka State Road Transport
Corporation and Others

RESPONDENT

Date of Decision : 09-11-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1995) 1 KarLJ 672 : (1995) 2 LLJ 982

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : K. Hanumantharayappa, for the Appellant; L. Govindaraj, for the Respondent

Judgement

1. I have heard the petitioner's learned counsel and I also directed Smt. Renuka to take notice on behalf of the respondent- corporation.

2. The petitioner has assailed the correctness of an award which is the subject-matter of challenge in this petition. The respondent-corporation had imposed the extra penalty of dismissal from service on the petitioner. It was alleged against him that he had been found guilty of serious misconduct in so far as he had not issued tickets to as many as fifteen passengers from whom he had collected fare and that in the case of three others, he had neither collected fare nor issued the tickets. The corporation has instituted certain disciplinary proceedings and after consideration of the entire record the Enquiry Officer held that the charges were proved. The disciplinary authority after considering the gravity of the charges as also the petitioner's back-ground as admittedly he had been found guilty or instances of misconduct in the past, took the decision that he should be dismissed from service. The appeal failed and ultimately the matter was challenged before the Labour Court.

3. The learned Judge by his award dated June 15, 1994 upheld the punishment awarded to the petitioner. He has considered the evidence adduced against the

petitioner as also the petitioner's defence which was essentially to the effect that the passengers had just boarded the bus, that there was a serious discrepancy with regard to the point at which the checking was done and more importantly, that he had not committed any act of misconduct in so far as he had not failed in his duties as a conductor nor had he misappropriated any revenue of the corporation. There is a detailed consideration in the award and the learned Judge had come to the conclusion that the punishment awarded was in consonance with the grave misconduct alleged.

4. The award has been seriously challenged before me. The principal ground being that there was no conclusive evidence to establish the charge and secondly that there were several serious infirmities in the evidence produced. I have heard learned counsel on both sides and I have perused the record before me and I am unable to uphold either of these submissions.

5. A strong plea was advanced on behalf of the petitioner by the learned counsel that this is the first major punishment imposed on the petitioner and more importantly that the punishment of dismissal is too harsh having regard to the fact that the amount involved was only about Rs. 11/-. It is also submitted that if the petitioner were to be reinstated in service without backwages, that he would have undergone sufficient punishment for whatever happened even assuming the charges against him were proved and that as has been done in several other cases he should be given an opportunity to reform.

6. These pleas have been seriously opposed by the learned counsel who represents the corporation. It has been contended that instances of this type are virtually rampant but more importantly that in a case of proven misconduct, and in particular, where it has been preceded by other acts of misconduct even if they be of a minor nature that the penalty imposed is perfectly in keeping with the provisions of law. A submission was also canvassed that it was in the public interest since cases of this type have a detrimental effect on the corporation and that these must be viewed with a degree of firmness by the court and misplaced sympathy would act as an impetus or encouragement to such activity.

7. I do not see any ground whatsoever to interfere with the findings recorded by the lower court in so far as the evidence has been carefully evaluated and the conclusions to my mind are perfectly valid and correct. The lower court has also observed that the punishment is in consonance with the gravity of misconduct alleged. As far as this aspect of the matter is concerned, it is necessary to observe that the petitioner had put in something like fifteen years of service with the corporation and that the two off-shoots of the order of dismissal are that the petitioner would lose all his accrued service benefits and secondly that it would act as a disqualification for future employment. These are the two aspects of the matter which the lower court had overlooked. I do consider that in the light of the statements advanced by the petitioner's counsel, even if the award is not liable to be set aside, that it is required to be modified and that the punishment awarded should be reduced to one of removal from service with effect from the

same date.

8. The corporation's learned counsel submitted that the Supreme Court in the decision reported in the case of Jitendra Singh Rathor Vs. Shri Baidyanath Ayurved Bhawan Ltd. and Another, has taken the view that the High Court is not justified in interfering with the award. In the first instance, a perusal of the judgment in question will indicate that the Supreme Court was concerned with a situation where the High Court was exercising the powers of superintendence under Article 227 of the Constitution. Undoubtedly those powers are narrower than the powers of the High Court under Article 226. That apart, the facts are clearly distinguished and the Supreme Court has only observed that it is normally not justifiable for the High Court to substitute a perfectly valid award by interfering with that one and rendering another award of its own. To my mind, the decision does not prescribe any bar on the powers of the High Court to vary an award that has been made. There is not fetter whatsoever so far as (sic) Article 226 of the Constitution are concerned particularly where the High Court finds that in the interest of justice the punishment awarded requires to be lessened.

9. The petition partially succeeds. The impugned award is modified to the extent that the punishment awarded to the petitioner is altered from one of dismissal from service to removal from service with effect from the same date.

10. The petition to stand disposed of. No order as to costs.

11. Mr. L. Govindaraj is permitted to file his vakalath on behalf of the respondents within two weeks.