(2005) 03 MAD CK 0090

In the Madras High Court

Case No : Writ Petition No. 1548 of 1998

Cholan Roadways Corporation Ltd. APPELLANT

Vs

P. Mathiyalagan and The Presiding Officer, Industrial Tribunal RESPONDENT

Date of Decision : 24-03-2005

Acts Referred:
Industrial Disputes Act, 1947 — Section 33(2)

Citation : (2005) 03 MAD CK 0090

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : John, for Ramasubramaniam and Associates, for the Appellant; D. Hari Paranthaman, for the Respondent

Judgement

P.K. Misra, J.—Cholan Roadways Corporation Limited has filed the present writ petition challenging the order passed by the Industrial Tribunal rejecting the approval petition filed by the Corporation u/s 33(2)(b) of the Industrial Disputes Act, 1947.

2. The facts giving rise to the present writ petition are as follows :-

Respondent No. 1 was working as Conductor under the petitioner Corporation. On 13.5.1993 when the Checking Inspectors checked the bus, they found that 67 betel nut bundles were in the bus as unaccompanied luggage for which Respondent No. 1 has issued ticket for Rs.47.40p but, as per Luggage Rules, total amount payable was Rs.147.40p. It was charged that Respondent No. 1 with an intention to misappropriate has mentioned only Rs.47.40p in the luggage ticket and on seeing the Checking Inspector, he hurriedly added the figure "1" to show as if the ticket has been issued for Rs.147.40p. Moreover, as per the Rules of the Corporation, the ticket for luggage should have been handed over to the Driver, but the Conductor had not done so. On being questioned by the Checking Inspector, the Driver had admitted that the copy of the ticket was not given to him by the Conductor and the Driver has stated that only Rs.47.40 had been taken. Another charge was to the effect that there was shortage of Rs.7.15p in the cash bag when it was checked by the Checking Inspectors. A disciplinary proceeding was held in the presence of Respondent No. 1. The Enquiry Officer came to the conclusion that the ticket was issued only for Rs.47.40p, but on seeing the Checking Inspectors, the Conductor had hurriedly put the figure "1", which was apparent as it was in a horizontal manner. It was also found that there was shortage of Rs.7.15p. After issuance of second show cause notice, Corporation passed an order of dismissal. However, since an Industrial Dispute was pending before the Tribunal, Approval Petition as contemplated u/s 33(2)(b) for seeking approval of the action taken by the Corporation in dismissing the first respondent was filed and such Approval Petition having been rejected by the Tribunal, the present writ petition has been filed.

3. In the counter affidavit filed by the first respondent it was contended that ticket had been issued for Rs.147.40p, but since figures are to be written while the Conductor was in a standing position, figure "1" appears to be horizontal. So far as shortage of Rs.7.15p was concerned, it was contended that such shortage use to occur in everyday collection and it should not be considered as a misappropriation.

4. The Tribunal came to the conclusion that the evidence of the Conductor before the disciplinary authority had not been challenged in cross-examination and therefore, his explanation regarding the first charge should have been accepted. It was further indicated by referring to the decision of the Supreme Court reported in Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others, as follows :-

"... As per the decision of our Supreme Court, when the misconduct is not enumerated in the Standing Order and if any person is punished for the said misconduct it should be rejected. When the shortage of amount less than Rs.10/- or Rs.20/- is not enumerated as a misconduct in the Standing Order of the petitioner and the said charge against the respondent has to be rejected. In these circumstances there is no prima facie case made out for dismissal."

The Tribunal further concluded :-

"8. General Manager is the appointing authority and the authority who is empowered to pass the order of dismissal against the workman like that of the respondent. The second show cause notice marked as Ex.M.9 has been issued by the General Manager an the respondent had given his explanation under Ex.M.10. The order of dismissal marked as Ex.M.11 has been issued by the Managing Director. According to the respondent, if the General Manager passed the order of dismissal, he had an opportunity to file an appeal before the Managing Director. As per Clause 28(viii) of the Standing Orders of the petitioner, an appeal can be filed before the next higher authority. When the appellate authority himself has passed the order of dismissal, he lost the opportunity to file appeal. In SURJIT GHOSH v. CHAIRMAN & MANAGING DIRECTOR, UNITED COMMERCIAL BANK, 1990 I LLN P 840, it has been held by the Supreme Court, "What is, further, when there is a provision of appeal against the order of the disciplinary authority and when the appellate or the higher authority against whose order there is no appeal exercises the power of the disciplinary authority in a given case, it results in discrimination against the employee concerned. This is particularly so when there are no guidelines in the rules/regulations as to when the higher authority or the appellate authority should exercise the powers of the disciplinary authority."

From the decision of our Supreme Court, it is clear that passing the dismissal order by the Appellate authority has taken away the right of the workman to prefer an appeal. Therefore, the order passed by the Managing Director is discrminatory."

5. Learned counsel appearing for the petitioner has vehemently contended that while deciding the matter of Approval u/s 33(2)(b), the Tribunal is only required to consider whether the domestic enquiry has been conducted in consonance with the principles of natural justice and whether a prima facie case has been made out, and therefore, the Tribunal has exceeded in its jurisdiction in re-appreciating the conclusions.

6. Even though there may be some force in such a contention, I find that the latter conclusion of the Tribunal, as indicated in paragraph 8, being acceptable, the order passed by the Tribunal has to be sustained, of course subject to certain modifications to be indicated later on.

7. As concluded by the Tribunal, the Corporation deprived the Respondent No. 1 an opportunity of filing appeal before the appropriate authority. It is of course contended by the counsel for the petitioner that Respondent No. 1 could have filed the appeal before the Board. However, in the order passed by the Corporation, it was not so indicated. In normal course, the General Manager would have passed the order and the Respondent No. 1 would have filed the appeal before the Managing Director as per the Standing Order. However, since the order was passed by the appellate authority himself and nothing has been indicated that Respondent No. 1 has further right of appeal, the conclusion of the Tribunal on this score is acceptable. Therefore, the ultimate conclusion of the Tribunal in rejecting the Approval Petition can be held to be valid.

8. In the writ petition it has been stated that after the order was passed by the Tribunal, some efforts have been made by the petitioner to amicably settle the matter. This specific averment has not been denied. Even assuming that the conclusion of the Tribunal on the first charge regarding alteration of Rs.47.40p to Rs.147.40p is acceptable, the conclusion of the disciplinary authority that there was shortage of Rs.7.15p has not been altered in any manner by the Tribunal. The Tribunal has merely indicated that in the Standing Order it has not been indicated that shortage of Rs.10 or Rs.20 is a misappropriation. In the Standing Order, misappropriation is considered as a misconduct. It is no where indicated that if misappropriation is upto Rs.10/- or Rs.20/-, it is not considered as a

misconduct. Similarly, in the Standing Order it is no where indicated that the Conductor is entitled to retain money upto Rs.10/- or Rs.20/- towards batta. Therefore, the conclusion of the Tribunal in this aspect does not appear to be acceptable.

9. The trend of the decisions of the Supreme Court is to take a serious note regarding the misappropriation. In normal course, the matter would have been remanded to Tribunal for reconsideration. However, the petitioner has alleged that efforts had been made to amicably settle the matter. In course of hearing, learned counsel appearing for Respondent No. 1 has suggested that Respondent No. 1 may be reinstated in service without payment of any further amount towards backwages, save and except the amounts which have already been paid during pendency of the writ petition towards interest on the deposited amount or as per the interim orders passed by the High Court and the past period should be considered towards continuity in service and taken into account for the purpose of calculating future increments, seniority, etc.

10. Having regard to the peculiar facts and circumstances of the case, I feel interest of justice would be served by observing that Respondent No. 1 should be reinstated in service without any backwages for the past period and he shall not claim any further amount, save and except the amount paid pursuant to the interim orders passed by this Court.

11. Subject to the aforesaid modification, the writ petition is disposed of. No costs. One month time to comply with the direction.

