

(2015) 12 KAR CK 0082

In the Karnataka High Court

Case No : Writ Petition No. 24303/2009 (L- KSRTC)

Divisional Controller KSRTC

APPELLANT

Vs

A.R. Somegowda

RESPONDENT

Date of Decision : 04-12-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 143, 147, 353

Citation : (2015) 12 KAR CK 0082

Hon'ble Judges : B. Veerappa, J.

Bench : Single Bench

Advocate : Harish Bhandary T., Advocate, for the Appellant; V.S. Naik, Advocate, for the Respondent

Final Decision : Allowed

Judgement

B. Veerappa, J.—The petitioner-Corporation has filed the above writ petition against the award dated 15th January 2009 made in Reference No. 26/2006 on the file of Presiding Officer, Industrial Tribunal, Mysore holding that preliminary issue was answered in negative and reference was allowed with cost of Rs. 1,000/- and set aside the punishment imposed by the Disciplinary Authority and consequently, it was clarified that the workman is entitled for all consequential benefits.

Brief facts of the case are as under:

2. The respondent was working as an Assistant Artisan of the petitioner-Corporation. While he was working, the petitioner-Corporation has issued Article of Charges on 16.11.1995 for his misconduct/misbehaviour committed on 16.10.1995 at Central Bus Stand, Mysore, in connection with instigation, threatening to the loyal workers; obstruction of KSRTC vehicles and thereby causing inconvenience to the traveling general public, for which he was arrested and a criminal case has been registered against him in Crime No. 95 under provisions of Sections 143, 147, 353 IPC read with Section 14 of Karnataka

Essential Service Maintenance Act, 1994.

3. In response to the said article of charges, the respondent has filed objections denying the allegations made against him. Therefore, the Disciplinary Authority initiated enquiry proceedings and the Enquiry officer after giving opportunity to the respondent and after following the procedure, submitted his Enquiry Report on 11.06.2004 holding that the charges leveled against the respondent are proved.

4. After following the procedure, the Disciplinary Authority exercising its powers vested under Regulation 19(2) of Part-III of the Karnataka State Road Transport Corporation Servants (Conduct and Discipline) Regulations, 1971 imposed the penalty of reduction of one increment in the basic pay with cumulative effect under Regulation 18(A) (vi) of the Regulations 1971. The said order was challenged before the Appellate Authority by filing an appeal and the Appellate Authority, after hearing both parties by exercising its powers under Regulation 34(2) of the Regulations 1971 has rejected the appeal on 12.10.2004. Thereafter, the respondent approached the conciliation Officer through the union and the matter was taken up for consideration and State Government referred the matter on 21.2.2006 for adjudication. The Tribunal after considering the entire material on record, by the impugned order dated 15th January 2009 allowed the reference, hence this present writ petition is filed.

5. I have heard the learned counsel appearing for the parties and perused the records.

6. Sri. Harish T Bhandary, learned counsel appearing for the petitioner vehemently contended that when the Tribunal answered preliminary issue in negative holding that the domestic enquiry held is not fair and proper, the Tribunal ought to have given an opportunity to both the parties to adduce evidence on merits and in fact, in the counter statement filed by the Management, has specifically stated that for any reason the domestic enquiry is not in accordance with law, the 2nd respondent/Management party may be permitted to adduce evidence afresh in order to prove the charges leveled against the first party/workman. The said aspect is not at all considered by the Tribunal and thereby proceeded to pass the impugned award which is contrary to the material on record. Therefore he sought to set aside the impugned award.

7. Per contra Sri. V.S Naik, learned counsel appearing for the caveator-respondent sought to justify the impugned award.

8. I have given my anxious consideration to the arguments addressed by the learned counsel appearing for the parties and perused the entire material on record.

9. The short question that arises for consideration in present writ petition is:

"Whether the Tribunal is justified in allowing the reference application?"

10. The material on record clearly indicates that articles of charges was issued against the respondent alleging that he was involved in certain charges/misbehaviour and based on the enquiry, the enquiry report was submitted and charges were proved and ultimately the Disciplinary Authority imposed punishment. The Tribunal while answering issue No. 1 has specifically held that the KSRTC failed to prove the proper and valid domestic enquiry against the first party/workman. If that is so, the Tribunal ought to have given an opportunity to both the parties to adduce fresh evidence. Admittedly, the Management by filing a counter statement before the Tribunal specifically stated at para-9 which reads as under:--

"The second party submits that if this Hon"ble Court holds that the domestic enquiry conducted by the Enquiry officer is not in accordance with principles of natural justice, the second party may be permitted to adduce evidence afresh in order to prove the charges leveled against the first party."

11. The tribunal while allowing the reference application, recorded a finding that when the Disciplinary Enquiry has suffered from basic infirmity and considering the distance of time and the nature of the punishment order, the Tribunal opined that it is not a fit case to grant permission to adduce evidence before the Tribunal or to remit the matter for passing the fresh order.

12. The Tribunal erred in recording such observation with regard to remand, when the Tribunal found domestic enquiry is not fair and proper, the Tribunal ought to have given an opportunity to both the parties to adduce evidence afresh and produce material documents. The same has not been done and therefore the impugned award passed by the Tribunal cannot be sustained and the matter requires for remand to the Tribunal to reconsider the matter afresh. Therefore, the issue answered in negative holding that the Tribunal is not justified in allowing the reference application.

13. In view of the above observations, the writ petition is allowed and the impugned award passed by the Tribunal dated 15th January 2009 made in Reference No. 26/2006 on the file of Presiding Officer, Industrial Tribunal, Mysore is quashed and matter is remitted back to the Tribunal to reconsider the matter afresh in accordance with law within a period of three months from the date of the receipt of this order.

14. It is made clear that the findings on the preliminary issue made by the Tribunal are undisturbed. The matter is remanded only with regard to provide an opportunity to both the parties to adduce and produce fresh evidence and to dispose of the case on merits in accordance with law.

Parties are directed to appear before the Tribunal on 30th December 2015 without awaiting any notice from the Tribunal.

Ordered accordingly.