

(2017) 01 KAR CK 0007

In the Karnataka High Court

Case No : W.P.Nos. 1558-1559 Of 2013 (L-TER)

Ganapathi S. Hegde s/o. Sridhar Hegde

APPELLANT

Vs

Gajanan Motor Transport Co. Ltd., rep. by its Managing
Director

RESPONDENT

Date of Decision : 05-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10(4-A)

Citation : (2017) 2 CLR 238 : (2017) 3 KantLJ 32

Hon'ble Judges : Mr. B. Veerappa, J.

Bench : Single Bench

Advocate : Sri S.R. Hegde Hudlamane, Advocate, for the Petitioner; Sri R.V. Jayaprakash, Advocate, for the Respondent No. 2

Final Decision : Dismissed

Judgement

B. Veerappa, J.—The petitioner who was working as a conductor in the respondent-Transport Company filed the present writ petition for a writ of Certiorari to quash the order dated 23.2.2012 made in IDA No. 5 of 2010 on the file of Labour Court, Dakshina Kannada, Mangaluru (camp at Shivamogga) rejecting the application filed under Section 10(4A) and confirming the dismissal order dated 17/18.2.2010, passed by the Disciplinary authority.

2. It is the case of the petitioner that, after completion of PUC, he had joined as Conductor in the Respondent-Transport Company on 7.2.2000 and worked in various places to the satisfaction of the superiors. When things stood thus, for the first time, an allegation was made against the petitioner that on 10.6.2009 he failed to issue tickets to the passengers amounting to Rs.62/-, thereby caused loss to the respondent-Transport Company for which he was penalized on 26.9.2009. One more allegation was made that on 25.6.2010, petitioner caused loss of Rs.25/- to the respondent-Transport Company. In addition on 26.11.2009, the petitioner failed to collect Rs.240/- from ten passengers and the said amount

was not entered in the gate pass and thereby the petitioner for the third time caused loss to the respondent-Transport Company. A show cause notice was issued to the petitioner on 28.1.2010 for which he replied. Not satisfied with the reply filed by the petitioner, the Disciplinary Authority appointed an Enquiry Officer to hold enquiry into the charges levelled against the petitioner in which the petitioner HAD participated. After conducting detailed enquiry, the enquiry officer submitted three reports on different dates holding that the charges levelled against the petitioner are proved.

3. After considering the entire material on record and considering the reports submitted by the Enquiry Officer, the Disciplinary Authority, on 17/18.2.2010 dismissed the petitioner from service.

4. Being aggrieved by the said order, the petitioner filed an application under Section 10(4A) of the Industrial Disputes Act, 1947. The Labour Court, on considering the preliminary issue, held that the domestic enquiry held against the petitioner was fair and proper. Thereafter, considering the entire material on record, the Labour Court, by an order dated 23.2.2012 rejected the dispute raised by the petitioner and hence, these Writ petitions are filed.

5. I have heard the learned counsel for the parties to the lis.

6. Sri. S.R. Hegde Hudlamane, learned counsel for the petitioner vehemently contended that the impugned award passed by the Labour Court confirming the dismissal order passed by the Disciplinary Authority/Management is without any basis. He further contended that absolutely there is no evidence with regard to the charges 1 and 2. In the absence of any material documents, the order passed by the Disciplinary Authority dismissing the petitioner from service is disproportionate to the gravity of the charge and also contended that though the petitioner brought to the notice of the Labour Court several irregularities committed by the Disciplinary Authority in passing the order of dismissal, the same has not been considered by the Labour Court. Therefore, he sought to set-aside the impugned award passed by the Labour Court by allowing the present writ petitions.

7. Per contra, Sri. R.V. Jayaprakash, learned counsel for the respondent sought to justify the impugned award passed by the Labour Court as well as the order passed by the Disciplinary Authority. He strenuously contended that on several occasions, the petitioner has committed irregularities and the company has issued several warnings in terms of memos as per Exs.M-41 to M-72 and also contended that earlier, on similar charges, the petitioner was terminated from service on 1.7.2001 and he was taken back to duty on 4.10.2001. It is the second time that the petitioner has been removed from service for the irregularities committed by him causing financial loss to the respondent-Transport Company. In spite of repeated memos, warnings and earlier termination, the petitioner has not improved himself and therefore sought to dismiss the Writ petitions.

8. Having heard the learned counsel for the parties, it is not in dispute that the petitioner was appointed as a conductor in the respondent-Transport Company on 7.2.2000 and was terminated from service on certain charges on 1.7.2001. It is also not in dispute that the petitioner has been given several warnings by issuing Memos, Exs.M.41 to M.72, letters of Warnings with acknowledgement slips and Exs.M.73 to M.75 letters of Suspensions and acknowledgement slips and joining report. In spite of the same, the petitioner has not, mend his and continued to commit similar misconducts. Therefore, the respondent issued charges alleging that on 26.9.2009 the petitioner has failed to perform his duty by not issuing tickets to the passengers and thereby made an attempt to steal Rs.62/- with an intention to cause loss to the respondent. It is also alleged that on 25.6.2009 again he made an attempt to gain Rs.25/- unlawfully and thereby planned to cause loss to the respondent. It is further alleged that on 26.11.2009, he failed to take account of 10 passengers amounting to Rs.240/- and the same was not entered in the gate pass and thereby he made an attempt to cause loss to the respondent. These are the three specific charges to which the petitioner filed a detailed reply. The Disciplinary Authority, not satisfied with the reply, appointed an Enquiry Officer. The Enquiry Officer, considering the entire material on record, held that the charges are proved.

9. Taking into consideration the entire material on record and after following procedure, the Disciplinary Authority proceeded to dismiss the Petitioner from service and recorded a finding as under:

"The Charges proved are of serious in nature, and if the punishment is not given on them, on the company's finances and on the other employees disciplinary proceedings, serious nature of adverse affect will cause, the opinion and decision of the company is that the proved charges cannot be neglected, in connection with initiating disciplinary action, as per the rules, your previous history when examined this is very minimum one, similar to the present misconduct out of 25 cases, by way of writing warning is given and left In 3 cases you were suspended and punishment imposed in spite of this you have not corrected your misbehaviour and misconduct and seen that you have completely failed in correcting yourself.

In view of the above reasons, in the interest of the company and on the other employees of the company the adverse effect being casted, the company's temporary decision to bring into force and there is no other way, and for the charges levelled against you with immediate effect i.e., from 18.2.2010 onwards you are dismissed from the service."

10. It is undisputed fact that the Tribunal while considering the preliminary enquiry with regard to domestic enquiry, held that it was fair and proper. Considering the entire material on record, the Tribunal recorded a finding that the workman has admitted the charge/Ex. M.17 that he had not issued tickets to four passengers though collected bus fare of Rs.25/- and also admitted the wrong entries in gate pass and he made a statement on 25.6.2009 which came

to be marked as per Ex.M.16 and reply Ex.M-18. He stated that 24 persons of Sri Durgamba Motors boarded his bus as the said bus had stopped at a place called Mukka due to some mechanical problem and as such, the conductor of that bus requested the petitioner to take the said passengers in his bus, for which he agreed. The petitioner during cross-examination has specifically admitted that some of the passengers boarded the bus and got down without obtaining the tickets and he collected bus fare from such passengers. Even though he made an attempt to explain, it is not possible to issue tickets before reaching the destination due to short distance. The explanation cannot be accepted and it is not the case of the petitioner that he had not collected money from the ticketless passengers. He admitted that he collected the money from those passengers. Therefore, it clearly depicts that the petitioner, to gulp the collected amount, has not issued the tickets.

11. It is also not disputed that the petitioner had past history of misconduct as can be seen from Exs.M-41 to M-79 and has committed similar offences in a habitual manner. Based on the entire material on record, the Enquiry Officer, Disciplinary Authority as well as the Labour Court have given concurrent finding of fact that the charges levelled against the petitioner are proved. Such a findings of fact recorded by the authorities below based on the evidence on record cannot be interfered by this Court, unless, the petitioner shows any perversity in the findings recorded by the Enquiry Officer or Disciplinary Authority or the Labour Court. The material on record, clearly indicates that the charges levelled against the petitioner are proved.

12. While considering the punishment imposed for misappropriation of Corporation funds, the Hon"ble Supreme Court in the case of Divisional Controller, N.E.K.R.T.C. v. H. Amaresh, reported in 2006 III CLR 11 (S.C.) : (2006) 6 SCC 187, at paragraphs 17, 18 and 22, has held as under:

"17. The order of reinstatement passed by the Labour Court and its affirmation by the High Court is contrary to the law declared by this Court in Hullikatti 2001 I CLR 699 (S.C.) wherein it was held that it is misplaced sympathy by courts in awarding lesser punishments where on checking it is found that the bus conductors have either not issued tickets to a large number of passengers and deposit the same with the Corporation. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare. It was finally held that the order of dismissal should not have been set aside. As already noticed, this view was reiterated by a 3 Judges Bench of this Court in the Regional Manager, RSRTC case (supra).

18. In the instant case, the misappropriation of the funds by the delinquent employee was only Rs.360.95. This Court has considered the punishment that may be awarded to the delinquent employees who misappropriated funds of the Corporation and the factors to be considered. This Court in a catena of judgments held that the loss of confidence as the primary factor and not the amount of money misappropriated and that the sympathy or generosity cannot

be a factor which is impermissible in law. When an employee is found guilty of pilferage or of misappropriating the Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment. The judgment in *Karnataka State Road Transport Corpn. v. B.S. Hullikatti*, (2001) I CLR 699 (S.C.) was also relied on in this judgment among others. Examination of passengers of vehicle from whom the said sum was collected was also not essential. In our view, possession of the said excess sum of money on the part of the respondent, a fact proved, is itself a misconduct and hence the Labour Court and the learned Judges of the High Court misdirected themselves in insisting on the evidence of the passengers which is wholly not essential. This apart, the respondent did not have any explanation for having carried the said excess amount. This omission was sufficient to hold him guilty. This act was so grossly negligent that the respondent was not fit to be retained as a conductor because such action or inaction of his was bound to result in financial loss to the appellant irrespective of the quantum.

22. We may also beneficially refer to a judgment rendered by a 3 Judges Bench of this Court in *M.P. Electricity Board v. Jagdish Chandra Sharma* 2005 I CLR 1074 (S.C.) : (2005) 3 SCC 401. This Court, held that the tribunals would not sit in appeal over the decision of the employer unless there exists a statutory provision in this behalf. Moreover, Labour Courts must act within the four corners of the statute concerned, in terms of the provisions thereof. When the Labour Court had held that charge 4 stood proved, no interference by the learned Single Judge or by the Division Bench was called for. In the instant case, the jurisdiction vested with the Labour Court has been exercised capriciously and arbitrarily in spite of the finding that Charge 4, with regard to the pilferage, has been proved beyond any doubt. In our opinion, the conclusion arrived at by the High Court in ordering reinstatement was shockingly disproportionate in the nature of charge 4 found proved. When charge is proved, which is grave in nature, interference with the punishment of dismissal cannot be justified. Similarly, the High Court gets jurisdiction to interfere with the punishment in the exercise of its jurisdiction under Article 226 of the Constitution only when it finds that the punishment imposed is shockingly disproportionate to the charges proved."

13. The Division Bench of this Court while considering the guilty of pilferage or of misappropriating the Corporation funds, in the case of *S. Govindaraju v. The Divisional Controller B.M.T.C* reported in (2009)(3) KCCR 1592 (DB), at paragraphs 10,11, 13 and 14, held as under:

"10. In our considered opinion, the law on the point is well settled. In *Devendra-swamy v. Karnataka State Road Transport Corporation*, (2002) I CLR 323 (S.C.) : (2002) 9 SCC 644. The Apex Court, while dealing with the scope of judicial review, particularly with reference to the penalty or punishment imposed by the

Disciplinary Authority, held that it may not be proper for the High Court that once the charge of misconduct is proved and there no illegality, after, a due enquiry giving fair and reasonable opportunity to the petitioner in compliance with the principles of natural justice, it is immaterial whether the amount of defalcation is small and the penalty of dismissal is harsh.

11. In the case of Regional Manager, Rajasthan State Road Transport Corporation v. Soban Lal, (2004) II CLR 778 (S.C.) : (2004) 8 SCC 218, the act of not issuing tickets to the passengers by the bus conductor, as in the instant case, was considered as a serious misconduct and the Apex Court held that such a conduct not only lead to the monetary loss to the Corporation, but also would amount to loss of confidence and therefore any order of reinstatement of such an employee by virtue of judicial order, is an act of misplaced sympathy which can find no foundation in law or in equity, hence the question of moulding the relief does not arise.

13. Again in U.P. State Road Transport Corporation, Dehradum v. Suresh Pal, (2006) 8 SCC 108 where a similar question arose as to whether the punishment of dismissal awarded to a conductor who was guilty of non-issuing the ticket as disproportionate, it is held as follows:

7. So far as the guilt of the petitioner is concerned, in the domestic enquiry it has been found that the petitioner is guilty of not issuing tickets to the twenty passengers and the same finding of the domestic enquiry has been upheld by Labour Court in the High Court. The petitioner was a Conductor and holding the position of trust. If an incumbent like the petitioner starts misappropriating the money by not issuing a ticket and pocketing the money thereby causing loss to the Corporation then this is a serious misconduct.

14. Similarly, the same view was reiterated by the Apex Court in Division Controller, N.E.K.R.T.C. v. H. Amaresh, (2006) III CLR 11 (S.C.) holding that when an employee is found guilty of pilferage or of misappropriating the Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment.

14. Considering the entire material on record and the law laid down by the Hon'ble Supreme Court and this Court stated supra, and the impugned award passed by the Labour Court is in accordance with law, the petitioner has not made out any case to interfere with the impugned award passed by the Labour Court confirming the order passed by the Disciplinary Authority in exercise of powers under Articles 226 and 227 of Constitution of India. Accordingly Petitions are dismissed.