

(1997) 04 KAR CK 0015
In the Karnataka High Court
Case No : W.A. No. 728 of 1995

John D'souza, Bangalore

APPELLANT

Vs

Karnataka State Road Transport Corpn. and another

RESPONDENT

Date of Decision : 04-04-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 11 A

Citation : (1998) 2 LLJ 385

Hon'ble Judges : S. Rajendra Babu, J; R.P. Sethi, J

Bench : Division Bench

Advocate : L. Govindaraju and K.L.N. Rao, for the Respondent

Judgement

1. This appeal arises out of an order made by the learned Single Judge in Writ Petition No. 15388 of 1994. That petition came to be filed by the 1st respondent herein challenging an award made by the Labour Court in a reference made to it. The appellant before us is a Conductor in the establishment of the 1st respondent-Corporation. Certain charges were framed against him as under :

"1. That on February 14, 1986, you were conducting a passenger bus bearing No. MEF-919 on route Cannanore to Bangalore. The said bus was subjected to check by Stryuths :- H. P. Ramchandra, B. T. Nagaraj, Traffic Inspectors and B. T. Krishnamurthy A.T.I. at Virajpet Bus Stand. When the abovesaid checking official tried to board the bus in order to check the ticketless passengers you have not opened the Conductor's door to discharge their duties besides obstructing them from discharging their duties. Taking advantages of it, you have made attempts to issue tickets to the ticketless passengers, on sighting the checking officials. Having noticed the abovesaid action. The Inspectors forcibly opened the door and entered the bus for inspection. Then you have intervened in this matter and prevented them from discharging their duties. So they have reported stating that you have not issued tickets to 8 passengers, despite collection of requisite fare of Rs. 5.50 from each who were traveling from Hirehatti to Virajpet. Having discovered the above said irregularities. The checking officials have made an

attempt to obtain the statement of the ticketless passengers. In the meantime you have mobilised the people and created tension in order to prevent them in obtaining the statement of ticketless passengers and also passengers were allowed to escape from the clutches of the Inspectors.

II. Further it is reported that you have created noise and also mobilised the people to assault the Inspectors under the guise that the checking officials making out a false report and also likely to lodge complaint to the police. When the said checking officials took you to the Police Station in order to complete the documentation there, you have snatched away the way bill alleging that the way bill and other things are your property.

III. The Inspectors further stated in their report that you have not made entries in the sales column of Rs. 6.00 denomination and also made advance entries. You have also made entries of Rs. 6.00 denomination writing the figures lightly to your advantage to reissue and also some of the tickets which ought to have been issued to ticketless passengers were in your possession.

IV. You have refused to accept the offence memos Nos. 23313 and 23314 prepared by the above said Inspectors.

V. You have threatened the Inspectors to endanger their lives if reported the matter to the higher authorities and also threatened them, that you are going to make complaint to the Managing Director and Chief Security and Vigilance Officer stating that the Inspectors have demanded illegal gratification and the same was not conceded and hence made out a false case."

Thereafter, an enquiry was conducted by the Enquiry Officer and a report made thereto. On the basis of the report made by the Enquiry Officer, the Disciplinary Authority, made an order terminating the services of the Appellant. Against that action, proceedings were initiated under the Industrial Disputes Act (for short, I.D. Act) and a reference was made u/s 10 of the I.D. Act to the Labour Court. Before the Labour Court, the appellant conceded the fairness of the enquiry and submitted that the matter be disposed to on merits after going through the evidence on record. The Labour Court reappraised the evidence available on record and held that the evidence was not credit-worthy and there were various discrepancies in the evidence tendered by different witnesses and there was not enough corroboration available on record and therefore, on the broad probabilities, the Labour Court was of the view that the charges were not established. The Labour Court was also of the view that the previous history of the appellant has not been duly considered by the authorities concerned and the material placed before the Enquiry Officer or the labour Court was not very clear nor could the same be relied upon. The Labour Court found that the history-sheet started with the case of one Javaraiah and thereafter the entries regarding the appellant had been made. He doubted as to whether these entries could have been made in the history-sheet pertaining to Javaraiah at all in relation to the appellant. It also found that there were several corrections and over-writings

made in the said history-sheet. On that basis, the Labour Court set aside the order of dismissal and directed his reinstatement with continuity of service and other benefits including full back wages.

2. In writ petition, the learned single Judge took the view that the scope of enquiry by the Labour Court in a proceeding before it is very limited and the material placed before the Labour Court could be considered only in cases of : (i) whether the order of dismissal is sustainable on the basis of the material placed before the authority concerned to pass that order; (ii) whether the procedure prescribed by law had been complied with; (iii) whether the reasoning and conclusion arrived at are legally justified; (iv) while examining the conclusions it was necessary to find out as to whether the order has been passed in reckless or run away manner; (v) whether the order made is vindictive, malicious or amounts to unfair labour practice or victimisation., and (vi) whether the limits of judicial discretion been over-stepped in evaluating the gravity of the charges so as to be so disproportionate between the charge and the punishment. He was of the view that only on the basis of these tests a review of the order made by the Disciplinary Authority is permissible so far as the Labour Court is concerned and not in other case. It is only on these questions, if any interference is called for, a finding to that effect has to be recorded and thereafter the enquiry gets widened to add on the evidence and thereafter be necessary, to take a fresh look at the matter in the light of the additional evidence in addition to the material already on record. Unless and until such appraisal had been gone through and a clear cut finding to that effect is given by, stating that the order is wrong, unsustainable or perverse, it would not be permissible for the Labour Court to exercise the expanded powers. On that basis, the learned Single Judge held that the Labour Court has acted as if it is an Appellate Court and critically examined the evidence. Torn it to shreds and then held that the charges are unsustainable and such a jurisdiction, the Labour Court does not have. Accordingly, the learned single Judge quashed the award made by the Labour Court and upheld the order of dismissal. It is against this order that the present Appeal is filed.

3. The scope of enquiry in cases where the departmental enquiry is held to be valid has been considered by the Supreme Court in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, . At para 33 the Supreme Court, after adverting to the legal position that was earlier present has explained as follows :

"This position, in our view, has now been changed by Section 11A. The words "in the course of the adjudication proceeding, the Tribunal is satisfied that the order of discharge or dismissal was not Justified" clearly indicate that the Tribunal is not clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by an employer established the misconduct alleged against a workman. What was originally a plausible conclusion that could be drawn by an employer from the evidence, has now given place to a satisfaction being arrived at by the Tribunal that the finding of

misconduct is correct. The limitations imposed on the powers of the Tribunal can no longer be invoked by an employer. The Tribunal is now at liberty to consider not only whether the finding of misconduct recorded by an employer is correct, but also to differ from the said finding if the proper case is made out. What was once largely in the realm of the satisfaction of the employer, has ceased to be so; and now it is the satisfaction of the Tribunal that finally decides the matter."

4 The learned single Judge proceeded on the that the Labour Court does not have appellate power nor can it reconsider the evidence adduced before the disciplinary authority or additional material placed before the Labour Court, except in the circumstances set forth by him, to which we have adverted to already. But in the light of what Supreme Court has stated in Firestone's case (supra) even in cases of valid domestic enquiry, it is permissible to reappraise the evidence and come to the conclusion one way or the other. Therefore, there is no limitation places upon the powers of Labour Court to reappraise the evidence adduced before the enquiry or disciplinary authority and arrive at a different conclusion. But, in doing so, the Labour Court must give cogent and convincing reasons. In this case, all that the learned single Judge stated is that the Labour Court has proceeded on the probabilities of the case, credibility of the witnesses and intense comparison of the evidence, which we think, is part of reappraisal of the evidence. If that process is part of appraisal of evidence, we are of the view that the Labour Court was justified in making a critical examination of the matter. The view of the learned single Judge that the scope of the enquiry u/s 11A of the I.D. Act is limited, is not well founded. Even in cases where there is a valid disciplinary enquiry, an independent review of the case is permissible as indicated by the Supreme Court in M/s. Firestone Tyre & Rubber Company's case (supra). Therefore, we think the learned Single Judge was not justified in interfering with the order made by the Labour Court and quashing the same. We set aside the order made by the learned single Judge and restore the Award made by the Labour Court. Writ Appeal allowed accordingly.