
(2016) 07 KAR CK 0056
In the Karnataka High Court
Case No : W.A. No. 30 of 2015 (L-KSRTC)

Karnataka State Road Transport Corporation	APPELLANT
Vs	
John D'Souza	RESPONDENT

Date of Decision : 14-07-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)(b)

Citation : (2016) ILRKarnataka 3357 : (2016) 4 KCCR 2900

Hon'ble Judges : Subhro Kamal Mukherjee, CJ. and Ravi Malimath, J.

Bench : Division Bench

Advocate : H.R. Renuka, Advocate, for the Appellant; Party in Person, for the Respondent

Final Decision : Allowed

Judgement

Subhro Kamal Mukherjee, C.J.—This is an appeal against the judgment and Order dated November 21, 2014 passed by the Hon'ble Single Judge in Writ Petition No. 10271 of 2014, affirming the judgment and award passed by the Labour Court, Bengaluru, in S.A. No. 1 of 2010.

2. The respondent was employed as a conductor in the Transport Corporation. Already, an industrial dispute has been pending before the I Additional Labour Court, Bengaluru.

3. In the meantime, on the alleged misconduct, there was a full-fledged enquiry. The Labour Court, as also, the Hon'ble Single Judge found that the domestic enquiry held was fair and proper.

4. However, when the employer proposed to pass an order of dismissal, as contemplated under Section 33(2)(b) of the Industrial Disputes Act, 1947, (hereinafter referred to as the Act, for brevity), the employer applied before the Labour Court for the purpose of approval of the action taken by it.

5. The Labour Court, by the judgment and award dated October 6, 2013,

rejected such application.

6. The Hon"ble Single Judge, by the order impugned, affirmed it.

7. The scope of an enquiry under Section 33(2)(b) of the Act is very limited. The issue is no longer *res Integra*.

8. In the case of *Martin Burn Ltd. v. R.N. Banerjee*, AIR 1958 SC 79, the Supreme Court of India holds that the Tribunal before whom an application is made under that Section, has not to adjudicate upon any industrial dispute arising between the employer and the workman, but has only got to consider, whether the ban which is imposed on the employer in the matter of altering the conditions of employment to the prejudice of the workman or his discharge or punishment, whether by dismissal or otherwise, during the pendency of the proceedings therein referred to, should be lifted. A *prima facie* case has to be made out by the employer for the lifting of such ban.

9. A *prima facie* case does not mean a case proved to the hilt, but a case which, can be said to be established, if the evidence, which is led in support of the same, were believed. While determining whether a *prima facie* case has been made out, the relevant consideration is, whether on the evidence led, it was possible to arrive at the conclusion in question, and not whether that was the only conclusion which could be arrived at on that evidence. It may be that the Tribunal considering this question may itself, could arrive at a different conclusion. It has, however, not to substitute its own judgment for the judgment in question. It has, only, got to consider whether the view taken is a possible view on the evidence on the record.

10. The Tribunal, while exercising its jurisdiction under Section 33(2)(b) of the Act, was required to bear in mind the aforementioned principles. They are not supposed to act as a Court of appeal.

11. Mr. John D'Souza, the workman, who appears in person, has strenuously argued that as he was championing the cause against corruption in the organization, he was victimized. Therefore, the Labour Court as well as the Hon"ble Single Judge were right in not granting the approval.

12. One thing that has to be kept in mind is that both the Labour Court as also the Hon"ble Single Judge have concurred that the domestic enquiry was held fairly and properly.

13. In this case, it appears the Labour Court has exceeded its jurisdiction under Section 33(2)(b) of the Act and, therefore, the order passed by the Hon"ble Single Judge and the award passed by the Labour Court are set-aside.

14. We allow the writ appeal and remit the matter back to the Labour Court for reconsideration of the matter in the light of our observations above.

15. Having regard to the long pendency of the case, we request the Labour Court to dispose of the matter as expeditiously as possible, preferably within a period

of two months from the date of communication of a copy of this order.

16. We make no order as to costs.