

(2011) 01 KAR CK 0095
In the Karnataka High Court
Case No : Writ Petition No. 11465 of 2010

Karnataka State Road Transport Corporation

APPELLANT

Vs

P. Sannaswamy

RESPONDENT

Date of Decision : 19-01-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (A4)

Citation : (2011) 01 KAR CK 0095

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : H.R. Renuka, for the Appellant; S.B. Mukkannappa, for the Respondent

Judgement

H.N. Nagamohan Das, J.—In this writ petition, the Petitioner has prayed for a writ in the nature of certiorari to quash the award dt. 27.1.2009 in ID No. 213/1998 passed by the Labour Court at Mysore directing reinstatement of the Respondent with 25% back wages and costs of Rs. 2000/-.

2. The Respondent is a trainee conductor in the Petitioners-Corporation. On 1.5.1993 when the Respondent was conducting the bus on the route from Mandya to Pandavapura, checking squad of the Corporation conducted a check and found that despite collecting fare from 15 passengers at the denomination of Rs. 1.25 from each of them, failed to issue tickets and further failed to close the entry before the stage point. For this misconduct, articles of charges were issued, enquiry was held and on 29.10.1998 an order dismissing the Respondent from service came to be passed.

3. The Respondent being aggrieved by the order of dismissal raised a dispute before the labour Court u/s 10(4)(A) of the I.D. Act. On the basis of the pleadings, the Labour Court framed the following issues for its consideration:

1) Whether D.E. is held is fair and proper?

2) Whether second party justified the dismissal at 29.10.1998 is proportionate

punishment against 1st party?

3) What relief the 1 party is entitle?

4. The Labour Court by order dt. 10.3.2003 held that the domestic enquiry as fair and proper. The Respondent being aggrieved by this order of the Labour Court on domestic enquiry, approached this Court in W.P. No. 8345/2005 and the same came to be allowed vide order dt. 12.6.2007 holding that the domestic enquiry as not fair and proper. Thereafter the Petitioners examined one witness and got marked Ex. M1 to 6. The Respondent got examined himself as WW1 and got marked Ex. W1 to W4. The Labour Court on appreciation of the pleadings, oral and documentary evidence held that: the Petitioners failed to prove the charge levelled against the Respondent, consequently under the impugned order directed reinstatement with 25% back wages and costs. Hence this writ petition.

5. Heard arguments on both side and perused the entire writ papers.

6. Once the domestic enquiry is held as not fair and proper, then it is obligatory on the part of the Petitioners to prove the charge levelled against the Respondent by placing acceptable evidence on record. The Petitioners have not examined any member of the checking squad who conducted check on 1.5.1993. Further MW1 has no personal knowledge with regard to the incident on 1.5.1993. The Labour Court noticed the inconsistencies and contradictions in the evidence of MW1. In the absence of any acceptable evidence on record, the Labour Court is right in holding that the Petitioner has failed to prove and establish the charge levelled against the Respondent. This conclusion of the Labour Court is in accordance with law, I find no justifiable ground to interfere with this finding of the Labour Court

7. From the date of dismissal till the date of impugned award, the Respondent has not worked in the Petitioners Corporation and there is no contribution by him. Payment of back wages is not a matter of right. The Petitioner is a public sector undertaking and the Respondent was only a trainee conductor. Learned Counsel for the Respondent fairly submits that if re-instatement is confirmed, then he will not press for back wages and costs. The submission of the learned Counsel for the Respondent is placed on record.

For the reasons stated above, the following order: The Writ petition is partly allowed. The impugned award in so far as it relates to grant of 25% back wages and levy of costs of Rs. 2000/- are hereby set aside, remaining all other aspects, the impugned award remain intact and undisturbed.

Learned Counsel for the Respondent submits that this Court by an interim order directed the Petitioner to re-instate the Respondent, extract work and to pay him current wages.

Though the Petitioner re-instated the Respondent, has not paid current wages. If that is so, the Petitioner to comply the interim order passed by this Court on 8.4.2010. Ordered accordingly.

Learned Counsel for the Respondent further submits that they will withdraw the prosecution proceedings against the Petitioner in C.C. No. 384/2010 pending on the file of the I Call Magistrate Mysore. This submission is placed on record.