

(2011) 03 KAR CK 0122
In the Karnataka High Court
Case No : Writ Petition No. 5562 of 2006

Karnataka State Road Transport Corporation

APPELLANT

Vs

P. Selvaraj

RESPONDENT

Date of Decision : 30-03-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (4-A), 11 A

Citation : (2011) ILR (Kar) 2709 : (2011) 3 KarLJ 694 : (2011) 3 KCCR 340
SN : (2011) 3 KCCR 336

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : H.R. Renuka, for the Appellant; S.C. Venkatesh, for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopala Gowda, J.—The Award dated 18.2.05 passed in I.D. No. 152/01 by the II Addl. Labour Court, Bangalore, is under challenge in this writ petition at the instance of KSRTC. By the Award, the order of dismissal dated 8.2.01 passed by the Petitioner against the Respondent was set aside.

2. The Respondent, a driver in the Petitioner -Corporation was issued with an Articles of Charge dated 1.1.2000 and was subjected to domestic enquiry on the following charges:

3. The Respondent did not submit any reply to the Articles of Charge. An enquiry Officer was appointed to ascertain the truth or otherwise of the allegations made in the Articles of Charge. The enquiry Officer conducted the enquiry and submitted report dated 15.6.01, holding the charges levelled against the Respondent as established. By furnishing a copy of the enquiry report and issuing show-cause notice, finding the charged misconduct to be proved, the Disciplinary Authority passed an order dated 8.8.01 and dismissed the Respondent from service.

4. Feeling aggrieved, the Respondent filed a claim u/s 10(4-A) of the Industrial

Disputes Act, 1947 ("the Act" for short), in the Labour Court, which was opposed by the Petitioner by filing counter statement. Based on the pleadings of the parties, issues were raised. The Respondent filed a memo, conceding the fairness of the enquiry held against him by the Management. Hence, issue No. 1 was answered in the affirmative. Exs.M1 to M12 pertaining to the domestic enquiry were marked with consent. The Respondent deposed and marked Exs.W1 and W2. After appreciating the record, the Labour Court held that, the enquiry Officer was correct in coming to the conclusion that the Respondent has committed the misconduct alleged against him. Having examined the case with regard to the proportionality of punishment, the Labour Court held that, the punishment is certainly disproportionate to the misconduct committed by the Respondent and therefore, the order of dismissal dated 8.8.01 was set aside and by imposing the punishment i.e., reduction of wages to the minimum basic applicable to the post of driver in the Corporation and by denying the backwages, the Corporation was directed to reinstate the Respondent into the original post with continuity of service and other consequential benefits. Aggrieved, the Management-Corporation has filed this writ petition.

5. Smt. H.R. Renuka, learned Counsel appearing for the Petitioner contended that, the fairness of the domestic enquiry held by the Petitioner against the Respondent having been conceded and the Labour Court after examining the record having arrived at the conclusion that, the enquiry Officer was correct in coming to the conclusion that the Respondent has committed the misconduct alleged against him and having found that the Respondent not only misbehaved with the superior officials but abused them in filthy language and made attempts to assault them and caused loss to the property of the Corporation, which amounts to terrorising the superior officials and preventing them from taking any lawful action against the Respondent and also the default history sheet of the Respondent showing that he involved in similar misconducts in the past on six occasions for which minor punishments were imposed with an intention to give opportunity for improvement having not brought any good effect, ought not to have interfered with the just punishment imposed, in exercise of power u/s 11A of the Act. Learned Counsel contended that, the interference with the quantum of punishment is contrary to the ratio of law laid down by the Apex Court in catena of decisions, specially, in view of the unruly and terrorizing conduct of the Respondent. She submitted that, continuance of the Respondent in service being detrimental to the smooth functioning and discipline, the Corporation having lost confidence, passed the order of dismissal, which ought not to have been interfered with. It was submitted that interference with the quantum of punishment in the facts and circumstances, is wholly illegal.

6. Sri S.C. Venkatesh, learned Counsel appearing for the Respondent on the other hand, contended that, neither in the charge sheet nor in the second show cause notice issued, there was any reference to the misconduct-past history of the Respondent and hence, the Disciplinary Authority while passing the order of dismissal was not justified in referring to the past history. According to the

learned Counsel, such an act has amounted to denial of reasonable opportunity and violation of principles of natural justice. By referring to Ex.W2, the judgment of acquittal passed by the learned Magistrate in the criminal case instituted against the Respondent, it was submitted that the Respondent knew Tamil language and not Kannada language and the charge alleged against him being in Kannada language, there is denial of reasonable opportunity and violation of principles of natural justice. He argued that, even before the Labour Court, the past history sheet was not produced and the Labour Court, which is a fact finding authority, having recorded the finding that, the punishment imposed is disproportionate, has rightly interfered with the extreme punishment imposed by the management and such interference being in exercise of the power conferred u/s 11A of the Act, it is not open to this Court to exercise discretionary power under the writ jurisdiction, to interfere with the impugned Award.

7. The Labour Court, on consideration of the enquiry report and the evidence on record has found that, the Respondent has committed the misconduct alleged against him. The punishment imposed by the Management was set aside and a substituted punishment, as noticed supra was ordered in exercise of the power u/s 11A of the Act. The Respondent has not questioned the Award passed by the Labour Court. In the circumstances, the only question for consideration is, whether, in the facts and circumstances of the case, the Labour Court was justified in substituting the punishment imposed by the Management on the Respondent?

8. The Labour Court has not accepted the case of the Respondent that he did not go to K.G.F. Depot on 9.12.99, since he was under treatment for acute gastritis at Government Hospital, Bangarpet between 8.12.99 to 10.12.99. The Labour Court has also not accepted the case of the Respondent that in view of the acquittal in the criminal case, the findings of the enquiry Officer loses its significance and cannot be relied upon on the ground that, the proceedings are independent of each other. A categorical finding was recorded by the Labour Court that, from the materials placed on record, the enquiry Officer was correct in coming to the conclusion that the Respondent has committed the misconduct alleged against him. The Labour Court has also recorded a finding to the following effect:

The action of the 1st party Respondent almost amounts to terrorising the superior Officers and preventing them from taking any lawful action against him.

9. Despite the said findings and even after noticing the default history sheet of the Respondent, the order of punishment was held to be not commensurate with the misconduct held proved against the Respondent and interfered with the punishment imposed by the Management. It was opined that, by imposing punishment of denying backwages and reducing the wages to the minimum basic applicable to the post the workman was holding, interest of justice would be met.

10. Copy of the enquiry Officer's report dated 15.6.01 was furnished to the

Respondent with show-cause notice dated 3.7.01 and after considering the reply submitted by the Respondent, the Disciplinary Authority held that the charged misconduct which is grave in nature has been committed. Noticing that the Respondent was involved in six similar acts of misconduct for which minor punishments were imposed with the hope that there would be improvement in his conduct and he would discipline himself, having not brought in any change, the dismissal order dated 8.8.01 was passed by the Disciplinary Authority.

11. In the claim statement filed before the Labour Court u/s 10(4-A) of the Act, the fact that, there is a history sheet showing six misconducts of similar nature was not even traversed. While deposing as WW-1, there was no denial of the fact that the Respondent has history of six past misconducts of similar nature. The certified copy of the judgment in the criminal case was produced as Ex.W2.

12. Learned Counsel for the Respondent, deriving support from the decision in the case of Ved Prakash Gupta Vs. Delton Cable India (P) Ltd., , contended that, the punishment part awarded on the Respondent being shockingly disproportionate and being an act of victimisation and unfair labour practice, was rightly interfered with by the Labour Court in exercise of the power u/s 11A of the Act. The discretion exercised by the Labour Court being a judicious discretion and keeping in view the ratio of law in the said decision, no interference with the Award passed by the Labour Court is called for in exercise of power of judicial review by this Court.

13. In Vedprakash (supra), it was noticed by the Apex Court that, the charge levelled is not a serious one and even if proved cannot result in any total loss of confidence of the Management. Incidentally, it was noticed that, there is nothing on record to show any previous defaults against the Appellant had been taken note of by the Management for awarding extreme punishment of dismissal from service and finding that, the punishment imposed was shockingly disproportionate, regard being had to the charge framed, it was held that, the termination of service is invalid. The said decision has no application to the instant case.

14. In Hombe Gowda Edn. Trust and Another Vs. State of Karnataka and Others, , noticing the long way from the earlier view points and the trend in the decisions of the Apex Court seeking to strike a balance between the earlier approach to the industrial relations wherein only the interests of the workman was sought to be protected with the avowed object of fast industrial growth of the Country and the view taken that discipline at the workplace/industrial undertakings received a setback and in view of the change in economic policy of the Country, finding it not proper to allow the employees to break discipline with impunity and the Country being governed by rule of law and all actions, therefore, had to be in accordance with law, it has been held that, there is need for strict adherence to and enforcement of the rule of law.

15. In J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another, , the trend in regard to

the scope of interference with punishment in matters involving discipline at the workplace having been different, after noticing catena of decisions finding that the charge established against the employee was a serious one and the Labour Court did not record a finding with regard to proportionality of punishment and interfered with the punishment only on the ground that the employee had worked only for four years without giving room for any such complaint, noticing that the Labour Court had ignored the seriousness of the misconduct and that was not warranted, it has been held as follows:

The consistent view of this Court is that in the absence of a finding that the punishment was shockingly disproportionate to the gravity of the charge established, the Labour Court should not interfere with the punishment. We, therefore, hold that the punishment of dismissal did not call for interference.

16. In *Hombegowda Educational Trust (supra)*, the Apex Court has observed that, a person, when dismissed from service, is put to great hardship but that would not mean that a grave misconduct should go unpunished and that the doctrine of proportionality may be applicable in such matters, but punishment of dismissal from service for such a misconduct cannot be said to be unheard of and maintenance of discipline of an institution is equally important.

17. In *L.K. Verma Vs. H.M.T. Ltd. and Another*, for the misconduct of verbal abuse, inflicting of punishment of dismissal was held as justified.

18. In *Mahindra & Mahindra Ltd. v. N.B. Naravade* AIR 2005 SCW 1115, it was alleged that, the workman used abusive and filthy language against his supervisor. Enquiry was held and the misconduct having been proved, the workman was terminated. When challenged by the workman, the Labour Court held that, the punishment of dismissal imposed was harsh and improper. By setting-aside the said punishment, it imposed a reduced punishment. The Management questioned the award in the writ petition and writ appeal and being unsuccessful, filed the appeal before the Apex Court. While allowing the appeal, it was held as follows:

20. It is no doubt true that after introduction of Section 11 -A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/ Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the concerned workman is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised u/s 11A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which requires the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of

sympathy alone exercise the power u/s 11 -A of the Act and reduce the punishment. As noticed hereinabove at least in two of the cases cited before us i.e. Orissa Cement Ltd- 1960 (I) LL.J 518 and New Shorrock Mills - AIR 1996 SCW 4427, this Court held: "punishment of dismissal for using of abusive language cannot be held to be disproportionate." In this case all the forums below have held that the language used by the workman was filthy. We too are of the opinion that the language used by the workman is such that it cannot be tolerated by any civilised society. Use of such abusive language against a superior officer, that too not once but twice, in the presence of his subordinates cannot be termed to be an indiscipline calling for lesser punishment in the absence of any extenuating factor referred to hereinabove.

19. In U.P. State Road Transport Corporation Vs. Subhash Chandra Sharma and Others, , charge against the workman, who was a driver in the U.P. State Road Transport Corporation was that, while he was in a drunken state, demanded money from the cashier and on his refusal, the workman abused and threatened to assault him. The charge of misconduct was held as proved and punishment of removal was awarded, which was substituted by the Labour Court by stoppage of one wage increment and payment of 50% of the backwages. In the appeal filed by the Corporation, the Apex Court has held as follows:

9. xxxx In such circumstances, the Labour Court was not justified in interfering with the order of removal of Respondent from the service when the charge against him stood proved. Rather we find that the discretion exercised by the Labour Court in the circumstances of the present case was capricious and arbitrary and certainly not justified. It could not be said that the punishment awarded to the Respondent was in any way "shockingly disproportionate"" to the nature of the charge found proved against him. In our opinion, the High Court failed to exercise its jurisdiction under Article 226 of the Constitution and did not correct the erroneous order of the Labour Court which, if allowed to stand, would certainly result in miscarriage of justice.

20. In Madhya Pradesh Electricity Board Vs. Jagdish Chandra Sharma, , the Respondent-employee, during work, assaulted his superior officer in the presence of other employees, which was a breach of discipline in the Organisation. Enquiry having been directed & held and the charges having been found established, punishment of termination was imposed on the employee. When questioned, the Labour Court interfered with the punishment. The Management having appealed before the Apex Court, it has been held that, use of abusive language against a superior, justified punishment of dismissal and, if, that be the position regarding verbal assault, the position regarding dismissal for physical assault, must be found all the more justifiable and the appeal was allowed and the punishment imposed by the Appellant/Management was restored.

21. The Labour Court in its Award has recorded the following finding against the workman/Respondent herein:

No doubt from the material placed on record shows that the first party has not only misbehaved with his official superiors but has abused them in a filthy language and has made attempts to assault them and has also caused loss to the property of the corporation. The action of the first party workman almost amounts to terrorising the superior officers and preventing them from taking any lawful action against them.

22. In the present case, the Labour Court, having come to the conclusion that, the finding of domestic enquiry was fair and proper; the Petitioner's order of dismissal was not by way of victimisation; the Respondent had seriously misbehaved by use of abusive language against his official superior; has even attempted to assault them and caused damage to the Corporation's property, which is nothing but an act of terrorism and thus the workman is guilty of misconduct, ought not to have interfered with the punishment imposed by the Management. This is not a case where the Court could come to the conclusion that the punishment, which was imposed by the Management on the workman was shockingly disproportionate to the workman's conduct. The Labour Court, even after taking notice of the workman's past record, which has resulted in minor punishments being imposed by the Management by adopting compassionate view and the workman having failed to improve his conduct despite the leniency shown earlier and the proved misconduct on hand being a serious one, the Appellant imposed the punishment of dismissal, as otherwise, indiscipline in the Organisation will spread its tentacles and take deep roots, with which, not only will the individual suffer, but the Organisation as such would also suffer, which would be detrimental even to the interest of the work force. In the circumstances, the punishment imposed by the Management was in any way disproportionate to warrant interference by the Labour Court in exercise of its power u/s 11A of the Act. Keeping in view the ratio of law laid down by the Apex Court in the decisions noticed supra, since there is misdirection adopted by the Labour Court resulting in illegal interference with the punishment imposed by the Management on the workman despite the findings recorded against the workman which are well founded and which have remained unchallenged, the impugned Award interfering with the punishment cannot be sustained. The direction of the Labour Court to reinstate the Respondent is clearly unwarranted.

In the result, the writ petition is allowed and the impugned Award passed by the Labour Court is hereby quashed.

The punishment imposed by the Petitioner on the Respondent shall stand restored.

No costs.