

(2005) 02 KAR CK 0057

In the Karnataka High Court

Case No : W.Ps. No's. 30094 and 41540 of 2001

Karnataka State Road Transport Corporation

APPELLANT

Vs

S. Rachaiah

RESPONDENT

Date of Decision : 18-02-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 11 A

Citation : (2005) ILR (Kar) 2313 : (2005) 4 KarLJ 76 : (2000) 4 KCCR 403 SN

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : Shwetha Anand, for the Appellant; K. Srinivasa and R. Radha and
and STM Associates, for the Respondent

Final Decision : Allowed

Judgement

R. Gururajan, J.—The Karnataka State Road Transport Corporation is before me in WP No. 30094 of 2001 challenging the award of the Labour Court passed in ID No: 64 of 1997 dated 4.1.2001.

2. Respondent workman was working as Conductor in the Corporation. On 14.9.1993 the bus bearing No. MEF 1634 which he was conducting was subjected to check by the checking officials at Maddur bus stand and the following irregularities were found:

- i) Respondent has failed to issue tickets to six passengers travelling from Borapura to Maddur despite collecting the requisite fare of Rs. 1.25;
- ii) Respondent has failed to issue tickets to five passengers travelling from Borapura to Maddur and had not collected the requisite fare of Rs. 1.25.

Penalty receipts were issued to five passengers and obtained necessary impeached tickets in respect of ticketless passengers and recorded statements of six ticketless passengers and necessary remarks were noted about the conductor on the waybill. The checking staff also entered remarks on traffic form and issued

an offence memo to the respondent on the spot and got the same endorsed from him. The checking staff submitted a detailed report to the Disciplinary Authority along with relevant documents. Respondent submitted his reply to the articles of charge. The Disciplinary Authority initiated a domestic enquiry by appointing the Inquiring Authority. It was held according to law. The Inquiring Authority gave its finding wherein the respondent was held guilty of the charges. The said finding was accepted. The Disciplinary Authority passed an order of dismissal after taking note of the past service record of the respondent. The order of removal is dated 4.2.1997. The said removal was challenged before the Labour Court in ID No. 64 of 1997. Parties have filed their respective pleadings. Labour Court framed issues. Labor Court treated the domestic enquiry issue as preliminary issue. Labour Court ruled that the domestic enquiry is fair and proper. Thereafter, evidence was adduced by the Corporation. Labour Court, after hearing, has chosen to say that the charges are proved in the matter. But, however, the Labour Court in terms of exercise of its power u/s 11A of the Industrial Disputes Act has ruled in his award that the punishment is disproportionate in the matter and he has ordered reinstatement with continuity of service but denied back wages. This award is challenged by the management.

3. In the connected WP No. 41540 of 2001, the very same award is challenged with regard to denial of back wages. Both the petitions are therefore taken together and a common order is passed,

4. Smt. Shwetha Anand, learned counsel for Corporation invites my attention to the material facts to say that the workman is found guilty not only by the Inquiring Authority but also by the Labour Court in its award. According to her, Labour Court could not have ordered reinstatement as in the case on hand. She further says the past record of the respondent is bad as could be seen from the material on record. She in the given circumstances says that the Labour Court is wrong in ordering reinstatement. Per contra, learned counsel for the workman would argue that the material on record would show that the petitioner is entitled for reinstatement. It is not as though the petitioner has committed a serious charge warranting denial of back wages nor removal. Learned counsel says that the punishment is disproportionate and that therefore the Labour Court is fully justified in the case on hand.

5. After hearing I have carefully perused the material on record including the award of the Labour Court.

6. Admittedly, petitioner was issued a charge sheet for having failed to issue tickets to six passengers travelling from Borapura to Maddur despite collection of required fare. He was also charged for having failed to issue tickets to five passengers travelling from Borapura to Maddur and not collected the requisite fare from them. Enquiry was held. Enquiry was held to be fair and proper. The only question remains for consideration is as to whether the findings are perverse in terms of the law governing such matter. Labour Court has looked into the material evidence in para-7 of the award. Labour Court has ruled that the

finding recorded by the Inquiring Authority is well found and is based on sufficient and legal evidence. Labour Court notices the statement of checking squad, waybill, red waybill, unpunched tickets, penalty receipts, passengers' statements, offence memo, etc. which are marked as Exhibits M-1 to M-6 and M-8. After noticing these aspects and the materia documents, Labour Court has come to the conclusion that the misconduct is proved. In fact, it has noticed evidence of the workman in para-7 of the award. This finding of the Labour Court in the given circumstances cannot be said to be non-acceptable findings in accordance with law. The entire finding in para-7 is based on the material on record. And is based on facts. In the circumstances, the findings with regard to proof of misconduct is accepted by me.

7. The other question that remains is as to whether the Labour Court is justified in ordering reinstatement in the given circumstances. Labour Court in the impugned award notices that the alleged past record was neither before Court nor was it referred to in the impugned award. Labour Court notices that the punishment is harsh. Firstly, Labour Court is not right in holding that the workman did not have any past record. In fact, management placed before me the history sheet. It is seen there from that the workman has committed similar misconduct on eight occasions. Therefore, it cannot be said that there is no past history at all as stated by the Labour Court. The said finding is contrary to the material on record.

8. The Supreme Court in its recent judgments has deprecated ordering reinstatement in such circumstances. The Supreme Court in *The Regional Manager, Rajasthan State Road Transport Corporation Vs. Sohan Lal etc.*, has ruled in para 10 and 11 reading as under.

"10. We notice from the finding of the Industrial Tribunal that the respondent workman had indulged in misconduct which has not only led to monetary loss to the Corporation but the Corporation has also lost confidence in the said workman. Therefore, to continue such an employee in the employment of the Corporation by virtue of a judicial order, in our opinion, is an act of misplaced sympathy which can find no foundation in law or in equity. The finding that the workman has committed the misconduct in question for not issuing tickets to passengers is a finding of fact arrived at by the Tribunal after taking into consideration the evidence recorded therein. This finding was affirmed by the learned single Judge and the High Court has not set aside the finding. Therefore, the question of moulding the relief on the facts of this case did not arise at all. The offer of the respondent to forego the back wages in lieu of his being reinstated is not an offer to be taken into consideration by the Court unless and until the finding of the Tribunal on misconduct was set aside and having perused the records including the order of the Tribunal, we are satisfied that this is not one of those cases in which there was room for setting aside such a finding.

"11. Assuming for argument sake that the High Court by the impugned order proceeded on the basis that though the misconduct is proved the punishment

was disproportionate and it is on that basis that the impugned order is made, even then we are unable to agree with the order of the Appellate Bench of the High Court because it is not the normal jurisdiction of the superior Courts to interfere with the quantum of sentence unless the said sentence is wholly disproportionate to the misconduct proved. No such finding has been recorded by the Appellate Bench in the impugned order. Since the misconduct proved is one of dishonesty, the quantum of loss is immaterial, it is the loss of confidence that matters. In such a situation if the Tribunal chooses to uphold the order of dismissal and refuse to interfere with such termination and the learned single Judge of the High Court agreed with the said order of the Tribunal, then Appellate Bench ought not to have interfered with the quantum of sentence. Having perused the facts of the case we are in agreement with the finding of the Tribunal as well as learned single Judge, hence, we are of the considered opinion that the Appellate Bench fell in error in interfering with the orders of the Courts below merely on the basis of offer made by the appellant before it."

Subsequently, the Supreme Court in *The Regional Manager, Rajasthan State Road Transport Corporation Vs. Sohan Lal etc.*, has ruled as under:

"13. Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating Corporation's fund, there is nothing wrong in the Corporation losing confidence or faith in such a person and awarding a punishment of dismissal,"

The Supreme Court in *Karnataka State Road Transport Corporation Vs. B.S. Hullikatti*, has chosen to hold in para-6 reading as under:

"6. It is misplaced sympathy by the Labour Court in such cases when on checking it is found that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charges. It is the responsibility of the Bus Conductors to collect the correct fare from the passengers and deposit the same with the Company. 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."

The Supreme Court again in *DIVISIONAL CONTROLLER, KSRTC (NWKRTC) 2004 IV LLJ 1074* has chosen to hold in para-13 reading as under:

"13. Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating Corporation's fund, there is nothing wrong in the Corporation losing confidence or faith in such a

person and awarding a punishment of dismissal."

9. These judgments are squarely applicable to the facts of this case. The Supreme Court in these judgments has noticed that the conduct on the part of the Conductor requires serious view. In the circumstances, Labour Court is not justified in ordering reinstatement in terms of Section 11A of the Industrial Disputes Act. The said exercise of the power in my view is nothing but a misplaced sympathy in such cases. Reinstatement therefore requires to be set aside and I do so in the case on hand.

10. However, learned counsel for the workman would argue that there is a circular in such circumstances. He relies on a judgment of this Court in WP No. 21803 of 2002 dated 30.10.2003. That judgment is prior to the judgment of the Supreme Court. Even otherwise, in that case the court has considered that it was not a clear case of past conduct made out by the management either before the Labour Court or before this Court. This Court has further observed in the said writ petition that having regard to the fact that in KSRTC no one is dismissed from service for the first time. The present case the reveals of past record on the part of the respondent workman. Even otherwise, the judgments of the Supreme Court are binding on the facts of this case. In the circumstances, the judgment dated 30.10.2003 relied upon by the learned counsel for the workman does not come to the aid of the workman.

11. In the result, management's writ petition i.e. WP No. 30094 of 2001 is accepted. Award is set aside. WP No. 41540 of 2001 filed by the workman is dismissed. Ordered accordingly. No costs.