

(2013) 11 KAR CK 0301

In the Karnataka High Court

Case No : Writ Petition No. 9847 of 2012 (L-KSRTC)

Karnataka State Road Transport Corporation

APPELLANT

Vs

Y.R. Anjaneyulu

RESPONDENT

Date of Decision : 11-11-2013

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)(d), 11-A

Citation : (2013) 11 KAR CK 0301

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

Bench : Single Bench

Advocate : H.R. Renuka, for the Appellant;

Final Decision : Allowed

Judgement

A.N. Venugopala Gowda, J.—This writ petition has been filed by the Management to quash an Award passed by the Industrial Tribunal, Bangalore (hereinafter referred to as the Tribunal), on 17.01.2011 in I.D. No. 45/2006, in so far as it relates to the modification of an order of punishment dated 04.06.2004, vide Annexure-D and to dismiss the claim petition as against the challenge to the said order of punishment is concerned. Heard Smt. H.R. Renuka, learned advocate for the petitioner. Respondent though has been served with the notice has remained unrepresented.

2. Perused the writ record.

3. Smt. Renuka contended that the Tribunal has committed error and illegality in modifying the punishment imposed vide order dated 04.06.2004 as at Annexure-D i.e., in reducing the punishment to withholding of one increment with cumulative effect. She submitted that the Tribunal having found the charged misconduct as having been proved, the punishment imposed being not either discharge or dismissal from service, the Tribunal is unjustified in exercising the power under S. 11A of the Industrial Disputes Act, 1947 (for short, the Act) and in modifying the order of punishment i.e., withholding of three annual increments

with cumulative effect. Learned counsel submitted that the view taken by the Tribunal to pass the order, to the extent impugned herein is contrary to the ratio of the decision in the case of The General Secretary, South Indian Cashew Factories Workers' Union Vs. The Managing Director, Kerala State Cashew Development Corporation Ltd. and Others, .

4. The respondent - workman having been imposed different punishments vide orders dated 26.12.2002, 18.10.2003, 04.06.2004 and 05.02.2005 and he having approached the Government, by an order dated 25.02.2006, in exercise of the power under S. 10(1)(d) of the Act, a reference was made to the Tribunal for adjudication. Both the parties filed claim and counter statements respectively. Based on the pleadings, issues having been raised, both parties adduced evidence. In support of the punishment order dated 04.06.2004 is concerned, for the Management Exs. M35 to M53 were marked. The Tribunal while considering the matter with regard to the punishment order dated 04.06.2004 held that the domestic enquiry conducted was fair and proper. It also arrived at the conclusion that there is negligence on the part of the workman. However, having arrived at the conclusion that the punishment imposed is disproportionate to the gravity of the proved misconduct, it modified the punishment order dated 04.06.2004, into reduction of basic pay by one annual increment with cumulative effect instead of three annual increments with cumulative effect. The other portion of the punishment order i.e., recovery of Rs. 6,362/- in 12 equal installments and treating the suspension period as "not on duty" was upheld. On account of the modification of the punishment, the workman was held entitled to the consequential monetary benefits.

5. By an order dated 03.07.2012, the impugned Award to the extent of the challenge noticed supra, was stayed.

6. The Tribunal having found the enquiry conducted by the Management as fair and proper, having examined the claim of the workman with regard to the alleged victimization has recorded as follows:

In the background of these materials, though there appears to be slight negligence of the driver of the bus, the punishment imposed appears to be disproportionate to the gravity of proved misconduct and excessive. Of course in this case itself, there are other two Punishment orders for the accident caused by this driver. Keeping in mind this aspect also, in my considered view the Punishment order needs interference by reducing the punishment to reduction of pay of the I Party workman by one annual incremental stage with cumulative effect instead of three annual incremental stage. The remaining punishment of recovery of one month salary of Rs. 6363/- in 12 installments and treating the suspension period as not on work remained undisturbed. Accordingly this point is answered partly in favour of the workman.

7. In the case of SOUTH (supra), with regard to applicability of the provision under S. 11A of the Act, Apex Court has held that, if the enquiry is fair and

proper then in the absence of any allegations of victimization or unfair labour practice the Labour Court has no power to interfere with the punishment imposed. S. 11A of the Act gives ample power to the Labour Court to reappraise the evidence adduced in the enquiry and also sit in appeal over the decision of the employer in imposing punishment. But, that section is applicable only in the case of dismissal or discharge of a workman.

8. In the case of Bangalore Metropolitan Transport Corporation Vs. BMTC and State Transport, , it was held by this Court as follows:

9. In the instant case, the punishment imposed on the workman for the proved misconduct being one, to withhold two annual increments with cumulative effect and not a case of dismissal or discharge, S. 11A of the Act has no application. As already noticed, the Tribunal has not recorded any finding that, the findings recorded in the enquiry, on which the Disciplinary and Appellate Authorities acted, as perverse.

10. In the case of J.B. Mahalingappa (Order dated 3.3.05 passed in W.P. 15726/2001 (L-KSRTC) - The Managing Director, KSRTC, Bangalore Vs. J.B. Mahalingappa, Kolar,)), for the proved misconduct, the Management imposed the punishment, which having been questioned, the Government made reference to the Labour Court, wherein, after adjudication, the Reference was allowed in part and the Management was directed to withhold one increment for a period of two years. The said Award when questioned by the Management, it has been held as follows:

Admittedly, Section 11A of the I.D. Act is not available in a matter like this. Section 11A comes into picture only in the case of discharge or dismissal. The Labour Court has committed a serious error in the case on hand.

11. In the instant case, the occurrence of the accident on account of the contributory negligence of the respondent - workman having been well founded and held as established, the punishment imposed being only to withhold two annual increments with cumulative effect, the Industrial Tribunal had no jurisdiction to exercise power under S. 11A of the Act and substitute the punishment. The Industrial Tribunal has committed illegality by interfering with the punishment imposed by the Management and in reducing the punishment.

The decision noticed supra, squarely applies to the case on hand.

The Tribunal has committed illegality in interfering with the order of punishment as at Annexure-D in exercise of the power under S. 11A of the Act, which is not attracted, in as much as the punishment imposed on 04.06.2004 is not discharge or dismissal.

In the result, writ petition is allowed and the impugned Award to the extent it has been challenged in this writ petition is quashed. In view of the findings recorded by the Tribunal that the domestic enquiry conducted is fair and proper and that there is misconduct on the part of the workman, the punishment order

as at Annexure-D to the writ petition is restored.

No costs.