

(2000) 05 KAR CK 0008

In the Karnataka High Court

Case No : Writ Petition No. 5498 of 1998

Karnataka State Road Transport Corporation, Bangalore

APPELLANT

Vs

Basavaraj and Another

RESPONDENT

Date of Decision : 29-05-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 226, 227

Citation : (2000) ILR (Kar) 2432 : (2000) 5 KarLJ 327

Hon'ble Judges : M.P. Chinnappa, J

Bench : Single Bench

Advocate : Sri P.R. Ramesh and Sri K. Lakshminarayana Rao, for the Appellant;
Sri P.K. Navadgi and Sri G.B. Chandregowda, High Court Government Pleader, for
the Respondent

Judgement

1. The respondent was working as a conductor under the petitioner-corporation. While he was on duty, the bus bearing Regn. No. MYF 9411 was checked on 27-4-1987 which revealed that he had failed to issue tickets to two passengers travelling from Koralli to Nagarahalli despite collecting fare of Re. 0.75 from each of them. He also failed to issue tickets to 15 passengers travelling from stage 14 to 16 having collected the fare of Rs. 1.50 from each of them from the place of boarding itself. He had not closed the way bill against the stage 15. In view of this report, the departmental enquiry was held and charges were framed against him on 13-5-1987. In the departmental enquiry, it was found that the charges were proved and accordingly, he was dismissed from service w.e.f. 17-8-1988. He raised an industrial dispute in I.D. No. 48 of 1992 and the 2nd respondent held by its order dated 31-8-1996 accepting the reference and the dismissal order dated 17-8-1988 passed by the petitioner was set aside. The petitioner was directed to reinstate the 1st respondent into service with full back wages from 6-5-1992 with continuity of service and other consequential benefits. As against that order, the petitioner-corporation filed this writ petition.

2. Heard the learned Counsel for the petitioner Sri P.R. Ramesh, Sri P.K. Navadgi

for the 1st respondent and Sri G.B. Chandregowda, High Court Government Pleader for the 2nd respondent.

3. At the very outset the learned Counsel for the petitioner submitted that the reference was made belatedly and no explanation is forthcoming as to why there was inordinate delay in referring the matter to the Labour Court. That itself is a ground for this Court to interfere under Articles 226 and 227 of the Constitution.

4. In support of his argument he also placed reliance on a recent decision of the Supreme Court in *The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others*, .

5. Repelling this argument, the learned Counsel for the 1st respondent submitted that the delay itself is no ground to interfere with the order. In support of his argument he also cited a decision in *Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another*, . In view of this argument, it is now necessary to find out as to whether the impugned order calls for interference on the question of limitation.

6. Their Lordships of the Supreme Court in *Nedungadi Bank's case*, supra, have held that where a reference was made after a lapse of about 7 years of order dismissing the respondent from service that on facts and circumstances of the case, a dispute which is stale could not be subject-matter of reference u/s 10 of the Act. It is also held that as to when a dispute can be said to be stale would depend on the facts and circumstances of each case and the law does not prescribe any time limit for appropriate Government to exercise its powers u/s 10 of the Act.

7. In the case before their Lordships the respondent was imposed with major punishment of dismissal and that has become final and conclusive. His request for mercy also came to be rejected. He claimed reinstatement on parity on the ground that other two officers were reinstated but it was not known on what ground those officers were reinstated by the bank. Under those circumstances, their Lordships have held that the respondent was not entitled for any relief as the reference became stale and illegal.

8. The learned Counsel for respondent 1 submitted that in the case on hand the reference made by the Government was not challenged at the initial stage by the petitioner on any ground. In addition to that, this specific plea was not raised before the Labour Court in the counter filed-by the petitioner. Further, no issue was framed by the Labour Court when the matter was decided under the impugned order. The petitioner also has not requested the Court to raise an issue on this point. Even in the writ petition also the petitioner has not specifically raised this point. Under those circumstances, it is clear at the point of time the petitioner contended or urged before the Labour Court that the reference is barred by time. In other words, since such question was not raised, an opportunity was not given to the respondent to establish as to why there was delay. For the first time, after this decision came to be passed by the Hon''ble Supreme Court, the petitioner raised this contention before this Court. Under

those circumstances he submitted that such a plea cannot be allowed to be raised for the first time in the writ petition at the time of arguments. With this background, it is now necessary to refer to the decision rendered by their Lordships of the Supreme Court in Ajaib Singh's case, supra, wherein employer's plea of delay in seeking reference, unless coupled with proof of real prejudice to him, was held not sufficient to deny relief to the workman. Even in cases of proved delay, relief can be moulded by declining whole or part of back wages.

9. In the absence of such a plea it is held the High Court was not justified in interfering with the order of the Labour Court reinstating and holding the workman to be disentitled to relief on account of his omission to explain the delay in seeking reference of the industrial dispute regarding termination of his services. Further, it is held that the provisions of the Industrial Dispute Act should be interpreted in a manner which advances the objects contained in the statement of objects and reasons. In that case also there was a delay of 7 years. Similar argument was advanced but that argument was rejected as indicated above. Therefore, it is clear that the petitioner has failed to take up this plea at the initial stage. So also even at the later stage before the Labour Court. As mentioned above, for the first time this plea was raised only after the decision of the Supreme Court in Nedungadi Bank's case, supra, came to be reported. Therefore, this plea is not available to the petitioner. Hence, his argument is rejected lest great prejudice will be caused to the 1st respondent as it would be failure of following principles of natural justice.

10. The learned Counsel for the petitioner further argued that on merits also, the Labour Court ought not to have granted the relief as sought for by the respondent 1. In this case the Labour Court has come to the conclusion that the charges of having not issued tickets were proved and other charges that he had not closed the way bill and he had collected fare from the passengers was not proved. Under those circumstances, only charge proved against the respondent is non-issuance of tickets. When the Labour Court has come to the conclusion that tickets were not issued it has to be presumed that he has collected the fare from the passengers and in spite of that, he has not issued the tickets. Thus, I hold that the Labour Court has erred in coming to the conclusion that the charge of non-issuance of tickets was not proved. Therefore, it has to be held that the respondent 1 having collected the fare failed to issue tickets. Thus the only charge which was not proved in this case is that he has not closed the way bill. With this material, it is now necessary to consider the order passed by the Labour Court in passing the award. As indicated above, though the Labour Court has come to the conclusion that he has committed irregularities, still the petitioner has been directed to reinstate the 1st respondent into service with full back wages from 6-5-1992 with continuity of service and other consequential benefits. However, the Labour Court has declined to grant back wages from 17-8-1988, i.e., the date on which he was terminated from service till 6-5-1992.

11. In this case, admittedly, there is inordinate delay in referring the matter to the Labour Court. It is a circumstance which can be taken note of by the Court as held by the Lordships of the Supreme Court in Gurmail Singh Vs. Principal, Govt. College of Education and Others, , wherein it is held that if the order of dismissal is challenged belatedly, the dispute would still continue for adjudication, the only question would be to deprive back wages for the period of delay in raising such a dispute if on merits it is to succeed. The 1st respondent was rightly denied back wages from 17-8-1988 to 6-5-1992 on the ground of delay and laches, but awarded back wages from 6-5-1992, that means to say no punishment was imposed on the proved misconduct of non-issuance of tickets. Hence, I hold that the 1st respondent is entitled only for 50% back wages from 6-5-1992 till the date of reinstatement.

12. Accordingly, I proceed to pass the following:

ORDER

The writ petition is disposed of modifying the order to the effect that the respondent is entitled for 50% of back wages. As far as reinstatement and continuity of service is concerned, the Tribunal's order is left unaltered.