

(2014) 12 KAR CK 0251
In the Karnataka High Court
Case No : Writ Appeal No. 31230/2013 (L-KSRTC)

Neeta	Vs	APPELLANT
North West Karnataka Road Transport Corporation		RESPONDENT

Date of Decision : 10-12-2014

Acts Referred:

Citation : (2014) 12 KAR CK 0251

Hon'ble Judges : Mohan M. Shantana Goudar, J;K.N. Phaneendra, J

Bench : Division Bench

Advocate : Shriharsh A. Neelopant, Advocate for the Appellant; Sunita P. Kalasoor, Advocate for the Respondent

Judgement

Mohan M. Shantana Goudar, J.—The order dated 26.07.2013 passed by the learned Single Judge in W.P. No. 63548/2011 is called in question in this writ appeal.

2. The appellants herein are the legal representatives of deceased Keshava Ijantkar he was a Conductor working in Karnataka State Road Transport Corporation; he was issued with articles of charges on 25.05.1992 on the ground that while he was conducting the vehicle from Rathnagiri to Belgaum, the workman did not issue tickets to five passengers despite collecting fair of Rs. 27.50 each and has closed way bill against stage No. 18 in all respects. It is further alleged in the charge memo that the workman was involved in seven past default cases and though he had been awarded minor punishment in respect of the earlier charges, he did not reform himself, consequently did not show any improvement. Domestic enquiry was held after service of charge memo against the workman. In the domestic enquiry the charges were held to be proved after due contest. On 24.08.1994 the workman was dismissed from service. The workman did not choose to question the order of dismissal till his death, i.e., till the year 2005. Only in the year 2006 the legal representatives of the deceased got the matter referred to the Labour Court in Ref. No. 4/2006. The Labour Court set aside the order of dismissal by the order dated 20.07.2010. By the said order

the Labour Court directed reinstatement of the workman with continuity of service and without backwages, however, with all consequential benefits. The order of the Labour Court was questioned by the Corporation before this Court in W.P. No. 63548/2011, which came to be allowed by the impugned order dated 26.07.2013.

3. Sri Neelopant, learned counsel appearing for the appellants/legal representatives of deceased workman submits that, it is not open for the learned Single Judge to reverse the findings arrived at by the Labour Court; since the reference was made by the State Government, it was not open for the learned Single Judge to conclude that appellants are pursuing their stale claim; once the reference is made by the State Government it is deemed that the delay, if any, is condoned; on these among other grounds he submits that the learned Single Judge is not justified in allowing the writ petition.

Smt. Sunitha P. Kalasoor, learned counsel for the Corporation argued in support of the impugned order by contending that it is not open for the appellants to pursue a stale claim.

4. Undisputedly, the workman was dismissed from service on 22.08.1994 after due enquiry. The workman was alive till the year 2005. Till his lifetime he did not choose to question the order passed by the Disciplinary authority which means the workman has accepted the order of dismissal passed against him by the Corporation. Only after his demise, his legal representatives got the matter referred to the Labour Court in the year 2006. The legal representatives of workman did not either lead any oral evidence or tendered any documentary evidence. On the other hand, the Corporation got marked Ex. M.1 to 38 before the Labour Court.

5. The Apex Court has repeatedly ruled that so far as the delay in seeking the reference is concerned, no universal application can be made; no formal uniform guidance can be laid down, it will depend on each individual cases. It is also ruled by the Apex Court that the delay defuses equity. If delay occurs in raising the dispute, records may not be available, witnesses may have expired and their memories would have affected and as such the employer in such cases after much water having flown down from the bridge, cannot be expected to place cogent material to substantiate the charges levelled against the workman which has been proved in the domestic enquiry.

6. The apex Court in the case of State of Karnataka and Another Vs. Ravi Kumar, has held that stale claim should not be referred and when the power is conferred by the statute, the same is to be exercised within a reasonable period. Though an issue was raised before the Labour Court in order to find out as to whether the delay in raising the dispute has caused any prejudice to the Corporation, the said issue is not answered by the Labour Court. The Labour Court has simply brushed aside the aspect relating to the stale claim.

7. Be that as it may, having regard to the totality of the facts and circumstances

we are of the considered opinion that it is a clear case of stale claim and consequently the learned Single Judge is justified in setting aside the award made by the Labour Court.

8. Even on merits the learned Single Judge has by exercising discretion judiciously under the facts and circumstances perused the records and passed the order correctly on merits. The offence memo was served on the workman during enquiry and the workman has not disputed the contents of the offence memo. He did not even reply the offence memo immediately; however after lapse of four months he replied to the same. The ticketless passengers who claimed to have paid fare to the workman have been leveled with penalty for ticketless travel and they have paid the same. The Checking Inspectors have seized five unpunched tickets. During the course of enquiry full opportunity has been extended to the workman and there is no cross-examination by the workman on this aspect. Apart from the aforementioned reasons the learned Single Judge has assigned certain additional reasons which we do not want to reiterate and burden this judgment.

9. As aforementioned, the workman had past history seven cases of similar nature for which he was imposed with minor punishment. Despite the same, he did not improve his conduct. In view of the same, the learned Single Judge is justified in interfering with the award made by the Labour Court. Hence, no interference is called for. Appeal fails and the same is hereby dismissed.

Service benefits, if any, which are accrued to the workman prior to the date of his dismissal, shall have to be paid to the workman's family, if not already paid.