

(2003) 10 KAR CK 0042
In the Karnataka High Court
Case No : Writ Petition No. 2003 of 2003 (LK)

North East Karnataka Road Transport Corporation, Gulbarga	APPELLANT
Vs	
M.N. Ramegowda	RESPONDENT

Date of Decision : 16-10-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10(4A)

Citation : (2003) 7 KarLJ 337

Hon'ble Judges : N. Kumar, J

Judgement

1. The respondent is a driver attached to the Hassan Depot of the petitioner-Corporation. On 16-1-1993, he conducted himself righteously in the premises of the Depot. He assaulted Junior Assistant H.S. Maheshwara and caused him bleeding injuries. Not content with this, he returned to the Depot later in the night with a chopper in hand and terrorised a traffic official and caused damage to the furniture in his office. The matter was immediately reported to the police. Thereafter, a charge-sheet was served on the petitioner. When he denied the said charges a disciplinary enquiry was initiated. After holding enquiry the Enquiry Officer submitted a report that the misconduct alleged against the respondent is proved. Acting on the said report the disciplinary authority imposed the penalty of dismissal of the respondent from service. The order of dismissal was passed on 6-1-1999. The respondent raised an industrial dispute under Section 10(4-A) of the Industrial Disputes Act, 1947 on 19-8-1999 before the Labour Court at Gulbarga. He contended that the domestic enquiry conducted is not fair and proper. He denied the entire charges levelled against him and he sought for setting aside the order of dismissal. Enquiry was conducted on the preliminary point. By order dated 9-4-2001 the Labour Court held that the domestic enquiry held is valid and proper. Thereafter, the parties were permitted to produce evidence in respect of their respective contentions. The Labour Court on appreciation of the material on record came to the conclusion that the first charge of misconduct alleged against the respondent is not proved. However, the

second charge of misconduct stands proved. In exercise of power under Section 11-A of the Act, the Labour Court held that the punishment of dismissal is disproportionate to the gravity of charge proved and therefore set aside the order of dismissal, ordered reinstatement without any back wages but with continuity of service by its award dated 29-6-2002 in KID No. 394 of 1999. Against the said award, the present writ petition is filed.

2. Learned Counsel for the petitioner assailing the said award of the Labour Court contends as under.- (a) The finding of the Labour Court that the first misconduct alleged against the workman is not proved in view of the order of acquittal passed by the Magistrate is totally erroneous. When once the Labour Court held that the second misconduct alleged against the workman is proved having regard to the nature of the misconduct, namely workman appearing at the work place with a chopper in his hands assaulting the Junior Assistant and then breaking the table glass of the A.T.S. into pieces, besides damaging another table with the chopper, setting aside the order of dismissal on the ground that it is shockingly disproportionate to the gravity of the charge proved is erroneous and contrary to the law declared by the Supreme Court.

(b) When the workman in the claim petition in categorical terms stated that his claim petition is barred by time, ignoring the law declared by this Court, entertaining such a claim petition which is barred by time is not sustainable. Therefore, he submits for the aforesaid reasons, the impugned award is liable to be set aside and the order of dismissal passed by the disciplinary authority is to be upheld.

3. Per contra, the learned Counsel appearing for the respondent contends when the Criminal Court acquitted the respondent honourably of all the charges levelled against him, the Labour Court was fully justified in holding that the misconduct which was covered under those charges are not proved. Though the second charge was held to be proved it has only resulted in damage to the property and therefore the Labour Court was justified in setting aside the order of dismissal on the ground of punishment being disproportionate to the charges proved in exercise of the powers under Section 11-A of the Act. On the question of limitation it was submitted a learned Single Judge of this Court has taken a view even though an application under Section 10(4-A) is not filed within six months as stipulated in law, it is open to the Labour Court to take a lenient view in the matter and entertain and in that view of the matter the Labour Court has entertained the matter which is barred by time and granted relief to the workman, it cannot be found fault with. Therefore, he submits a case for interference with the Labour Court award is not made out.

4. In order to appreciate the rival contentions it is necessary to have a look at the charges levelled against the respondent. The articles of charges reads as under.-

"Charges.-

I. Gross misconduct on your part is - That on 16-1-1993 at about 17.00 hours, you have quarreled and fought with Sri H.S. Maheshwara, Junior Assistant in the Depot, causing bleeding injuries to him, under the pretext of asking wages slip even though you have been given wages slip twice by the said Junior Assistant.

Further at about 20.00 hours on the same day, you appeared again in the depot with a chopper in the hand, shouting "where is Mahesha" and broke the table glass of the A.T.S. into pieces, besides damaging another table with the chopper.

Thus you have acted in an unruly manner and assaulted the Junior Assistant on duty, causing injuries to him, besides damaging the departmental property and created a frightful atmosphere in the depot by behaving in a rowdeism manner.

II. That in spite of lenient view taken in the earlier cases reported against you as detailed in the enclosed default history sheet, you have failed to show any improvement in your work and behaviour, which leads to loss of confidence in you by the Management".

5. In support of the said charges before the Enquiry Officer the management examined three witnesses, the victim of the assault H.S. Maheshwara, two witnesses B. Kalle Gowda and Dundumariah. All the three witnesses in the course of their evidence in categorical terms have stated that the respondent assaulted H.S. Maheshwara which has resulted in bleeding injuries. All the aforesaid three witnesses have also spoken about the incident which happened after the working hours in which the respondent appeared again in the Depot with a chopper in his hand shouting "where is Mahesha" and broke the table glass of the A.T.S. into pieces, besides damaging another table with the chopper. These three witnesses who have spoken about the aforesaid facts when they were called upon to give evidence before the Magistrate Court turned hostile. They did not support the case of prosecution. Under those circumstances, the learned Magistrate has recorded a finding that the prosecution has miserably failed to prove the guilt of the accused beyond reasonable doubt. At this stage it is relevant to refer to the points that arose for consideration before the learned Magistrate. They are.-

"1. Whether the prosecution proves that, on 16-1-1993, at about 4.30 p.m. accused wrongfully restrained C.W. 1 Maheshwar from proceeding further by holding his collar?

2. Whether the prosecution proves that on the same date, time and place, accused caused hurt to C.W. 1 by means of bleeding patti?"

6. It is relevant to point out that the police registered a case against the respondent under Sections 324, 341 and 506 of the Indian Penal Code. It is also to be noticed the Labour Court did not go into the evidence of the aforesaid three witnesses given before the Enquiry Officer on the ground that the said evidence is not given on oath, whereas in the Criminal Court the evidence was recorded on oath. The Labour Court appreciates the evidence of those three witnesses as extracted in the order of the Magistrate and comes to the conclusion that the

charges of misconduct levelled against the respondent is not proved completely ignoring the evidence of the three witnesses which was given before the Enquiry Officer which stood the test of cross-examination. Though it is open to the Labour Court to look into the order of acquittal passed by the Magistrate Court it is only a piece of evidence in support of the workman. That piece of evidence has to be weighed with the evidence on record and then it is open to the Labour Court to come to its own conclusion. But it is totally impermissible for the Labour Court to ignore the entire evidence given by the witnesses before the Enquiry Officer after the said enquiry was held to be fair and proper and base its finding solely on the basis of the evidence recorded in the Criminal Court and on the basis of the order of acquittal passed by the Magistrate Court. It is in this context it is necessary to keep in mind the scope of enquiry before a Magistrate and in a departmental enquiry. In the case of *Depot Manager, Andhra Pradesh State Road Transport Corporation v Mohd. Yousuf Miya*, AIR 1997 SC 2232, the Supreme Court explaining the scope of enquiry in a departmental proceedings and the Magistrate Court has held as under:-

"6.....When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Indian Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceeding relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Indian Evidence Act stands excluded is a settled legal position. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. It is seen that invariably that departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of Indian Evidence Act. The evidence required in the departmental enquiry is not regulated by Indian Evidence Act."

7. Therefore, it is clear the Labour Court committed a serious error in ignoring the evidence adduced in a departmental enquiry and. it did not keep in mind that the standard of proof that is required to prove a charge of misconduct is altogether different from the standard of proof that is required to prove a charge in a Criminal Court. When the acquittal order clearly stated that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt, the Labour Court committed a serious error in holding that the first charge of misconduct is not proved. All the three witnesses who have deposed before the Enquiry Officer have spoken to about the first charge. In fact, there is no serious cross-examination on this point. In fact the workman goes to the extent of denying in

the course of his evidence that no police case is registered against him on account of the said incident whereas in the Labour Court he relies on the acquittal order to contend that the first charge is not proved. It is relevant to point out at this juncture the Labour Court after refusing to look into the evidence of the three witnesses insofar as the first charge is concerned relies on the evidence of the same witnesses to come to the conclusion that the second charge is proved. If the evidence of the witnesses is looked into for the purpose of deciding whether the second charge is proved or not, the said evidence ought to have been looked into to see whether the first charge is proved or not. Therefore, seen from any angle the finding recorded by the Labour Court insofar as the first charge is concerned cannot be sustained. The evidence on record clearly establishes the first charge levelled against the workman. Merely because, the very same witnesses after deposing before the enquiry proceedings when they appeared in the Criminal Court turned hostile do not in any way take away the effect of their evidence which was given before the Enquiry Officer. In that view of the matter, the finding recorded by the Labour Court on charge No. 1 is hereby set aside and it is held that the first charge is also proved.

8. On the second question, i.e., whether the Labour Court was fully justified in exercising its discretion under Section 11-A of the Act and setting aside the order of dismissal on the ground that the punishment imposed is disproportionate to the charge proved is concerned, the Labour Court has committed a serious error in not noticing the settled law on the point. The Supreme Court had an occasion to consider this question in the case of *Uttar Pradesh State Road Transport Corporation v Subhash Chandra Sharma and Others*, AIR 2000 SC 1163, wherein it is held as under:-

"9. The Labour Court, while upholding the third charge against the respondent nevertheless interfered with the order of the appellant removing the respondent from the service. The charge against the respondent was that he, in drunken state, along with a conductor went to the Assistant Cashier in the cash room of the appellant and demanded money from the Assistant Cashier. When the Assistant Cashier refused, the respondent abused him and threatened to assault him. It was certainly a serious charge of misconduct against the respondent. 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".

9. In a case of lesser gravity of charge, the Supreme Court has held that the

discretion exercised by the Labour Court in setting aside the order of dismissal was held to be capricious and arbitrary and certainly no justified and further the Supreme Court held that the High Court failed to exercise jurisdiction under Article 226 of the Constitution of India and did not correct the erroneous order of the Labour Court which, if allowed to stand, would certainly result in miscarriage of justice.

10. In the instant case the second charge held to be proved is that the respondent after assaulting the Junior Assistant few hours earlier with bleeding injuries again at 8.00 p.m. in the depot with a chopper in his hands shouting "where is Mahesha" and not finding him breaking the table glass of the A.T.S. into pieces besides damaging another table with the chopper. In a civilised, society whatever may be the rights of the workman under the Industrial Disputes Act certainly he has no right to come to the work place with a chopper in his hands threatening his superiors to break their heads. This conduct of the worker cannot be countenanced on any account. It is next to impossibility for every peace loving workers to work honourably at work place. Though the number of workmen who indulge in these acts are handful, if such conduct is tolerated the morale of the majority of the workmen who work honestly, peacefully at the work place, would be shattered if these things are condoned. It is in the interest of maintaining peace in the industry that such unruly behaviour on the part of the worker is nipped in the bud so that people who are sober, hard working, peaceful, gentle are encouraged to perform their avocation in a peaceful manner. Therefore, seen from any angle this conduct of the respondent cannot be condoned under any circumstances. The Labour Court on the basis of misplaced sympathy on the ground that a punishment of dismissal is almost causing economic death sentence has exercised the discretion under Section 11-A which is totally unwarranted in the circumstances of the case. In the words of the Supreme Court such a discretion exercised by the Labour Court is capricious, arbitrary and certainly not justified having regard to the charges proved. Moreover now that I have held first charge is also proved, absolutely there is not justification for exercising the discretion under Section 11-A of the Act to give any relief to the worker who has no respect for life and liberty of his co-worker. Under these circumstances, the discretion exercised by the Labour Court under Section 11-A cannot be sustained. Accordingly, it is hereby set aside.

11. Insofar as the question of limitation is concerned, the respondent in his petition itself has stated that his application is barred by time. It is settled law if a proceeding is not initiated within time, the Court does not get jurisdiction to enquire into those proceedings and even when the opposite party does not raise such objection, a duty is cast upon the Court to reject petition. It is not as if the learned Judge was not aware of the law. In fact in a dispute in KID No. 743 of 2000 which he decided on 28-2-2002 on the question of limitation at paragraph 15 he stated as under:- "15. The most important thing is that the present petition is filed under Section 10(4-A) of the Industrial Disputes Act, after 5 years of the alleged date of his termination. Under Section 10(4-A) of the Industrial Disputes

Act, the workman has to approach the appropriate Court within six months from the date of communication of the termination order/dismissal or retrenchment or from the date of commencement of the Industrial Disputes (Karnataka Amendment) Act, 1987, whichever is later. Admittedly, this petition is not filed within six months either from the date of the communication of termination/dismissal or retrenchment order or from the commencement of the Industrial Disputes (Karnataka Amendment) Act, 1987. On the other hand, it is filed after more than 5 years of the date of communication of the termination order. Recently, the Division Bench of our own High Court of Karnataka in an unreported decision in Writ Appeal No. 625 of 1998 connected with Writ Appeal No. 1353 of 1998 decided on 11th day of October, 2001 Karnataka State Road Transport Corporation v Khaleel Ahmed and Another, ILR 2002 Kar. 3827, by overruling the earlier two decisions of our Own High Court in North West Karnataka Road Transport Corporation, Central Offices, Hubli v Santmallayya and Another, 1994(4) Kar. L.J. 654 and Karnataka State Road Transport Corporation, Central Offices v Govinda Setty, ILR 1997 Kar. 983, has held that:-

"If an aggrieved individual workman do not file application within the period prescribed under Section 10(4-A) of the Act, then it will be impermissible for the Labour Court to entertain the same and the same has to be rejected as not maintainable".

Since the present petition is filed after the lapse of more than five years of the date of termination of the petitioner workman, the present petition is also not maintainable and the petitioner workman is not entitled to any relief. Hence, I answer issue 2 in the negative".

12. The learned Judge relied on an unreported decision of a Division Bench of this Court in coming to the said conclusion. But, while passing the impugned order just about four months thereafter, his memory has failed and he appears to have forgotten the law on the point though the said unreported judgment is in the case of Khaleel Ahmed. In the aforesaid judgment, on the question of limitation, the Division Bench of this Court has held as under:-

"23. It seems quite clear to us that the State Legislature has incorporated sub-section (4-A) in Section 10 of the Act to provide a more expeditious remedy to the workman enabling him to redress his grievances without undergoing the ordeal of approaching any Labour Union and without approaching the State Government for referring his case to the Labour Court. Therefore, the remedy provided under sub-section (4-A) is a remedy alternative to what is provided under sub-section (1) of Section 10 of the Act. But the right created under the State Amendment is coupled with a condition that individual workman has to prefer application before the Labour Court within the time frame of six months fixed by the Legislature. It is a statutory condition precedent for exercise of the right and availment of remedy under sub-section (4-A) of Section 10 of the Act. Therefore, it has to be held that if an application is filed beyond the period of 6 months as prescribed under the above sub-section, then it will be incumbent on

the part of the Labour Court not to entertain such an application since the condition does not only bars the special remedy but it also strikes at the jurisdiction of the Labour Court to entertain such an application. Such an interpretation is in consonance with the general rule of interpretation of statute. Such construction will not also in any way prejudice the right of a workman to get his dispute resolved by a reference under Section 10(1) of the Act provided the dispute sought to be raised do not become stale because of his inaction as held by the Supreme Court in the cases of Balbir Singh v Punjab Roadways, (2001)1 SCC 133, Indian Iron and Steel Company Limited v Prahlad Singh, AIR 2001 SC 69 and Telecom District Manager, Belgaum v A.A. Angali, 2000(6) Kar. L.J. 327 (DB).

xxx xxx xxx

27. In view of the above discussions, we hold that if an aggrieved individual workman do not file application within the period prescribed under Section 10(4-A) of the Act then, it will be impermissible for the Labour Court to entertain the same and the same has to be rejected as not maintainable at the very first instance after hearing the workman or his Counsel like rejection of the plaint under Order 7, Rule 11 of the Civil Procedure Code".

13. Ignoring the aforesaid legal position which was within the knowledge of the Labour Court, it proceeded to entertain the petition which was filed beyond the period of limitation.

14. It is not in dispute that the workman was dismissed from service on 6-1-1999 and he has filed the petition under Section 10(4-A) of the Act on 19-8-1999 which is beyond six months period. Therefore, the application filed by the workman was hopelessly barred by time and the Lab our Court ought not to have entertained the petition at all. In that view of the matter, seen from any angle the impugned award passed by the Labour Court cannot be sustained and accordingly it is hereby quashed. Hence, I pass the following order:-

15. Writ petition is allowed. The impugned award passed by the Labour Court is hereby quashed. The order of dismissal passed by the disciplinary authority dismissing the respondent-workman on 6-1-1999 is upheld.

Parties to bear their own costs.