

(2015) 03 KAR CK 0198

In the Karnataka High Court

Case No : Writ Petition No. 8593/2008 (L-KSRTC)

North West Karnataka Road Transport Corporation

APPELLANT

Vs

Allabaksh

RESPONDENT

Date of Decision : 05-03-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(4-A), 11A

Citation : (2015) 4 AKR 261 : (2015) 146 FLR 565 : (2015) 3 KarLJ 279 :
(2015) 4 KCCR 3384 : (2015) LabIC 3966 : (2015) 2 LLN 703

Hon'ble Judges : B.S. Patil, J.

Bench : Single Bench

Advocate : Veena Hegde, Advocate for Rao Associates, for the Appellant

Final Decision : Disposed off

Judgement

B.S. Patil, J.—North West Karnataka Road Transport Corporation has filed this writ petition challenging the award passed by the Additional Labour Court, Hubli, thereby allowing the petition filed by the respondent under Section 10(4-A) of the Industrial Disputes (Karnataka Amendment Act 1987) Act, 1947 (for short, "the Act") setting aside the order of dismissal of the employee and directing his reinstatement with full backwages, but by withholding annual increment for the year 1995 and 1996.

2. Facts, stated in brief, are that respondent employee was on duty as a conductor in the bus plying between Londa and Hubli. On 07.12.1995, the bus was intercepted and inspected by the Inspection Squad of the Corporation. They found that out of 12 passengers, who had boarded at stage No. 18, Jagalpet, 3 passengers were not issued with tickets. According to the employee, he explained to the inspecting squad as to why he could not issue tickets to the remaining passengers, but the inspecting squad snatched the ticket tray and waybill and asked him to close the waybill. He was directed by the Inspector to sign on penal receipt and also on the offence memo, which he obeyed. Thus, he alleged that a false case was booked against him stating that he has not issued

tickets to 12 passengers at stage No. 18.

3. Articles of charges were issued to the employee. He denied the allegations. Enquiry was held. Based on the enquiry report, order of dismissal was passed by the Disciplinary Authority on 18.08.2004. Therefore, petitioner approached the Labour Court under Section 10(4-A) of the Act.

4. The Labour Court found that departmental enquiry held was fair and proper. However, as regards the punishment of dismissal, it came to the conclusion that punishment of dismissal was highly disproportionate and deserved modification, particularly because in the facts and circumstances as established in the enquiry, it emerged that the conductor had not collected any fare from 12 passengers and there were in all 34 passengers. The fact that he had not issued tickets and not collected fare of 3 passengers had been admitted. But, the Labour Court has recorded a finding that explanation offered by the delinquent was not acceptable because for the first time, he had come up with a case that just before reaching Kalapani village, 12 passengers entered the bus, but it was not his case that there was a request stop at that particular place. However, having due regard to the conduct of the delinquent in admitting the fact that for 3 of the passengers he could not issue tickets, nor collect the fare and that there were 34 passengers in the bus and that it was not just these 12 passengers who had boarded the bus from Jagalpet to Kalapani who were there in the bus and also in view of the fact that the incident had taken place in the year 1995, but the enquiry was conducted later, culminating in the order of dismissal dated 18.08.2004, the Labour Court exercising its power and jurisdiction under Section 11A of the Act has modified the punishment. It has set aside the order of dismissal by imposing a minor punishment of withholding of two increments awarding full backwages with a direction for reinstatement.

5. The employee has raised the industrial dispute without any loss of time during the year 2004 itself. The Labour Court has passed the award on 17.01.2008 directing reinstatement. However, the employee has attained the age of superannuation during the year 2008 itself. Therefore, though an interim order was granted by this Court earlier on 23.06.2008 staying the award with a direction to reinstate the employee subject to the result of the petition, the said order was subsequently recalled on 03.07.2008 having noticed the fact that respondent employee had already attained age of superannuation. Therefore, essentially the question would be whether the Labour Court was right and justified in interfering with the quantum of punishment.

6. The facts and circumstances of the case disclose that petitioner was an ex-army personnel. He was awarded with certain medals. He has been found guilty of non-issue of tickets and non-collection of fare thereby causing loss to the Corporation. There is no material on record to show that he was dishonestly misappropriating the amount to himself to cause loss to the Corporation. Even then, it cannot be lost sight that mistake committed by him tantamounted to misconduct for which he is liable for imposition of punishment. The Labour Court

was not at all justified in conferring such a favour on the employee by modifying the order of dismissal to enable him to get the entire backwages and to get away with only withholding of two increments. Even keeping in mind the principle that punishment to be imposed shall not be so disproportionate so as to shock one's conscience, the Labour Court ought not to have allowed the employee to get away so slightly. The result of the award passed by the Labour Court is that for a period of four years, the employee would get backwages without work apart from getting all other retiral benefits.

7. In my considered view, the employee cannot be given full backwages. The backwages have to be reduced to 35% while retaining the imposition of punishment of withholding of two increments. It is made clear that the employee shall be entitled for all the retiral benefits and only 35% of backwages. Writ Petition is accordingly disposed of.