

(2009) 02 KAR CK 0004
In the Karnataka High Court
Case No : Writ Appeal No. 558 of 2007

North West Karnataka Road Transport Corporation	APPELLANT
Vs	
C.Y. Sudi	RESPONDENT

Date of Decision : 10-02-2009

Acts Referred:

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

Citation : (2011) 4 KCCR 404 SN

Hon'ble Judges : P.D. Dinakaran, C.J;N.K. Patil, J

Bench : Division Bench

Advocate : Dinesh Rao, for the Appellant; V.S. Naik, for the Respondent

Final Decision : Allowed

Judgement

N.K. Patil, J.—The Petitioner-Appellant-Management, being aggrieved by the common order passed by the learned Single Judge dated 24th January 2007 in W.P. No. 31524/2003 C.W.W.P. No. 52702/2003, wherein, the writ petition filed by Petitioner-Appellant herein has been dismissed and the writ petition filed by workman-Respondent herein has been allowed in part holding that the workman-Respondent shall be entitled to continuity of service and in all other respects the impugned award stands undisturbed, has presented this writ appeal.

2. The workman-Respondent herein was working as a driver and during the course of his employment and when he was driving the bus on 20.12.1993 in a rash and negligent manner, had hit a boy aged about 10 years and the said boy died due to the injuries sustained in the said accident, causing pain and agony to his parents and in this background, the Appellant-Management, has initiated disciplinary proceeding against the workman-Respondent. The Disciplinary authority, after conducting a thorough enquiry, after giving substantial hearing to the workman-Respondent and after considering the oral and documentary evidence available on record, has held that the charges leveled against the workman-Respondent are proved and dismissed him from service, by its order dated 4.8.1997. Assailing the correctness of the said order, the workman-

Respondent had filed a petition u/s 10(4-A) of the Industrial Disputes Act, before the Labor Court, Hubli, in No. KID: 12071997. The Labor Court, in turn, after considering the pleadings available on file and after hearing both sides, has raised necessary points for consideration and after discussing the relevant material available on file, including the oral and documentary evidence, has answered the said points and allowed the petition filed by workman-Respondent in part and set aside the order of dismissal passed against the workman-Respondent on 4.8.1997 and directed the Appellant-management to reinstate the workman-Respondent into service, but without back wages and without continuity of service. Assailing the correctness of the order passed by the Labor Court, Hubli, the Appellant-Management and workman-Respondent have filed their respective writ petitions before this Court as referred above. Those writ petitions had come up for consideration before the learned Single Judge of this Court on 24th July 2007. The learned Single Judge, after hearing both sides, has dismissed the petition filed by the Appellant-management and allowed the writ petition filed by workman-Respondent in part, and modified the impugned award to the effect that, the workman-Respondent shall be entitled to continuity of service and in all other respects the said order remains undisturbed. Being aggrieved by the impugned common order passed by the learned Single Judge, as referred to above, Appellant-management felt necessitated to present this writ appeal.

3. We have heard learned Counsel appearing for Petitioner-Appellant-management and learned Counsel appearing for the workman-Respondent at considerable length of time.

4. After thorough evaluation of the entire material available on record, specifically, the order passed by the Disciplinary authority, the order passed by the Labor Court, Hubli and the order passed by the learned Single Judge, as stated supra, it is manifest on the face of the orders that, the Labor Court, Hubli and the learned Single Judge, both have committed an error, in proceeding to consider the reliefs sought for by "he workman-Respondent by partly allowing his petition and in setting aside the order of dismissal passed by the Disciplinary Authority of the Appellant-Management, without taking into consideration the fact that, due to rash and negligent driving of the workman-Respondent, he lost his control over the bus and dashed against a boy aged about 10 years and due to which, the boy succumbed to the injuries. It is clear from the evidence of the reporting officer that, after the boy fell down on the road, due to the impact, the vehicle went further but none of the wheels of the vehicle passed over his body and further it reveals from the cross-examination that, the vehicle in question moved further and stopped in a drainage mud, which goes to show that the driver-workman was unable to stop his vehicle immediately after seeing to the boy in front of the bus and bus went further for a distance of 20M and stopped and therefore, it establishes beyond reasonable doubt that, the vehicle was in high speed. The defense pleaded by the workman-Respondent is that, he tried his level best to avoid the accident and to save the boy, but he could not and

that none of the tires of the bus went over the body of the deceased boy. Further, the Labor Court has stated that, in view of the explanation given by the workman-Respondent and also looking into the sketch and the evidence given by the witnesses in the cross examination, the fact that remains unchallenged is that, even after the impact of the boy to whom the driver has observed along with two other boys, has merely taken the vehicle to the extreme left side of the road, but he has cared to stop the vehicle looking to the situation, but the vehicle could not be stopped by him, which clearly establishes that the vehicle was in high speed and he was able to stop the vehicle after moving a distance of 20 M, that too in a drainage mud by the side of the road. If that is so, the cross-examination proves that the vehicle was in high speed and driver has lost his control and dashed against one boy aged about 10 years, who succumbed to the injuries sustained in the said accident. The workman-Respondent has taken away the life of a boy who was aged about 10 years and who is the source of inspiration and hopes of his parents and if the boy has not met with an accident and died, he could have taken care of his parents in their old age and due to the death of their son they might have gone into depression and which may not be compensated by any means. The parents of the boy have lost their son due to rash and negligent driving of the bus by its driver and if the driver was little cautious and drove the bus in a normal speed, he might have avoided the accident. As a matter of fact, after considering the oral and documentary evidence, the Disciplinary Authority has recorded a finding that, the rash and negligent driving of the workman- Respondent has been proved and the same has been reiterated by the Labor Court and also by the learned Single Judge. All the three authorities have recorded the concurrent finding of fact that, the boy aged about 10 years was died due to the rash and negligent driving of the bus by the workman-Respondent herein. If that is so, showing leniency to the workman-Respondent and ordering for reinstatement in service without back wages and continuity of service cannot be sustained and it is liable to be set aside at the threshold. Further, learned Single Judge has also committed an error in taking a lenient view by allowing the writ petition filed by workman-Respondent and in modifying the order that, the workman shall be entitled to the continuity of service and the said modification cannot be sustained, having regard to the magnitude of the charge leveled against the workman-Respondent, on the ground that, he would be placed at a serious disadvantage of deprivation of other benefits that he would be entitled to in the usual course in the event of his service is not continued. The said observation made by the learned Single Judge cannot be sustained and it is not feasible to show such leniency to a person who has committed grave injustice and misconduct during the course of discharging his duty as driver and he being the driver by profession, ought to have taken all care while driving the bus. Therefore, the impugned order passed by the Labor Court and by the learned Single Judge is not fair and the punishment imposed by the Disciplinary authority of the Appellant-Management is commensurate to the charges leveled against him. Further, it is unfortunate to observe that the counsel for the Petitioner-Appellant-management despite of taking a specific

ground that, the act of rash and negligent driving was grave mis-conduct warranting dismissal and the same could not have been compromised for any reasons, ought not to have volunteered on the last date of hearing before the court for not pressing reinstatement. But we are of the opinion that the concession of the learned Single Judge, which has obtained contrary to the ground taken by the corporation is not binding on us. Therefore, having regard to the facts and circumstances of the case and in view of the legal and factual aspect of the matter and after re-appreciation of the oral and documentary evidence that, the orders impugned passed by the Labor Court, Hubli, and the learned Single of this Court cannot be sustained and hence, they are liable to be set aside.

5. For the foregoing reasons, the writ appeal filed by Appellant-management is hereby allowed.

The order passed by the learned Single Judge dated 24th January 2007 passed in W.P. No. 52702/2003 filed by the workman-Respondent herein, is set aside.

The order passed by the Appellant-management, dismissing the workman-Respondent is confirmed.