
(2000) 08 KAR CK 0006
In the Karnataka High Court
Case No : W.A. No. 1057 of 2000

North West Karnataka Road Transport Corporation	APPELLANT
Vs	
H.B. Nadiger	RESPONDENT

Date of Decision : 28-08-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10 (4-A), 11 A

Citation : (2001) ILR (Kar) 2650 : (2001) 1 LLJ 998

Hon'ble Judges : Manjula Chellur, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : Puttige R. Ramesh, for the Appellant; S. Deshpande, for the Respondent

Final Decision : Allowed

Judgement

1. This writ appeal has been preferred by the Karnataka State Road Transport Corporation challenging the order of the learned single Judge, who has affirmed the award of the Labour Court directing reinstatement of the respondent conductor, who was admittedly found to be guilty of misappropriation and pilfering Corporation's revenue collected by way of fare from the passengers.

2. Now, it is a matter of record that on August 19, 1991, while the respondent was on duty as conductor in the Corporation bus bearing registration No. CAF 9868 coming from Sirsi to Mattigatta, on inspection by the checking squad, it was found that 20 passengers were travelling without ticket though he had collected Rs. 3/- from each of those passengers. Thereafter, the respondent was subjected to disciplinary enquiry in which the misconduct was duly proved and as a measure of punishment he was dismissed from service.

3. Thereafter, the respondent conductor raised an industrial dispute before the Labour Court u/s 10(4-A) of the Industrial Disputes Act, 1947. Before the Labour Court, he admitted the fairness of the enquiry conducted by the Corporation. For the misconduct committed by him, he offered to suffer Rs. 15,000/- as penalty

and to forego back wages, if he is directed to be reinstated in service. The Labour Court without examining as to whether the punishment awarded by the Corporation was "shockingly disproportionate" to the proved charges, by accepting the plea of the respondent, directed for his reinstatement subject to penalty of Rs. 15,000/- to be paid by the respondent conductor as fine to the appellant Corporation. On being challenged by the appellant Corporation, the learned single Judge affirmed the award of the Labour Court.

4. In our opinion, the view taken by the Labour Court is clearly fallacious and contrary to the law declared by the Supreme Court in various cases.

5. In the case of D.C. Roy Vs. The Presiding Officer, Madhya Pradesh Industrial Court, Indore and Others, , the appellant, who was working as a Ticket Examiner in the M.P. State Road Transport Corporation, on a proved charge of his colluding with the conductor of the Corporation's bus, who despite collection of fare had failed to issue tickets to 9 1/2 passengers was dismissed from service as a measure of punishment. The Supreme Court upheld the punishment by holding that :

"The appellant having acted dishonestly in connection with the business of the Corporation, he was clearly guilty of a major misconduct."

6. Similar view, as in the above case, was taken by a three Judges Bench of the Supreme Court in the case of State of Haryana and Another Vs. Rattan Singh, . In this case as well, the conductor of the Haryana Road Transport Corporation was found guilty of not issuing tickets to 11 passengers despite collection of fare from them. On establishment of the guilt in the domestic enquiry his services were terminated. He challenged the order before the Civil Court and succeeded. State's appeal before the District Judge and the High Court failed. On appeal, the Supreme Court upheld the termination.

7. In the case of State of Haryana v. Ratan Singh (supra), the principal ground on which the Courts below had declared the termination as bad was that none of the 11 passengers had been examined in the domestic enquiry. The explanation of the State was that according to the Inspector of Flying Squad, the passengers who had said that they had paid fares declined to give written statement. Taking into account the above facts borne out from the records, the Supreme Court took the view that in State of Haryana and Another Vs. Rattan Singh, , 48:

"5. Reliance was placed, as earlier stated, on the non-compliance with the departmental instruction that statements of passengers should be recorded by Inspectors. These are instructions of prudence, not rules that bind or vitiate in the violation. In this case, the Inspector tried to get the statements but the passengers declined, the psychology of the latter in such circumstances being understandable, although may not be approved. We cannot hold that merely because statements of passengers were not recorded the order that followed was invalid."

8. In the above case, it has further been held that "the Courts below had misdirected themselves, in insisting that passengers who had come in and gone out should be chased and brought before the Tribunal before a valid finding could be recorded." In the above case, the Apex Court has clarified and declared as of law that "in domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility". Their Lordships have further clarified that in domestic enquiry what is required to be ascertained is as to whether there is some evidence or was there no evidence not in the sense of the technical rules governing regular Court proceedings but in a fair common sense way as men of understanding and worldly wisdom will accept. On fact, the Court held that the evidence of Inspector of Flying Squad was enough to substantiate the charges levelled against the respondent conductor and accordingly punishment of termination could not have been interfered with.

9. In the case of U.P. SRTC v. Basudeo Chaudhary, (1997) 11 SCC 370 , the conductor of UPSTRC, after due enquiry was dismissed from service on the charge that though he had collected bus fare from 23 passengers at the rate of Rs. 5.35/- per head but in the waybill he had entered as Rs. 2.35 from each of them. By the said process, the conductor had tried to misappropriate a sum of Rs. 65/-. The said finding was accepted by the Labour Court but the High Court interfered with the said order by taking the view that the charges against the petitioner had not been proved to the hilt. Despite the above facts, the Supreme Court, on appeal has held that since the conductor had tried to fabricate the record by recording recovery of wrong fare, to show that the passengers had travelled for a lesser distance amounts to misconduct of serious nature (Para 5). It was held that having regard to the nature of misconduct that has been established against the petitioner, it is not possible to say that the Corporation, in removing the petitioner from service, had imposed a punishment which can be held as disproportionate to the misconduct.

10. The Supreme Court in the case of U.P. State Road Transport Corporation Vs. Subhash Chandra Sharma and Others, has elaborately considered the powers of the Labour Court as also of the High Court under Article 226 of the Constitution with regard to interference with the punishment awarded by the employers u/s 11-A of the Industrial Disputes Act, 1947. It has been held by the Supreme Court that for interference either by the Labour Court or by the High Court with the punishment imposed by the management against the workman, it must be found that it was in any way "shockingly disproportionate" to the nature of the charges found proved against him.

11. In the present case, as has been noticed even by the learned single Judge it had been admitted by the respondent conductor before the Labour Court that he has been punished for his proved act of misconduct pursuant to a fairly conducted departmental enquiry.

12. Despite the facts as found in the present case, the Labour Court by merely accepting the offer of the respondent conductor that he would pay Rs. 15,000/- as fine to the appellant Corporation for the misconduct committed by him, had passed an award directing reinstatement with continuity of service but without back wages. The legality of the Labour Court's award being questioned by the appellant Corporation before this Court in writ jurisdiction, the learned single Judge has affirmed the view taken by the Labour Court.

13. In our opinion, keeping in view the law laid down by the Supreme Court and the standard or extent of evidence which is required to be led in the disciplinary proceedings in relation to the charge of non-issuance of tickets despite collection of fares from the passengers for proving misconduct of pilferage committed by the delinquent and non-examination of passengers during the domestic enquiry or before the Labour Court, in case the enquiry is found to be defective, cannot be taken to be a ground for disproving the charges. Similarly, non-counting of cash available with the conductor as well cannot be held to be of any relevance in relation to the said charge. On the other hand, if the cash found with the conductor is found to be in excess of the permissible limit, it may have more corroborative value to sustain the charge.

14. On the facts of the present case and the law laid down by the Supreme Court, it cannot be said that the punishment imposed by the management was "shockingly disproportionate". Therefore, neither the Labour Court nor this Court could have directed for reinstatement substituting the major punishment of dismissal with a meagre fine of Rs. 15,000/- which such delinquents will always be ready to pay.

15. Deprecating misplaced judicial sympathies tending to subvert the rule of law, the Supreme Court in the case of Kerala Solvent Extractions Ltd. Vs. A. Unnikrishnan and Another, has held that in P. 890 of LLJ:

"7. In recent times, there is an increasing evidence of this, perhaps well meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the Courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain, the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy, of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability."

16. Accordingly, we set aside the order of the learned single Judge and quash the award of the Labour Court, restoring the order of the disciplinary authority awarding the major punishment of dismissal against the respondent.

17. In the result, the writ appeal is allowed. No costs.