

(2003) 11 KAR CK 0031
In the Karnataka High Court
Case No : Writ Petition No. 36171 of 2003

North West Karnataka Road Transport Corporation	APPELLANT
Vs	
R.S. Wali	RESPONDENT

Date of Decision : 19-11-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10 (4-A), 11 A

Citation : (2004) 2 KarLJ 479 : (2004) 2 KCCR 138 SN

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : L. Govindraj, for the Appellant; S.B. Mukkannappa, for the Respondent

Judgement

N. Kumar, J.—The petitioner-Corporation has challenged in this writ petition the award of the Labour Court which has set aside the order of dismissal passed by the Disciplinary Authority and imposed a penalty of stoppage of five increments with cumulative effect.

2. The facts in brief are as under:

The respondent was employed as conductor in the Belgaum Division of the petitioner-Corporation. On 27-6-1996 while on route C.B.T.-Kanabargi he was found not to have issued tickets to 12 passengers, the fare being Rs. 1.25 each. The Checking Inspectors levied penalty of 10 times fare upon the passengers and collected the penalty from the passengers. At the time when the checking squad checked the bus there were 58 passengers, one child and ten persons who are having passes. Out of these 58 passengers 12 had no tickets. Immediately, thereafter checking officials issued an offence memo to the workman which is duly acknowledged by him. The respondent has also affixed his signature to the penalty receipt. Thereafter, they submitted the report to their superiors and on the basis of the said report a charge-sheet was issued to the respondent accusing him of not issuing tickets to 12 passengers and not collecting the fare.

The respondent denied all the allegations. An enquiry was initiated. In the enquiry the checking officials gave their evidence and have produced the way-bill, offence memo, penalty receipt, statement of passengers and the unpunched tickets. Respondent had the assistance of a co-worker who had cross-examined the witness on behalf of the Corporation. When he was called upon to adduce evidence in support of his defence he did not adduce any evidence but was content with filing statement in writing. On the basis of the aforesaid material, the Enquiry Officer submitted a report holding that the charges levelled against the respondent stands proved. The Disciplinary Authority taking note of the fact that the respondent had a past record of 89 cases and earlier also once he was dismissed from service and on his raising a dispute before the Labour Court., in the Lokadalat the matter was settled and he was given fresh employment came to the conclusion that in spite of several opportunities being given to him for reformation as he is persisting in the misconduct imposed a penalty of dismissal.

3. The respondent raised industrial dispute u/s 10(4-A) of the Industrial Disputes Act before the Labour Court, Hubli, contending that the domestic enquiry conducted is not fair and proper and that the charges levelled against him are not proved. Evidence was recorded on the preliminary issue of validity of domestic enquiry. Labour Court by an order dated 19-6-2001, held that the domestic enquiry is valid and proper. Thereafter, the Labour Court heard the learned Counsels appearing for both parties and considering the material placed on record before the Enquiry Officer came to the conclusion that the misconduct alleged against the respondent is not proved. Having held that the misconduct is not proved by taking note of the fact that he had past history of 89 cases he proceeded to impose penalty of withholding of five increments. It is against the said award the petitioner has preferred this writ petition.

4. The Labour Court recorded a finding that the checking officials were confused and that they have not led any consistent evidence to prove the charge of misconduct. In coming to the said conclusion, the Labour Court relies on an answer given in the cross-examination of the Checking Inspector, in answer to a question put to him to the effect, when he checked how many passengers had tickets. The answer was 46 passengers plus one child and ten passengers with passes were there. This answer is misconstrued by the Labour Court as an admission on the part of the checking squad that only 48 passengers were there when checking was done. In that context, the Labour Court has held that the charge of misconduct is not proved. The other ground given by the labour Court for holding charges not proved is that the checking squad ought to have checked the cash bag of the conductor to find out whether there is any excess amount which would have shown the pilferage alleged against the respondent. As the checking squad was under confusion and as they have not given clear-cut and cogent evidence before the Enquiry Officer the Court holds that the charges levelled against the respondent are not proved.

5. Assailing the said finding, learned Counsel appearing for the petitioner

contends, it is a clear case of misreading of evidence by the Labour Court. The checking official in categorical terms have stated in the examination-in-chief, at the time of checking of the bus there were 58 passengers + 1 child + 10 persons with passes. What has been said in the cross-examination in answer to a question put by a co-worker of the respondent that how many passengers in the bus out of 58 had tickets, the answer was 46 persons. Therefore, he submits that there is no confusion either in the evidence of the checking officials or the material on record. It is also settled law that there is no obligation cast upon the checking official to check the cash in the cash bag as held in various judgments of this Court. Therefore, he submits, the finding recorded by the Labour Court is perverse, contrary to the material on record and is a case of misreading of evidence and as such this Court in its jurisdiction under Articles 226 and 227 of the Constitution has the jurisdiction to correct the said finding of fact recorded by the Labour Court.

6. Per contra, learned Counsel appearing for the respondent submits, it is settled law that this Court in exercise of its jurisdiction under Articles 226 and 227 is not sitting as Appellate Authority and it has no jurisdiction to interfere with the finding of fact recorded by the Labour Court merely because on the same set of facts it can come to a different conclusion. He farther submits that the Labour Court has considered all the material on record, and after appreciation has recorded a finding of fact that misconduct is not proved. Even if there is any laches this Court cannot interfere with the said finding of fact and in support of the said contention he relies on several judgments of this Court as well as the Supreme Court. On merits also, the learned Counsel submits, a reading of the way-bill which is the most material piece of evidence on record shows that there were only 46 passengers to whom he had already issued tickets and it is also on record by way of admission of management witness, 12 persons who had no tickets admitted before them, that the conductor had issued tickets to them and they had lost it. In view of this clinching evidence on record it cannot be held that the respondent failed to issue tickets to 12 persons. Therefore, he submits that a case for interference with the award passed by the Labour Court is not made out.

7. Therefore, the short point that arise for my consideration, in view of the aforesaid contention is, whether the finding recorded by the Labour Court on question of fact is perverse, capricious and is on account of misreading of evidence so as to call for interference by this Court under Articles 226 and 227 of the Constitution.

8. The Supreme Court in the case of *Essen Deinki Vs. Rajiv Kumar*, , has held as under:

Generally speaking, exercise of jurisdiction under Article 227 of the Constitution is limited and restrictive in nature. It is so exercised in the normal circumstances for want of jurisdiction, errors of law, perverse findings and gross violation of natural justice, to name a few. It is merely a revisional jurisdiction and does not

confer an unlimited authority or prerogative to correct all order or even wrong decisions made within the limits of the jurisdiction of the Courts below. The finding of fact being within the domain of the inferior Tribunal, except where it is a perverse recording thereof or not based on any material whatsoever resulting in manifest injustice, interference under the article is not called for.

9. The Supreme Court in the case of Nibaran Chandra Bag etc. Vs. Mahendra Nath Ghughu, , has held that the jurisdiction so conferred is by no means appellate in nature for correcting errors in the decision of the subordinate Courts or Tribunals but is merely a power of superintendence to be used to keep them within the bounds of their authority.

10. Again in the case of Mani Nariman Daruwala alias Bharucha (Deceased) through Lrs. and Others Vs. Phiroz N. Bhatena and Others, , it has been laid down as under:

In the exercise of this jurisdiction the High Court can set aside or ignore the findings of fact of an inferior Court or Tribunal if there was no evidence to justify such a conclusion and if no reasonable person could possibly have come to the conclusion which the Court or Tribunal who (sic) has come or in other words it is a finding which was perverse in law. Except to the limited extent indicated above the High Court has no jurisdiction to interfere with the findings of fact.

11. The Supreme Court in the case of Khalil Ahmed Bashir Ahmed Vs. Tufelhussein Samasbhai Sarangpurwala, , dealing with the power under Articles 226 and 227 of the Constitution has held as under:--

Where two views are possible and the Trial Court has taken one view which is a possible and plausible view, merely because another view is attractive, the High Court should not interfere with the finding of the Trial Court under Article 227.

The Supreme Court in the case of H.S. Chandra Shekara Chari Vs. The Divisional Controller, KSRTC and Another, , it has been held, once the Tribunal had found that the charges against the appellant were not established, it was not open to the learned Single Judge, who had rightly refused to reappraise the evidence, to say that with better proof the charges could have been established. The learned Single Judge had no jurisdiction, not even u/s 11A of the Industrial Disputes Act, 1947, to enter into the question whether the charges could have been established by better or further evidence. That is not the function of the Court or any quasi-judicial authority.

12. Therefore, the law on the point is well-settled. The scope of interference under Articles 226 and 227 insofar as finding of fact recorded by Tribunal or Court is concerned, is limited and restrictive in nature. It is merely a revisional jurisdiction and by no means appellate in nature. Where two views are possible and the Tribunal or Trial Court has taken one view, which is possible and plausible view, merely because another view is possible or attractive, is not a ground for interference. But, the circumstances under which interference is

warranted in respect of a finding of fact is also well-defined. If the finding of fact recorded is not based on evidence, if there was no evidence to justify such a conclusion, if the evidence on record is misread, if no reasonable person could possibly have come to the conclusion which the Court or Tribunal has come, in other words, it is a finding which is perverse, which has resulted in manifest injustice, then not only a case for interference is made out but it becomes the duty of the High Court to interfere with such a finding of fact and set right the injustice done.

13. Therefore, what has to be seen in this case is, on the facts which are brought on record whether the finding recorded by the Labour Court suffers from any one of the vices referred to supra.

14. As already stated, the main thing which prevailed on the Labour Court to record a finding of misconduct and having been proved is that, in the cross-examination the management witness admits that when he checked the bus there were only 46 passengers with tickets. Therefore, the Court records a finding that the charge against the respondent that there were 12 passengers without tickets is not proved. Learned Judge has not read the evidence properly. In the examination-in-chief, the management witness in categorical terms has stated that when they checked the bus there were 58 passengers, one child and ten passengers who possessed passes. In the cross-examination, what has been said is, out of 58 passengers only 46 had tickets. Therefore, there were 12 ticketless passengers. This evidence has been ignored, quoted out of context and on that basis Tribunal has come to the conclusion there is a confusion in the mind of the management witness and their evidence is not cogent. The confusion is in the mind of the Court and not in the evidence adduced by the management witness. The second reason given is, that 12 ticketless passengers stated at the time of checking that they have purchased tickets and all the twelve persons had lost their tickets. The Labour Court holds, in view of this categorical statement by the passengers which is admitted by the management witness non-issue of tickets has to fail. What the Court failed to notice was those 12 passengers did pay the penalty. If they had paid fare and purchased tickets when the bus was checked during the course of journey even if those tickets were not in the pocket it should have been in the bus. Moreover, when evidence clearly establishes that there were 12 passengers without tickets in the bus, if the number of passengers in the bus were 58 and 46 had valid tickets and 12 passengers without tickets, charge of misconduct alleged against the respondent stands proved. The third ground on which the Labour Court held that misconduct is not proved is that the checking squad did not check the cash in the cash bag. That is hardly a ground to come to the conclusion that misconduct is not proved. It is an error of law. The Supreme Court and this Court in number of judgments have held that there is no obligation cast upon the checking squad to check the case in the cash bag in order to establish the plea of pilferage. Lastly, it was contended on behalf of the respondent that the entries in the way-bill disprove the case of the petitioner. The way-bill is marked as Ext. M. 5. This is the only undisputed documentary

evidence on record. In the last page it is mentioned as 58+0. Thereafter, there is an entry to the effect that 46+1+10 in the bottom there is an entry 12 NINC of Rs. 1.25 and number of the offence memo is mentioned and the checking squad has put their signatures. A reading of the aforesaid entries makes it very clear, as is mentioned in the top there were 58 passengers out of which 46 adult who had been issued tickets and 12 persons were travelling without tickets. The learned Judge has failed to look into this admitted documentary evidence on record and appreciate the entries therein properly. It is also on record, immediately after the checking, respondent was served with offence memo and he has also signed the penalty receipt. As rightly pointed out by the learned Counsel appearing for the petitioner/respondent filed his reply to the offence memo only after a month. During this period the respondent did not choose to complain to the higher authorities to the effect that either the signature is obtained to the offence memo or penalty memo by force as pleaded by him or that a false case is registered against him, even though when the checking squad entered the bus there were only 46 passengers and all of them possessed valid tickets. In view of this unimpeachable evidence on record the finding recorded by the Labour Court is perverse, capricious and therefore, in view of the law stated above not only this Court has power to interfere with the said finding of fact, but it also becomes the duty of this Court to set aside the said finding. Accordingly, from the material on record and in the light of the discussion made above I hold that the misconduct alleged by the petitioner against the respondent stands proved.

15. Before imposing the penalty of dismissal the respondent was served with report of the Enquiry Officer along with the particulars of past record for which the respondent has given reply. He did not dispute his past record of 89 cases. The said record also discloses, earlier he had been dismissed from service once on the same charges. He had raised industrial dispute and in the lokadalat compromise was arrived at and he was reinstated with the fond hope that he would not repeat the same mistake again but the hope expressed by the Corporation has proved to be wrong. Taking into account all these facts the Disciplinary Authority by virtue of the statutory obligation cast upon him under Regulation 25 have rightly dismissed the respondent from service. In fact, the Labour Court also looks into the past record and comes to the conclusion, even though in the instant case misconduct is not proved because of past history he should be penalised with stoppage of five increments which is unwarranted and perverse. Suffice is to say in view of the past conduct of 89 cases coupled with the fact in the instant case the alleged misconduct is proved and in view of the law laid down by the Supreme Court and this Court on the point a case for exercise of any discretion u/s 11A also is not made out. In that view of the matter, I pass the following order.

Writ petition is allowed. Award of the Labour Court is hereby quashed. Order of dismissal passed by the Disciplinary Authority is restored. Parties to bear their own costs.