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**(2013) 09 KAR CK 0003**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 63023 of 2011**

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|-------------------------------------------------|------------|
| North West Karnataka Road Transport Corporation | APPELLANT  |
| Vs                                              |            |
| U.T. Kinekar                                    | RESPONDENT |

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**Date of Decision :** 13-09-2013

**Acts Referred:**

**Citation :** (2013) 09 KAR CK 0003

**Hon'ble Judges :** Ashok B. Hinchigeri, J

**Bench :** Single Bench

**Advocate :** J.S. Shetty, for the Appellant; S.K. Hegde, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Ashok B. Hinchigeri, J.—The petitioner has raised the challenge to the award, dated 5.8.2010 passed by the Labour Court, Hubli in Reference No. 11/2007. The facts of the case in brief are that the respondent, who was working as a conductor in the services of the petitioner, was conducting the bus from Dharmasthala to Byadgi on 16.4.2004. When the bus was intercepted by the checking squad at stage No. 5 Chikkerur, it was found that there were 10 ticketless passengers travelling from Hirekerur to Chikkerur. The domestic enquiry found the respondent guilty of the charges culminating in the passing of the dismissal order, dated 8.1.2005 by the Disciplinary Authority. The respondent raised the industrial dispute. As the conciliation failed, the matter was referred by the Government to the Labour Court. The Labour Court delivered the finding that the domestic enquiry held is fair and proper and that the respondent is guilty of the charges. However, it modified the punishment from dismissal to the stoppage of three increments with cumulative effect. It granted him the continuity of service but without the backwages.

2. Sri J.S. Shetty, the learned counsel for the petitioner submits that the respondent was a trainee conductor. Even during the period of training itself, he has committed as many as 16 misconducts. Contending that the pilferage of

revenue warrants the punishment of dismissal, he relies on the Apex Court's judgment in the case of Karnataka State Road Transport Corporation Vs. B.S. Hullikatti, .

3. Sri S.K. Hegde, the learned counsel for the respondent submits that the respondent has worked as a conductor for an unbroken period of 8 years between 1996 to 2005. The respondent is taken by surprise that the petitioner is alleging 16 misconducts against him in the disciplinary order. He submits that unless the past misconducts form part of the charge, as held by the Division Bench, by its judgment, dated 29.1.2009 passed in W.A. No. 698/2008, no reliance can be placed on the alleged past misconducts for the purpose of awarding the extreme punishment of dismissal.

4. My perusal of the impugned award reveals that the Labour Court has taken a very balanced view. It has rightly held that the domestic enquiry held is fair and proper and that the respondent is indeed guilty of the charge of not issuing the tickets to 10 passengers. However, it has found the punishment to be disproportionate and hence it has scaled it down to the stoppage of three increments with cumulative effect. It has rightly denied the backwages to him but has only granted the continuity of service.

5. The petitioner's attempt to justify the dismissal order based on the past misconducts does not lead it anywhere in view of the Division Bench's judgment, dated 28.1.2009 passed in W.A. No. 398/2008. The relevant paragraph of the said judgment reads as follows:

10. Further, the findings and reasons recorded by the Labour Court at paragraph 23 and 25 in the impugned judgment holding that the order of dismissal is justified is contrary to the judgments of Supreme Court and the Division Bench decisions of this Court in B. Nagaraju Vs. Karnataka State Road Transport Corporation and another, referred to before, wherein it is clearly stated that past service record of the delinquent workman at the time of passing an order of dismissal must be taken into consideration, it must be part of the charge in the charge sheet or the said past service record should be put to the workman and the same must be independently proved before considering and passing an order of dismissal which is a grave penalty. That has not been done in the instant case by the disciplinary authority. Therefore, the order of dismissal passed by the disciplinary authority, against the appellant, which is affirmed by the Labour Court and concluded by the learned Single Judge is contrary to law laid down by the Apex Court and this Court.

6. As the impugned award is proper and balanced, I do not see any scope for my interference. This petition is dismissed. It is clarified that the Labour Courts direction to reinstate the respondent into service is obviously to the position, which he had, as on the date of his dismissal from service. The petitioner shall comply with the Labour Court's direction within two months from the date of the issuance of the certified copy of today's order. No order as to costs.