

(2015) 01 KAR CK 0492

In the Karnataka High Court

Case No : Writ Petition No. 22860/2005 (L-KSRTC)

Ramnath

APPELLANT

Vs

The Management of NWKRTC Uttra Kannada Division

RESPONDENT

Date of Decision : 30-01-2015

Acts Referred:

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

Citation : (2015) 145 FLR 728 : (2015) LLR 401

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : Ravi Hegde, for the Appellant; Sunita P. Kalasoor, Advocates for the Respondent

Final Decision : Disposed off

Judgement

A.S. Bopanna, J.

1. The petitioner is before this Court assailing the Award dated 03.06.2005 passed in KID No. 49/2002. The Labour Court by its Award has dismissed the petition filed by the petitioner. The petitioner was working as a driver in the respondent-Corporation. While he was driving the bus bearing No. KA-31 F-394 on Sirsi Sagara route on 18.12.1998, the bus had gone off the road on right side and overturned. According to the respondent, eight passengers were injured in the said accident. Hence, an Article of Charge dated 13.03.1999 was issued, an enquiry was held and thereafter the petitioner was dismissed from the services of the respondent-Corporation with effect from 28.02.2002. The petitioner raised a dispute under Section 10(4)(A) of the Industrial Disputes Act, 1947 ("I.D. Act" for short). The validity of the domestic enquiry was considered as a preliminary issue and the Labour Court by its order dated 31.01.2004 held the same to be not fair and proper.

2. The respondent-Corporation thereafter examined two witnesses as MW1 and MW2 to establish the charges afresh before the Labour Court. The petitioner-

workman examined himself as WW1. The Labour Court on analyzing the evidence before it has arrived at the conclusion that the accident had occurred due to the rash and negligent driving of the petitioner and therefore, rejected the petition. It is in that view, the petitioner is assailing the Award passed by the Labour Court.

3. Heard the learned counsel for the parties and perused the petition papers including the records received from the Labour Court.

4. At the outset, a perusal of the observation made in the Award by the Labour Court would indicate that though the Labour Court had observed that the witnesses on behalf of the respondent had alleged that the petitioner had caused the accident due to his rash and negligent driving and further had noticed that there was no mechanical defect in the bus as claimed by the petitioner, has held the petitioner to be guilty since he has admitted the occurrence of the accident. The Labour Court has also taken note of the fact that the petitioner had caused five earlier accidents and as such has come to the conclusion that the action against the petitioner is justified.

5. While taking note of such conclusion reached by the Labour Court, this Court in a writ proceeding is required to find out as to whether the evidence which was available on record has been properly appreciated by the Labour Court. As noticed, though the charge alleged against the petitioner was established in the domestic enquiry, since the validity of the domestic enquiry was set aside by the Labour Court, the evidence thereafter tendered on behalf of respondent-Corporation to establish the charge afresh before the Labour Court would become relevant.

6. In this regard, it is seen that Sri Shiva Shankar Mangappa Hegde, Assistant Traffic Inspector was examined as MW1 and further Sri Gopalakrishna Devaru, was examined as MW2. From the evidence of the said witnesses, it is clear that they were neither travelling in the bus nor were present at the spot where the accident had occurred so as to speak with the nature of the occurrence. The witness MW1 has however spoken with regard to the accident based on his inspection of the spot which he had made subsequently and the other documents which had been perused by him. MW2 was examined to state about the earlier instance since he is working in the Default Section and the record in that regard is maintained therein.

7. No doubt from the M.V. Report, no mechanical defect in the vehicle is found. Yet, the question that would arise for consideration is as to whether the accident had occurred due to the rash and negligent driving of the petitioner?

8. The evidence of MW1 and MW2 does not lead to such conclusion. No other witness, either the persons who had travelled in the bus or the Conductor who had conducted the bus on the said date had been examined as a witness to establish the fact that the petitioner was rash and negligent in driving.

9. In that light, merely because the petitioner has admitted the occurrence of the accident, that in itself cannot lead to the conclusion that he was rash and negligent when he has proceeded further to state with regard to the manner in which the accident had occurred. Hence, it could also be concluded that there was an error of judgment in negotiating the turn when a lorry had approached from the opposite direction. It is no doubt true that though the other accidents had occurred when the petitioner was driving the buses on earlier occasions, the Labour Court ought not to have been led by this fact alone. However, the document at Exhs. M18 marked through MW2 viz., default sheet though refers to the earlier accidents, it is seen that out of five accidents referred therein, in two accidents, it has been held that the petitioner was not responsible for the said accidents. In such circumstance, when there was no conclusive material to indicate that the instant accident had occurred only due to the rash and negligent driving of the petitioner, the punishment of dismissal from service would be too harsh.

10. When no such conclusion of rash and negligent driving can be reached and even in such circumstance since it is found that he had also caused earlier accidents to see that the petitioner would be more careful in future, it would have been appropriate to impose such other alternate punishment and the respondent could have also explored the possibility of assigning such duties to the petitioner where he may not have to drive on long distance journeys. Without exploring the same, the order of dismissal would not only affect the petitioner, but his dependants would be too harsh a punishment for causing the accident without there being conclusion that it was due to his negligence.

11. Therefore, when the charge of rash and negligent driving is not established, though the accident has occurred while the petitioner was driving the bus, in my opinion, it would be appropriate to modify the Award and impose such appropriate punishment which would serve the purpose of securing the petitioner to undertake his duties in a diligent manner in future. Hence, the Award dated 03.06.2005 is set aside. In substitution, the respondent-Corporation is directed to reinstate the petitioner into service with continuity of service, but without consequential benefits. Further, in modification of the punishment, the respondent shall impose the punishment of withholding of two increments with cumulative effect.

In terms of the above, the petition stands disposed of.