

(2008) 07 KAR CK 0094
In the Karnataka High Court
Case No : Writ Appeal No. 3074 of 2005

Shaikh Dawood

APPELLANT

Vs

The Divisional Controller, KSRTC

RESPONDENT

Date of Decision : 28-07-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 11 A

Citation : (2009) ILR (Kar) 3287 : (2011) 2 KarLJ 598 : (2010) 1 SLR 385

Hon'ble Judges : V. Gopala Gowda, J;Arali Nagaraj, J

Bench : Division Bench

Advocate : P. Vilas Kumar, for the Appellant; Shivakumar S. Badawadagi, for the Respondent

Final Decision : Allowed

Judgement

Arali Nagaraj, J.—The appellant workman herein has challenged the order of the Learned Single Judge of this Court dated 1.7.2005, passed in WP 40505/99 (LK) that was filed by the respondent herein viz., the Divisional Controller, KSRTC, Raichur Division, Raichur, allowing the said writ petition and setting aside the award of the Labour Court, Gulbarga dated 18.5.1999 passed in Ref. No. 87/97 directing the respondent-employer to reinstate the appellant workman, and restoring the order dated 16.12.1983 passed by the respondent-Divisional Controller and Disciplinary Authority dismissing the appellant workman from his service as Driver on the ground of mis-conduct.

2. The case of the respondent-Corporation (employer) as could be gathered from the Articles of charge that were framed against appellant-workman and the enquiry conducted against him is as under:

On the night of 9.4.1980, the appellant, being driver of the KSRTC bus bearing Registration No. MEF-8054 drove the said bus from Raichur to Hubli and arrived at Hubli on 10.4.1980 at 6.50 A.M. Thereafter, at about 10 A.M., he took the said bus from Hubli Bus stand informing its conductor namely Sri. Hanumantha Rao

that he was taking the said vehicle for filling the fuel and then misused the same for doing the trips between Hubli and Dharwad and, by 3.50 P.M. on that day he brought the said bus to the Mofussal Depot at Hubli and left it there. By misusing the said bus he wrongfully gained by collecting freight from - the passengers and, at the time when he left the bus at the said depot, he was found possessed of Rs. 22/- as against Rs. 10/- which was declared by him in the morning.

3. On the charges, levelled against the appellant workman, the domestic enquiry was held against him by the respondent-Corporation. The enquiry officer found the said charges proved against the appellant and accordingly he submitted his report along with records before the Disciplinary Authority, who accepted the said report and passed the order of dismissal dated 16.12.1983. Thereafter, the conciliation was held by the Conciliation Officer at the instance of the Workman as he has raised an industrial dispute with regard to his dismissal from services of the corporations but the conciliation failed.

4. After the conciliation failed, a reference was made by the Government to the Labour Court for adjudication of the industrial dispute as per the points referred to it. A preliminary issue was framed by the Learned Presiding Officer of the Labour Court as to the validity of the domestic enquiry as required in law. The Learned Presiding Officer, by his order dated 27.10.1998 held that the domestic enquiry conducted by the enquiry officer was valid. Having held so, he examined the correctness of the findings recorded by the Disciplinary Authority in the order of dismissal with reference the report of the enquiry officer and also the evidence placed on record by the respondent-Corporation before the enquiry officer. Ultimately the Labour Court, on re-appreciations of material on record, recorded its finding of fact holding that the finding of the Disciplinary Authority was not sustainable and therefore, it passed the award, by setting aside the order of dismissal of the Disciplinary Authority and directed it to re-instate the appellant. However, the Labour Court accepted the finding of the Disciplinary Authority in respect of the charge as to the appellant possessing Rs. 22/- as against the declared amount of Rs. 10/- and therefore ordered cutting of one increment for a period of one year and denied back wages to the extent of 5% only in exercise of its power u/s 11A of the I.D. Act, by substituting the above lesser punishment upon the workman.

5. The said award of the Labour Court was challenged by the respondent-Corporation in the said writ petition. The Learned Single Judge, by passing the impugned order has allowed the said writ petition and set aside the award passed by the Labour Court and restored the Order of Dismissal passed by the Disciplinary Authority. This order of the Learned Single Judge is challenged in this appeal.

6. Having heard the arguments of the Learned Counsel for the parties the only point that arises for our determination in this appeal is,

Whether the Learned Single Judge is justified in passing the impugned order

reversing the award passed by the Learned Presiding Officer of the Labour Court, Gulbarga in Ref.87/97 and restoring the order of dismissal dated 16.12.1983 passed by the Disciplinary Authority of the respondent Corporation.

Our finding on this point is in the "Negative" for the following.

REASONS

7. Sri. P. Vilas Kumar, Learned Counsel for the appellant has strongly urged that the Learned Single Judge has committed serious error in law in reversing the award of the Labour Court on the ground that the Labour Court erroneously declined to look into the statements recorded by the Checking Officer at the time of inspection and subsequent thereto for the reason that the authors of said statements were not examined before the enquiry officer. He further urged that the Learned Single Judge committed another error in law holding that non-examination of the conductor and non-production of the register showing the entry of the buses into the Bus stand and exit of the buses from it was not fatal to the case of the Corporation.

8. Per contra, the Learned Counsel for the respondent-Corporation has contended that the Rules of Evidence Act are not applicable to the domestic enquiries under the Industrial Disputes Act and the Labour Court, on technicalities, found fault with the findings of the enquiry Officer which were accepted by the Disciplinary Authority. Therefore, it is urged that the Learned Single Judge has rightly reversed the findings of the Labour Court and quashed the award passed by the Labour Court and restored the order of dismissal passed by the Disciplinary Authority against the workman.

9. On careful reading of the charges levelled against the appellant, it could be seen that he is alleged to have taken the said bus at 10 A.M. from the bus stand at Hubli informing the conductor, who was on duty, that he was taking the bus for filling the fuel and then made trips between Hubli and Dharwad till 3.50 P.M. gained wrongfully Rs. 12/- by collecting freight from the passengers and left the bus at the Depot at 3.50 P.M. In order to substantiate the charges levelled against the appellant-workman, the Corporation has got examined two witnesses namely, one Sri. Jahagirdar and another Mahadevappa, who have been employees of the Corporation.

10. At paragraph 7 of the award, the Labour Court has observed, with reference to the material evidence on the record of the enquiry, that in order to establish the fact that the workman took the said bus from the said bus stand at 10 A.M. on that day by informing the conductor that he was so taking the bus for filling the fuel, the best evidence that ought to have been placed on record by the Corporation was the evidence of the said conductor and since the said conductor was not examined as a witness before the Enquiry Officer, the Corporation failed to prove the said fact. The Labour Court has further observed at paragraph No. 8 of the award that the evidence of Sri. Jahagirdar, would at the most, establishes the fact that he saw the said bus at Hubli Depot at about 3.15 P.M. on that day

being driven by the delinquent driver and that at that time, none was present in the bus except this workman driver but it does not establish the factum of the driver taking the bus from the bus stand at 10 A.M. on that day. It is also observed by the Labour Court in its award that the evidence of Mahadevappa at best, goes to show that he recorded the statement of the said conductor as per Ex.M1, but, the said statement has not been proved by the Corporation by getting the said conductor examined as a witness in the enquiry proceedings. The Learned Presiding Officer of the Labour Court has held that since the evidence of said Mahadevappa is only hearsay, no reliance can be placed on it and therefore the same is of no help to the Corporation to prove the said fact.

11. On perusal of the impugned order of the Learned Single Judge it could be seen that he has observed at paragraph No. 6 therein that none of the three grounds on which the Labour Court held that the misconduct alleged against the respondent-workman is not proved, could be held to be correct as there is evidence of P.V. Jahagirdar whose testimony has remained unchallenged, and the said Jahagirdar has reiterated the same thing what he stated on 15.04.1980 as per Ex.M.5. The said three grounds, as observed by the Learned Single Judge in his impugned order on which the Labour Court held that the misconduct alleged against the workman is not proved are;

(i) the statements of witnesses for the management namely Hanumantha Rao, (Ex.M.9), the conductor to whom the workman is said to have informed that he was taking the bus for filling the fuel, S.S. Hirematt, the Traffic Inspector (Ex.M.2) who is said to have seen the bus near Hubli depot at about 3.00 P.M. on that day being driven by the appellant-workman, I.M. Tasildar another conductor (Ex.M.3); B.L. Patil the Traffic Controller (Ex.M.4); the three watchmen at the said depot (Exs.M.6 to M.8) could not be relied upon against the workman as the authors of the said statements i.e., the said witnesses were not examined before the Enquiry Officer. .

(ii) The conductor on duty in the said bus namely Hanumantha Rao was not examined before the Enquiry Officer to prove the case of the management that the appellant-driver informed him at the time of taking the bus from Hubli bus stand at 10.00 A.M. on that day he was taking it to filling the fuel and therefore the said fact is not established by the management;

(iii) The Register showing the entry into and exit from the bus stand, of the buses, was not produced before the Enquiry Officer to show that the said bus was taken out of the bus stand by the workman-driver on the said date and time.

Referring to the above grounds, on which the Labour Court held the misconduct against the workman not proved, the Learned Single Judge has observed at the same para No. 6 of his order that the Labour Court, forgetting for a moment that strict rules of evidence are not applicable to the proceeding under the Industrial Disputes Act, declined to look into the said statements on the ground that their authors were not examined. While observing so, the Learned Single Judge

allowed the said writ petition of the Corporation and reversed the award passed by the Labour Court setting aside the order of dismissal passed by the Disciplinary Authority and directing the re-instatement of the workman with 95% backwages by imposing lesser punishment as stated supra.

12. As to the application of rules of evidence to the domestic enquiry conducted by the enquiry officer/Labour Court/Tribunal, the Apex Court has observed at paragraph 8 of its judgment in the case of Central Bank of India Ltd. Vs. Prakash Chand Jain, as under:

The Tribunal gave the reason that these findings were based on hearsay evidence. This view taken by the Tribunal appears to be fully justified....

It is true that, in numerous cases, it has been held that domestic tribunals, like Enquiry Officer, are not bound by the technical rules about evidence contained in the Indian Evidence Act; but it has nowhere been laid down that even substantive rules, which would form part of principles of natural justice, also can be ignored by the domestic tribunals. The principle that a fact sought to be proved must be supported by statements made in the presence of the person against whom the enquiry is held and that statements made behind the back of the person charged are not to be treated as substantive evidence, is one of the basic principles which cannot be ignored on the mere ground that domestic tribunals are not bound by the technical rules of procedure contained in the Evidence Act.

13. Applying the above principles to the facts of the present case, it could be seen that the Learned Presiding Officer of the Labour Court was justified in observing in the award that the person who is said to have recorded the said statements at Exs.M1 to M9 viz.; the DSI was not examined as witness and therefore, the said statements cannot be taken as substantive evidence on record to prove the guilt of the workman. Likewise, the Labour Court was further justified in observing that the management did not get the authors of the statements at Exs.M2, M4, M7 and M8 examined as witnesses and hence, the said documents (statements) cannot be accepted as the substantive evidence to prove the charges alleged against the workman.

14. In this view of the matter, we are of the considered opinion that the Learned Single Judge was not justified in observing in the impugned order that, strict rules of Evidence are not applicable to the enquiries by the Tribunals under the Industrial Disputes Act, and therefore, the statements of the witnesses at Exs.M2 and M4 to M8 were sufficient to prove the guilt of the workman. It is an undisputed fact that the said statements were recorded behind the back of appellant workman and authors of the said statements were not produced before the Enquiry Officer by the respondent-Corporation as witnesses and as such the appellant-workman had no opportunity to cross-examine them. Therefore, while disagreeing with the view taken by the Learned Single Judge in the impugned order that all the said statements prove the charges levelled against the

appellant workman, we hold that the learned Presiding Officer of the Labour Court was quite justified in ignoring the said statements and also in holding that the evidence of said Jahagirdar and Mahadevappa was in no way helpful to the Corporation to prove the fact that the workman took the said bus on the said date and time from Hubli bus stand under the pretext of filling the fuel to it after informing the conductor Hanumantha Rao that he was so taking the said bus for the said purpose. Therefore, we are of the considered opinion that the impugned order of the Learned Signal Judge setting aside the award of the Labour Court and restoring the dismissal order of the disciplinary authority dated 16.12.1983 cannot be sustained and the same deserves to be set aside.

15. The Learned Counsel for the respondent-Corporation while drawing our attention to the order dated 29.8.2005 passed in this writ appeal submitted that the appellant workman has foregone his backwages and therefore, even if this Court holds that the Presiding Officer of the Labour Court was justified in directing reinstatement of the workman, the latter would not be entitled to 95% of backwages in terms of said award. On perusal of the order dated 29.8.2005 passed in this appeal it is seen that on that date the Learned Counsel for the appellant-workman filed a memo stating that irrespective of the decision to be taken by this Court in this appeal, the appellant workman would give up his claim of backwages. The relevant portion of the memo reads thus:

The appellant submits that he is ready to give up back-wages from the date of dismissal till the date of reinstatement irrespective of the decision in this writ appeal.

16. While exercising the appellate jurisdiction, this Court is bound to examine the correctness or otherwise of the order of the Learned Single Judge and also the award passed by the Labour Court and the dismissal order passed by the Disciplinary Authority. It is the statutory right conferred upon the workman that in the event of he being reinstated he would be entitled to backwages. This is normal rule subject to proof, by the employer of the workman, of gainful employment during the period from the date of his dismissal till the date of passing of the Award. Simply because the workman filed the said memo, his statutory right cannot be taken away easily by this Court so as to deprive him of the benefit of backwages, for which the workman will be legally entitled to. It is not the case of respondent-Corporation that the appellant herein was gainfully employed during the pendency of the enquiry or during the pendency of the proceedings before the Labour Court and this Court. Therefore, we feel that he is entitled to the backwages notwithstanding the memo filed by him as we are of the view that impugned order of the Learned Single Judge for the reasons recorded above and therefore the impugned order passed by him is not legal and valid in law. As to the extent of backwages to which the workman is to be held entitled, we are of the opinion that, having regard to the facts and circumstances of the case and also in view of the fact that said alleged charges were levelled against the workman in the year 1980, and the matter is yet to be finalised in

this appeal, the ends of justice would be met that if 40% of the backwages are ordered to be paid to the appellant-workman with all consequential benefits thereon.

17. For the foregoing reasons, while answering the point raised by us in this appeal in the (negative) we pass the following.

ORDER

We hereby allow this appeal and set aside the impugned order dated 1.7.2005 passed by the Learned Single Judge in WP.40505/99 setting aside the award of the Labour Court, Gulbarga dated 18.5.1999. We restore the award of the Labour Court dated 18.5.1999 passed in REF No. 87 of 1997 in so far as it relates to the reinstatement of the appellant-workman and we reduce the backwages awarded by the Labour Court from 95% thereof to 40% only with all consequential benefits. No order as to costs in this appeal.