

(2014) 02 KAR CK 0235

In the Karnataka High Court

Case No : Writ Appeal No. 8555 of 2012 (L-KSRTC)

Shankar Vinay Achari

APPELLANT

Vs

The Chief Traffic Manager, Bangalore Metropolitan Transport Corporation

RESPONDENT

Date of Decision : 18-02-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 1
Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10(4-A)

Citation : (2014) 2 AKR 181 : (2014) 141 FLR 718 : (2014) 2 KCCR 1548 :
(2014) 2 LLJ 95

Hon'ble Judges : Rathnakala, J;N.K. Patil, J

Bench : Division Bench

Advocate : S.C. Venkatesh, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Rathnakala, J.—This appeal is filed assailing the correctness of the order passed by the learned single Judge dated 23.07.2012 in W.P. No. 17079 of 2008, in dismissing the writ petition filed by the petitioner/appellant herein. The facts of the case are:

The appellant herein is the Conductor of the respondent - Corporation, who was dismissed from service on allegation of misconduct. He raised industrial dispute before the Labour Court u/s 10(4-A) of the Industrial Disputes Act, 1947 (hereinafter called as the Act for brevity). The employer contested the claim. The Tribunal after due enquiry and after hearing both the parties vide award dated 10.01.2008, dismissed the claim of the workman. Aggrieved by the said order, the workman preferred writ petition before this Court in W.P. No. 17079/2008. The matter came up for hearing before the learned single Judge. The fairness of the domestic enquiry which preceded the order of dismissal of the claim and validity of award passed by Labour Court were under consideration before the

learned single Judge. The grievance of the workman that, the conductor's original Way Bill was not produced either during the domestic enquiry held by the Department or during the enquiry held about the fairness of the Domestic Enquiry in the Labour Court, was not appreciated on the ground that the document admitted in evidence become part of the record. The extract of the Way Bill - Ex. M. 7, revealed ticket numbers and also the denomination; these tickets are referred in the Trip sheet; the Trip sheet shows that the same tickets have been reissued by the petitioner not once but thrice. Learned single Judge has endorsed the finding recorded by Disciplinary Authority and also the Labour Court. On finding that the workman had a history of 45 cases of pilferage to his credit has refused to invoke the jurisdiction under Articles 226 and 227 of the Constitution of India.

2. Sri. S.L. Venkatesh, learned Counsel for the appellant submits that the alleged Way Bill bearing No. 4153440 was not issued to him on 10.12.1998. It was a tailor made document. The entire case of the Management rested on the so called Way Bill which was never produced before the Labour Court. The workman had made best of his efforts by filing a writ petition before this Court and was submitting representation to trace the original Way Bill; he is victimized by his Superior Officers due to vengeance. Alleged Way Bill did not bear the signatures of the conductor driver and the cashier. The Enquiry Officer had summoned the "Way Bill Issue Ledger" to cross check the veracity of the xerox copy of the Way Bill produced, it was not the extract of the original Way Bill. When he was disputing the veracity of the xerox copy, the same could not have been considered as secondary evidence. Hence, the order of dismissal passed by disciplinary authority, the Award of the Labour Court and the order of the learned single Judge in W.P. No. 17079/2008 vide order dated 23.07.2012 may be set aside with a direction to reinstate him to service, with continuity of service and backwages.

3. In reply, Smt. Renuka, learned Counsel for respondent employer submits that the dismissal order passed by the employer vide order dated 19.06.2001 was preceded by a valid domestic enquiry. Unsuccessfully, he had approached the Court in W.P. No. 34120/2000 seeking to quash the charge memo dated 25.01.1999, issued to him during the domestic enquiry by the Management. The charge against him was severe. He had reissued tickets already sold; did not make proper entry in the Way Bill and caused financial loss to the Corporation and he had past history of 45 misconduct cases. During the enquiry before the Labour Court also, the fairness of the domestic enquiry was gone into and was upheld. In the meantime, the workman had filed a writ petition before this Court in W.P. 27030/2001, for a direction to the Director, Security and Vigilance in the matter of investigation of the missing Way Bill and said writ petition came to be rejected vide order dated 01.08.2001. Initially, original Way Bill was produced during the domestic enquiry, since the same could not be traced at the time of leading evidence before the Labour Court, the xerox copy of the same was produced. The Labour Court has examined all his objections with regard to the

said missing Way Bill and found that the domestic enquiry held was fair and proper and found him guilty of the misconduct and the learned single Judge has rightly noticed that the copy of the Way Bill produced was admissible in evidence and the impugned order is correct and no substantial question of law would arise in this case for consideration.

4. After hearing both learned Counsels and on perusing the impugned order and records the following point arise for our consideration:-

Whether non-production of the original Way Bill vitiated the Disciplinary action against the workman?

5. As such, the management had produced the Way Bill through it's witness during the domestic enquiry and the same is marked as Ex. M3 and the workman had cross-examined the management witness. On noticing that the original Way Bill was missing from the file, the xerox copy at Ex. M3 was produced by the management as Ex. M8. At that stage, it was not the case of the workman that Ex. M8 was not the xerox copy of the original Way Bill produced earlier; all the while his contention was that the Way Bill was a got up document; the Disciplinary Authority, the Labour Court and the learned single Judge have concurrently held that the misconduct is proved against the workman. The veracity of Ex. M.8/the xerox copy of original Way Bill is appreciated in the background of surrounding circumstances. When that grievance of the appellant is taken, what remains is proportionality of punishment. In catena of judgments of this Court and the Apex Court, it is held that when the serious charge of misconduct is held proved, the only appropriate punishment is dismissal of workman from service and nothing less than that. That is the well settled law. That being so, no substantial question of law would arise from the impugned order of the learned single Judge in this Intra-Court proceedings and appeal is liable to be dismissed. The appellant has filed application under Order XIII Rule 1 of CPC seeking permission to produce two documents to demonstrate that it is possible to manipulate the documents with the xerox copier machine. Even otherwise, it is to the common knowledge that such mischief is possible while preparing xerox copies. Since, we have already found the appeal as devoid of merits, I.A. No. 1/2014 filed under Order XIII Rule 1 of CPC and also the main appeal stands dismissed.

No costs.