

**(2013) 11 KAR CK 0099**

**In the Karnataka High Court**

**Case No : Writ Appeal No. 3677 of 2011 (L-KSRTC)**

Shri. Ayub Ahamed Khan

APPELLANT

Vs

The Divisional Controller, KSRTC

RESPONDENT

**Date of Decision : 11-11-2013**

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 10(4-A), 11A

**Citation :** (2014) 1 AKR 297 : (2014) ILR (Kar) 47

**Hon'ble Judges :** N.K. Patil, J; Budihal R.B., J

**Bench :** Division Bench

**Advocate :** G.S. Naveen Kumar, for the Appellant; H.R. Renuka, for the Respondent

**Final Decision :** Dismissed

## Judgement

N.K. Patil, J.—The appellant/workman, questioning the correctness or otherwise of the order impugned passed by the learned Single Judge, in Writ Petition No. 6623/2010(L-KSRTC) dated 22nd March 2011, has presented this writ appeal. In the said writ petition, the appellant/workman had sought for quashing the award dated 1st August 2009 passed by the 2nd Additional Labour Court at Bangalore in I.D. No. 46/2005 vide Annexure H to the writ petition. The order passed in the said writ petition is under challenge in this appeal. The grievance of the appellant/workman is that, he was a permanent employee of the respondent -Corporation working as Driver in Bagepalli depot of Kolar Division, with Badge No. 1391. That on 11-08-2001, when the appellant/workman was manning the vehicle bearing Registration No. KA-07/F-390 on route Chikkaballapur to Mysore, it met with an accident around 17 hours near R.S.N.R.S. Rice Mill of Ramanagaram, as a result of which a cyclist died at the spot. An investigation was held on the alleged accident and on the basis of the report submitted by the Investigating Officer, the respondent/Corporation initiated disciplinary proceedings against the appellant/workman and issued the Article of Charges dated 4th June 2002, wherein it was stated that the appellant has driven the vehicle in a rash and

negligent manner and caused the accident at the outskirts of Ramanagaram, resulting in death of a cyclist at the spot, as a result of which, the Corporation has incurred heavy financial loss besides inconvenience to the travelling public.

2. After receipt of the Articles of Charges, the appellant/workman submitted his detailed reply to the same, denying the charges leveled against him and he also submitted his detailed explanation, indicating the circumstances under which the vehicle met with an accident. Not being satisfied with the reply/explanation submitted by the workman, the Corporation appointed the Divisional Superintendent as Enquiry Officer to hold an enquiry on the alleged accident, resulting in misconduct of the workman. Thereafter, the Enquiry Officer conducted a thorough enquiry and submitted the report, stating that the workman is guilty of the charges leveled against him. On the basis of the report submitted by the Enquiry Officer, the Corporation dismissed the workman from service, by its order dated 2nd May 2005. Being aggrieved by the said dismissal order passed by the Corporation, the workman raised an industrial dispute before the II Additional Labour Court in I.D. No. 46/2005, u/s 10(4-A) of the Industrial Disputes Act, 1947.

3. The Labour Court, in turn, after consideration of the entire material available on file, having regard to the magnitude and gravity of the misconduct alleged and thereafter proved against the workman, that the accident occurred on account of rash and negligent driving by the appellant/workman, which resulted in death of a cyclist on the spot, dismissed the dispute raised by the workman, holding that the workman has committed the misconduct alleged against him and further noticing that the workman was involved in nine default cases earlier, out of which, five were accident cases, held that the punishment of dismissal imposed on the workman was not disproportionate to the gravity of the misconduct established and therefore the workman is not entitled to any reliefs. Being aggrieved by the said award passed by the Labour Court, the workman approached the learned Single Judge in writ proceedings and the learned Single Judge, after evaluation of the entire material available on his file, dismissed the writ petition, confirming the award passed by the Labour Court, holding that the Labour Court was justified in not exercising its power u/s 11A of the Act and interfering with the order of punishment of dismissal from service imposed by the Management. Being further aggrieved by the order passed by the learned Single Judge, the appellant/workman has presented this writ appeal.

4. The submission of the learned counsel appearing for appellant/workman at the outset is that the Disciplinary Authority, Labour Court as well as the learned Single Judge have committed error and illegality in proceeding to accept the report submitted by the Enquiry Officer, without proper appreciation of the oral and documentary evidence available on file. To substantiate the said submission, he submitted that the workman served the Corporation for nearly 13 years without any blemish and that the accident occurred on account of negligence on the part of the cyclist also as he was riding the cycle in the middle of the road

and in spite of his best efforts to avoid the accident, he could not and thus, the cyclist also contributed to the occurrence of accident. Further, he submitted that the punishment of dismissal from service imposed by the Management is grave in nature and is disproportionate when compared to the misconduct committed by workman. A lesser punishment ought to have been imposed to the workman to mould himself and continued in service to safeguard the interest of the family members. Therefore, he submitted that the impugned award passed by the Labour Court as well as the order passed by the learned Single Judge may be modified, directing the Corporation to reinstate the appellant/workman into service with continuity of service without back wages.

Further, he vehemently submitted that the workman was aged about 49 years as on the date of accident and the family is entirely dependent on his income and in view of the punishment of dismissal from service, confirmed by the Labour Court and subsequently confirmed by the learned Single Judge, the entire family would be displaced and it would affect the future and survival of the family members. This aspect has not been looked into nor considered either by the Labour Court or by the learned Single Judge and a lesser punishment could have been imposed to enable the workman to rehabilitate and mould himself and complete his full service. Therefore, he submitted that the impugned order passed by the learned Single Judge, confirming the order passed by the Labour Court, upholding the dismissal order passed by the Disciplinary Authority, be set aside and a direction be issued to the Corporation to reinstate the workman into service without back wages, by imposing reasonable punishment commensurate with the misconduct committed by the workman.

5. As against this, learned counsel appearing for Corporation, inter alia, contended and submitted that the Enquiry Officer has conducted a free, fair and a thorough enquiry, on the basis of which, the Management has imposed the punishment of dismissal from service. The Labour Court as well as the learned Single Judge, after critical evaluation of the oral and documentary evidence, have recorded concurrent finding of fact against the appellant/workman for the misconduct committed by him, holding that the Management has established the charge leveled against the workman. Further she is quick to point out and submit that this misconduct is not the first of its kind for the reason that the workman was in fact, involved in as many as 9 default cases, out of which, five were accident cases Ample opportunity has been afforded to the workman to mould himself and ensure that he does not commit such misconduct in future. But, in spite of the opportunities and warning with lesser/minor punishments, he has not mend his ways and caused the accident, which resulted in the death of a cyclist, who was aged about only 11 years and caused loss to the Corporation and also inconvenience to the travelling public. Therefore, she vehemently submitted that the punishment of dismissal from service imposed by the Management is just and reasonable and. Is commensurate with the gravity and magnitude of misconduct committed by the workman. Hence, interference in the impugned order passed by learned Single Judge is uncalled for.

6. After careful consideration of the submission of the learned counsel appearing for the appellant/workman, the learned counsel appearing for Corporation, after perusal of the award passed by the Labour Court dated 1st August 2009 in I.D. No. 46/2005 vide Annexure H produced along with the writ petition and the order passed by the learned Single Judge dated 22nd March 2011 in Writ Petition No. 6623/2010, it is manifest on the face of the same that all the authorities have not committed any error or material irregularity in passing the respective orders. Further, it is significant to note that, the workman earlier, was involved in as many as nine default cases, out of which five are accident cases. The same has not been disputed by the appellant/workman. In spite of giving sufficient opportunity, the workman has not mend his ways nor has been patient and calm while driving and has caused the road traffic accident due to his reckless driving. On all the previous occasions, thinking that the workman would change his attitude and mould himself, the Management/Corporation has awarded lesser/minor punishment and continued him in service as a driver in the Corporation. But, this time, due to the rash and negligent driving by the workman, a cyclist, aged about 11 years has died on the spot and also caused great financial loss to the Corporation apart from inconvenience to the travelling public.

7. Further, it can be seen that, at the place of accident, near the dead body, the brake marks are seen from 8 ft. length, which shows that the workman was driving the vehicle at a very high speed and the damaged cycle has been shown in the centre of 22 ft. wide tar road and that the cyclist is being shown as moving in the same direction and the accident occurred around 5:00 P.M. in broad daylight, in front of a Flour Mill in Vidyanagar area of Ramanagaram. The sketch further shows, the body of cyclist was lying at the center of the road and the road was a one way. The Motor Vehicle Inspector, as per the report submitted by him at Ex.M4, has opined that there was no mechanical defects in the vehicle driven by the workman. The learned Single Judge observed. that, the accident being not in dispute, it was for the appellant/workman to place on record any evidence to show that the accident occurred due to some other cause, other than his own negligence, which he has failed to do so and the Labour Court, after critical evaluation of the oral and documentary evidence available on file, approaching the matter in a right perspective, has recorded a finding of fact, holding that on account of rash and negligent driving by the appellant/workman, the accident has occurred resulting in the death of the cyclist on the spot and great financial loss to the Corporation and also inconvenience to the travelling public. The earned Single Judge further held, the settled position with regard to standard of proof in matters of the one on hand being preponderance of probability and not proof beyond reasonable doubt as required in criminal trial, the Labour Court was justified in holding that the Management has established the charge alleged against the appellant/workman.

8. It can further be seen that the Enquiry Officer, after conducting enquiry, has submitted the report that the charge leveled against the appellant/workman is proved beyond all reasonable doubts and came to the conclusion that the

accident occurred solely on account of the reckless act of driving by the appellant/workman, resulting in death of a cyclist, financial loss to the Corporation and inconvenience to the travelling public. The said report has been accepted by the Management and considering the previous misconduct committed by the workman, imposed the punishment of dismissal from service. The Labour Court, after critical evaluation of the oral and documentary evidence, confirmed the order of dismissal passed by the Management. Thereafter, the learned Single Judge also after appreciation of the oral and documentary evidence available on file, in a right perspective, recorded a concurrent finding of fact against the appellant/workman, holding that the appellant/workman having not learnt any lesson from the minor punishments imposed on him by the Management for earlier misconducts, the Labour Court was justified in not exercising its power u/s 11A of the Act and declined to interfere with the order of punishment of dismissal from service imposed by the Management. There is neither perversity nor illegality as such committed either by the Management, Labour Court, or by the learned Single Judge in recording the finding of fact and confirming the punishment of dismissal from service, considering his past records of misconduct.

9. Therefore, in view of concurrent finding of fact recorded by all the authorities and the well settled law laid down by the Apex Court in catena of decisions, interference in the impugned order passed by the learned Single Judge is uncalled for nor the appellant/workman has made out a case in his favour to interfere with the same. For the foregoing reasons, the appeal filed by appellant/workman is liable to be dismissed. Accordingly, it is dismissed.