

(2008) 09 KAR CK 0039
In the Karnataka High Court
Case No : Writ Petition No. 11305 of 2007

Sri H. Srinivas Reddy

APPELLANT

Vs

The Management of BMTC

RESPONDENT

Date of Decision : 19-09-2008

Acts Referred:

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

Citation : (2009) 120 FLR 1124 : (2008) ILR (Kar) 4753 : (2008) 4 KCCR 2574

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : V.S. Naik and Manjula N. Kulkarni, for the Appellant; L. Govindraj, for the Respondent

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—The petitioner, a conductor while conducting the bus belonging to the respondent-Corporation on 5.11.1995 on route Attiguppc to City market, the checking officials intercepted the bus and on checking, found the following irregularities:

1. Non issue of tickets after collection of fare of Rs. 1.25 ps. from each of eight passengers;
 2. Neither issued nor collected the fare of Rs. 1.25 from 12 passengers;
 3. Not recording the entries in the way bill in respect of tickets of Rs. 1.25 denomination, leading to failure to credit to the account of the corporation the sale of 62 tickets.
2. The checking officials, in the presence of the petitioner secured the statement of the passengers alleged to have paid fares to the petitioner, to which the petitioner affixed his signature. The checking officials recorded the irregularities in an offence memo acknowledged by the petitioner, to which the petitioner did not submit a reply. The Disciplinary Authority on the basis of the report

submitted by the checking officials, being of the opinion that there were grounds to enquire into the truth of irregularities, issued an article of charge to which the petitioner submitted an explanation Ex.M-16, inter alia, contending that 8 passengers lost the tickets either when the driver of the bus applied the brake or when the children of the said passengers were playing. With regard to the charge of not crediting the fare amount from the sale of 62 tickets of Rs. 1.25 denomination to the account of the corporation, by making entries in the way bill, it was contended that when the driver applied the brake, tickets of 1.25 denomination fell down and the petitioner was unable to secure the same thereafter. With regard to the charge of non issue of tickets and non collection of fare from 12 passengers, it was contended that the said 12 passengers were coolies headed by a supervisor purchased the tickets and having held them in his custody alighted from the bus along with tickets before the bus was checked.

3. The Disciplinary Authority not being satisfied with the explanation offered and being of the opinion that there were grounds to inquire into the truth of the allegations, appointed an inquiring authority to enquire into the charges. The petitioner actively participated in the enquiry and the Inquiring Authority on the basis of the material on record, submitted a report holding the charges proved. The Disciplinary Authority on an independent assessment of facts, circumstances and evidence on record, held the petitioner guilty of the charges and as there were no mitigating circumstances but aggravating circumstances, in the light of the past record disclosing that the petitioner was imposed with minor punishment on 164 occasions for acts of similar misconduct, by order dated 28.6.2001 dismissed the petitioner from the services of the corporation.

4. The petitioner questioned the order of termination in a petition u/s 10(4-A) of the Industrial Disputes Act, 1947 for short the Act, before the Presiding Officer, III Addl. Labour Court, Bangalore, whence it is registered as I.D. 85/2001, arraigning the respondent as second party who entered appearance and resisted the claim by filing statement of objections. The Labour Court, in the premise of the pleadings of the parties framed issues, of which the first issue related to the validity of the domestic enquiry. The parties entered trial whence the respondent examined the enquiry officer as MW-1 and marked documents M-1 to M-17 while the petitioner examined as WW-1 and marked one document as Ex.W-1. The Labour court by order dated 1.3.2006 answered the 1st issue in the affirmative holding the domestic enquiry as fair and proper. Thereafter, the petitioner examined himself further and produced documents, marked as Ex.W-2 to W-9. The Labour Court having regard to the material on record and appreciating the evidence both oral and documentary, by award dated 10.2.2007 Annexure-E held that the petitioner guilty of the charges and placing reliance upon the decision in the case of R.C. Shankaregowda v. The Divisional Controller ILR 2007 KSRTC 486 as extracted in the award, rejected the reference.

5. Learned Counsel for the petitioner advances the following pleas:

(a) admittedly the bus having 120 passengers, it was practically impossible for

the petitioner to issue tickets to all the passengers which was not considered by the Labour Court;

(b) that the tickets issued to the 8 passengers, having lost the tickets, the Tribunal was not justified in recording a finding that the passengers were not issued with the tickets despite collection of fare;

(c) the testimony of the petitioner as well as his witness, the driver of the bus, examined as WW-1, before the Enquiry Officer remained unchallenged as they were not cross examined;

(d) that conductors similarly circumstanced, the respondent - corporation had taken a lenient view and impose minor punishment.

6. Learned Counsel for the respondent points out to the explanation Annexure-A to the article of charges to contend that the petitioner having placed no material on record to establish the contentions advanced, the explanation was not probable enough for acceptance. Learned Counsel hastens to add that the Labour Court having considered the material on record and on a proper appreciation of evidence, justifiably concluded that the petitioner was guilty of the charges. It is lastly contended that the petitioner having been found guilty of similar misconduct's in the past, was visited with minor punishments on 164 occasions, and that the imposition of minor punishments in the case of other conductors cannot be a ground on equality, since it is opposed to Article 14 of the Constitution of India.

7. Having heard the learned Counsel for the parties, perused the pleadings and examined the order impugned, I find considerable force in the submission of the learned Counsel for the respondent that the Labour Court was fully justified in recording a positive conclusion on facts that the petitioner was guilty of the charges of non issue of tickets after collection of fare from 8 passengers and non issue of tickets and non collection of fare from 12 passengers, in addition to the failure to credit to the account of the corporation the sale of 62 tickets of Rs. 1.25 denomination. I say so because the explanation Annexure-A to the article of charges clearly disclose that the petitioner asserted issue of tickets to the eight passengers who lost the tickets either while the driver of the bus applied the brake or the children who were in possession of the tickets, while playing. This in my opinion, is not even a plausible explanation, since admittedly there were 125 passengers in the bus and I wonder how the children could possibly play in the bus. So also, the mere fact that the driver of the bus applied brakes, could the passengers have lost the tickets? The explanation, in my considered opinion, is a rouse to get over the charges. The fact that the passengers made their statements to the checking officials that they paid the fare to the petitioner who did not issue the tickets, and who in turn affixed his signature to the statement of the passengers is a sure pointer to the fact that those eight passengers were travelling without tickets though paid the fares.

8. As regards 12 passengers travelling without tickets, the contention that it was

practically impossible for the petitioner to issue tickets to all the passengers is quite contrary to the explanation Annexure-A, wherein, it is stated that the 12 passengers were coolies, headed by a supervisor who purchased the tickets and while in possession of all the tickets, alighted from the bus before the place of check. The petitioner cannot be permitted to be approbate and reprobate. This contention must necessarily therefore, fail.

9. The evidence of the petitioner and that of the driver, as recorded by the enquiry officer, though remained unchallenged, in the enquiry proceeding, by itself and nothing more it cannot be said deserves acceptance. In the circumstances noticed supra, more appropriately, the vacillator statements made by the petitioner, no credence can be attached to the evidence of either the petitioner or his witness.

10. Undoubtedly, Article 14 of the Constitution of India is a positive concept and cannot be enforced in a negative manner. If benefits are extended to some persons in an illegal and irregular manner, cannot be claimed by others on the plea of equality. Wrong orders or judgments passed in favour of one person cannot entitle the others to claim the very same benefits. This is the law laid down by the Apex Court in the case of the State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, . Applying the very same principles to the facts of this case, even assuming that the other conductors were visited with minor punishment for similar acts of misconduct, cannot enure to the benefit of the petitioner. Yet another reason is the fact that the petitioner's past records of service, admittedly, was replete with 164 cases whence minor punishments were imposed. In that view of the matter too, there were no mitigating circumstances by which a lesser punishment could be imposed.

11. Before parting with this case, the following reported opinions, in the circumstances are apposite:

1. In The Karnataka State Road Transport Corporation and Another Vs. Sathyanarayan, in the Division Bench of this Court held that the passengers' statement contain the signature of the workman, would be a straight pointer that the conductor had collected the fare and did not account for it with an intention to misappropriate the same. It is further observed that a conductor collecting fare from the passengers and not accounting for the same to the credit of the corporation should not be permitted to continue in the services of the corporation.

In the Regional Manager, U.P.S.R.T.C., Etawah and Others Vs. Hoti Lal and Another, , the Apex Court held that the conductor holds a position of trust where honesty and integrity are inbuilt requirements of functioning and that in such matters it should be dealt with iron hands and not lenient.

The Supreme Court in the said case upheld the termination of the service of a bus conductor for carrying ticketless passengers in the SRTC bus though the loss caused was Rs. 16/- and was inconsequential.

In *The Regional Manager, Rajasthan State Road Transport Corporation Vs. Sohan Lal etc.*, the Supreme Court observed that once the misconduct of non issue of tickets to the passengers is proved, it cannot be said that the punishment of dismissal was disproportionate since the misconduct was one of dishonesty.

In *Delhi Transport Corporation v. Shyam Lal* AIR 2004 SCW 4711, the Apex Court, while considering the hearsay evidence of the statement made by the passenger who had paid excess money to the Checking Officer, is held that, it cannot be regarded as hearsay evidence.

12. In the instant case, as noticed supra, the Labour Court recorded findings of facts that the charges were proved, which are not shown to be either irrational or extraneous much less capricious or arbitrary, calling for interference.

13. The writ petition is without merit and is accordingly rejected.