

(2000) 11 KAR CK 0019
In the Karnataka High Court
Case No : Writ Petition No. 7351 of 2000

Sri. M. Jayaram since deceased by L.Rs.	APPELLANT
Vs	
The Management of Karnataka State Road Transport Corporation	RESPONDENT

Date of Decision : 23-11-2000

Acts Referred:

Citation : (2001) 1 KCCR 504

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : Manjula Kulkarni, for V.S. Naik, for the Appellant; H.R. Renuka, for the Respondent

Judgement

M.F. Saldanha, J.—I have heard learned Advocates on both sides. This case has rather sad overtones in so far as the Petitioner who was then a conductor with the KSRTC was charge-sheeted in the year 1992 on the allegation that he had while on duty as a conductor not issued tickets to five passengers and that he had not collected the fares from other passengers. The enquiry went against the Petitioner and so did the appeal. The Petitioner had been awarded punishment by way of dismissal against which he carried the case to the Labour Court. The Labour Court did not require to record any evidence because the fairness of the enquiry was conceded but the Labour Court in a rather strange order held that once the fairness of the enquiry was conceded that the employee was even precluded from arguing anything with regard to punishment awarded to him which is not the correct position in law. Even if one concedes that the earlier procedures have been complied with, the proceeding before the Labour Court involves a review of the entire record and every point of fact and of law can certainly be re-agitated. The Labour Court ultimately set aside the order of dismissal holding that it was disproportionate to the misconduct that had been established and therefore directed reinstatement with continuity of service holding that the employee was not entitled to backwages. The award of the Labour Court is dated 15.4.1999 and I am informed at the Bar that it was

published sometime in the month of December 1999 and that shortly thereafter the Corporation, since it decided not to appeal against the order sent a memo to the Petitioner to report back for duties. In the meanwhile, the Petitioner had died on 19.11.1999.

2. At the hearing before me, the Petitioner's learned Advocate submitted that since the order of reinstatement has virtually become final in so far as since the Corporation has not decided to challenge it that this is a case in which the Court must lay down that the order of reinstatement has taken effect as otherwise, the difficulty in the way of the legal representatives of the Petitioner who happen to be his young wife and four minor children, one of whom is severely handicapped would be precarious because on technicalities, the Corporation could contend that the order of reinstatement is incapable of being given effect to since the beneficiary has died and that the earlier order of dismissal has effectively not been replaced by an order of reinstatement during his life time. A strict reading of the award would indicate that the Corporation had two months after the date of publication to implement it and on technicalities it could be pleaded that since the employee had died prior to this date that the order in question is not capable of being implemented. Having regard to this position, a strong plea has been advanced before this Court that a sympathetic and beneficial interpretation of the law should be made out so that the legal heirs of the deceased employee are not deprived of the benefits which would otherwise rightly have accrued to the family.

3. There is considerable justification in this last submission and I do not see much difficulty with regard to applying the law correctly in which case none of the aforesaid technical hurdles will arise. The argument canvassed by the Petitioner's learned Advocate will have to be upheld in so far as by the order of reinstatement by virtue of its not having been challenged has become final, and it would be perfectly permissible to hold that in law the order is deemed to have taken effect from the date when the reinstatement was ordered. On 15.4.1999 which is the date of award the employee was very much alive and if he is deemed to have been reinstated on that date, then the legal representatives would get the benefit of the consequential change of status because he is back in employment with the corporation and therefore entitled to his salary and allowances upto the date of his death and all other terminal benefits that would have accrued to him assuming that he is deemed to have been in service upto 19.11.1999. The Corporation shall take this finding of the High Court into account while setting the dues of the deceased Petitioner.

4. There is another aspect namely the fact that since he has died, a plea has been put forward that on compassionate grounds the Corporation should consider employment of another member of the family. As far as this is concerned, again it would be wholly dependent on whether or not even if it is by a deeming provision, it can be construed that he was not a dismissed employee but was in the services of the Corporation on the date of his death because unless this is the position, the question of compassionate employment to another

family member will not arise. Since it has already been held that the deceased Petitioner shall be deemed to have been reinstated from 15.4.1999 it would be permissible for an application to be filed with the Corporation for considering compassionate employment and it would be within the framework of the rules. If such an application is submitted the Corporation shall consider it and take a decision on the same within an outer limit of six months from the date on which the application is so submitted.

5. The Petitioner's learned Advocate relied on a Division Bench decision dated 24.10.2000 wherein the Division Bench had confirmed an order of the learned Single Judge in a misconduct case relating to the Bangalore Metropolitan Transport Corporation wherein the learned Single Judge had awarded 25% of the backwages after confirming the order of reinstatement passed by the Labour Court. In that case the Labour Court had awarded 50% of backwages which the learned Single Judge had reduced to 25% and this order was confirmed by the Division Bench. The submission canvassed is that the Courts are vested with a wide degree of discretion and this case is distinguishable from several others and will not create a precedent because the employee has died and he has left behind a young wife and four minor children one of whom is severely handicapped and if in circumstances the Court were to award 25% backwages that it would be in keeping with the rule of fairness. The Corporation's learned Counsel has submitted that there is a well defined principle that applies to situations of this type and it is well settled law that as far as cases of misappropriation are concerned that they qualify for extremely serious punishment and that despite this fact, where an utmost charitable view has been taken by giving the employee back his job that nothing more would be warranted.

6. I have carefully considered everything that has been pointed out to me and I need to record that even this Court in this very order has advanced the most charitable and beneficial interpretation possible purely on sympathetic grounds but this cannot be stretched beyond permissible limits. I cannot lose sight of the fact that the Division Bench was dealing with a case of unauthorised absence whereas the present case is one of misappropriation and dereliction of duty which is a far more serious misconduct. It is in these circumstances that the order of the Labour Court denying backwages for the entire period will have to be confirmed.

7. The writ petition partially succeeds for the reasons set out above. No order as to costs. The Corporation shall give effect to the orders with regard to computation of the dues and terminal benefits within an outer limit of sixty days from today.