

(2016) 02 KAR CK 0067
In the Karnataka High Court
Case No : Writ Petition No. 8531/2008 (L-KSRTC)

S.S. Kumbar

APPELLANT

Vs

The Chief Traffic Manager, B.M.T.C. and Others

RESPONDENT

Date of Decision : 05-02-2016

Acts Referred:

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

Citation : (2016) 02 KAR CK 0067

Hon'ble Judges : A.S. Bopanna, J.

Bench : Single Bench

Advocate : Shivarudra, Advocate, for the Appellant; B.L. Sanjeev, Advocate, for the Respondent

Final Decision : Disposed off

Judgement

A.S. Bopanna, J.—1. The petitioner is before this Court assailing the award dated 14.12.2007 passed in I.D. No. 148/2000. The Labour Court has rejected the claim petition filed by the petitioner and confirmed the order of punishment imposed on the petitioner.

2. The petitioner was working as a Conductor in the bus belonging to the respondent-Corporation. While he was conducting the bus on 23.07.1999, the bus was intercepted by the checking staff at Tagachaguppa. It was noticed that two passengers who had purchased two tickets of Rs. 2.75 traveling from Kumbalgod to Agara lost their tickets and had paid the penalty and other discrepancies were noticed.

3. Based on the report, a charge sheet was issued, an enquiry was held and on the finding being rendered holding the petitioner guilty of the charges, the petitioner was dismissed from service through the order dated 10.07.2000. The petitioner filed a claim statement under Section 10(4-A) of the Industrial Disputes Act before the III Additional Labour Court raising a dispute with regard to the dismissal. The same was registered in I.D. No. 148/2000. On the notice

being issued to the first respondent, they had appeared and filed their counter statement. Since, the action against the petitioner was preceded by a domestic enquiry; the first issue which was considered by the Labour Court was with regard to the validity of the domestic enquiry relating to its fairness and legality. Pursuant thereto, the other issues were considered.

4. The Labour Court by the order dated 29.06.2005 held the validity of the domestic enquiry in favour of the respondent-management. In that view of the matter, the Labour Court proceeded to consider the correctness or otherwise of the finding rendered by the Enquiry Officer to come to a conclusion as to whether the finding as rendered therein is based on the evidence available on record or as to whether the same was perverse. In that regard, the Labour Court has arrived at the conclusion that the findings were justified and keeping in view the nature of the charges, the punishment as imposed was also held justified.

5. The learned counsel for the petitioner while assailing the award passed by the Labour Court would contend that an appropriate consideration of the matter has not been made by the Labour Court. He contends that the petitioner had denied the allegations that had been made against him with regard to the allegation that two used tickets were found with him and contended that the checking staff had picked the tickets from the ground and had made the allegation against the petitioner. It is also contended that the Labour Court has not only not appreciated that aspect of the matter but has failed to exercise the discretion available under Section 11(A) of the Industrial Dispute Act and in a matter of the present nature, the Labour Court ought to have noticed that keeping in view the nature of the allegations, the punishment of dismissal as imposed is too harsh and the same required modification. Hence, he contends that the award passed by the Labour Court is liable to be set aside.

6. The learned counsel for the respondent-management would however seek to sustain the award passed. He would contend that the Labour Court on holding the domestic enquiry to be valid has thereafter taken note of the documents that were relied upon in the enquiry to come to conclusion that charge in fact had been established in the enquiry and therefore, was of the opinion that the respondent was justified.

7. Insofar as the gravity of the misconduct and the punishment imposed, the learned counsel would point out that materials had been produced to indicate that the petitioner had involved in 193 pilferage cases earlier and out of which 11 cases were red mark cases and despite imposition of minor punishments, the petitioner had not reformed himself and had continued to indulge in similar misconduct causing loss to the respondent-corporation.

8. The learned counsel would also refer to the decisions of the Hon''ble Supreme Court in the case of Uttaranchal Transport Corporation v. Sanjay Kumar Nautiyal [Appeal (Civil) 696 of 2006] and in the case of U.P. State Road Transport Corporation v. Suresh Chand Sharma [Civil Appeal No. 3086 of 2007] to contend

that the Hon''ble Supreme Court in such pilferage cases where loss is caused to the corporation has held that no lenient view could be taken.

9. In the light of the rival contentions, I have perused the petition papers including the award impugned herein. As noticed, the domestic enquiry was held to be fair and proper by the order dated 29.06.2005. In that light, all that was necessary to be considered by the Labour Court thereafter is with regard to the validity of the findings rendered by the Enquiry Officer with reference to the evidence that was relied upon before the Enquiry Officer to come to a conclusion as to whether such finding was based on the evidence or as to whether it was a case of victimization.

10. To the said extent, the Labour Court has in fact taken note of the allegations that had been made against the petitioner and has crystallized the same in Para-8 of the award. In that light, while taking note of the manner in which it had been established in the enquiry, the documents which had been relied on therein at Ex-M8 to Ex-M13 on the relevant aspects relating to the charge has been taken into consideration and in that light, has arrived at the conclusion that there was sufficient evidence before the Enquiry Officer to come to the conclusion that the charge alleged against the petitioner had been proved.

11. The learned counsel for the petitioner no doubt as noticed had contended that the old tickets which are said to have been seized and relied on in the enquiry was not available with the petitioner but, had been picked up from the ground. In fact, the said contention has also been referred to and has been rejected by the Labour Court. While taking note of this aspect, reference is also made to the evidence to indicate that serial numbers of the tickets which were available with the petitioner are in the series which had been issued by him to others.

12. Be that as it may, when in fact the old tickets were available and had been produced and when the petitioner contends that the same has been picked up by the checking staff and has been falsely produced, there should have been material to indicate the reason for which the checking staff had any ill will against the petitioner and if there was any specific reason for them to target the petitioner in such manner. When there is no such evidence to that effect and when the checking staff have only performed their duty and in the said process have collected the material to be produced as evidence in the enquiry, the contention as put forth in the present case will have to be termed as without basis and therefore, to the said extent, the Labour Court is justified in appreciating the evidence which was available on record and had been produced before the Enquiry Officer to arrive at its conclusion.

13. On the aspect as to whether the punishment as imposed is too harsh, apart from the decisions to which the reference has been made by the learned counsel for the respondents, the instant facts will also have to be kept in view in that regard. It is no doubt true that there is no specific finding rendered by the Labour Court in that direction. However, what cannot be lost sight of is that there

was material available on record which had been noticed by the Labour Court with regard to the earlier instances wherein, the petitioner had been booked for pilferage cases and minor punishments were imposed though 11 of which were red mark cases.

14. Therefore, in a circumstance when the petitioner has involved in so many cases earlier and yet was indulging in similar misconducts more particularly, in a circumstance where he was using the old tickets and pocketing the money which was actually the income of the respondent-corporation, in a matter of the present nature, certainly, invoking the power under Section 11(A) of the Industrial Disputes Act would not be justified. Therefore, I see no error committed by the Labour Court, so as to call for interference with the award.

Accordingly, the petition being devoid of merit stands disposed of.