

(2011) 07 KAR CK 0021

In the Karnataka High Court

Case No : Writ Petition No. 23850 of 2011 (L-KSRTC)

The Divisional Controller K.S.R.T.C.

APPELLANT

Vs

Sri Sanjeev Kumar

RESPONDENT

Date of Decision : 22-07-2011

Acts Referred:

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

Citation : (2011) 07 KAR CK 0021

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : K.S. Bharath Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

Ram Mohan Reddy

1. A Public Road Transport Corporation aggrieved by the order dated 21.1.2011 in I.D. No. 56/2009 of the III Additional Labour Court, Bangalore allowing respondent's petition u/s 10(4-A) of the Industrial Disputes Act, 1947 (for short the "Act"), to set aside the order dated 21.4.2008 of respondent's dismissal and directing reinstatement with 50% back wages, continuity of service and other consequential benefits, has presented this petition. Respondent, a driver in the petitioner-Corporation, while discharging duties on 27.12.2007 in bus bearing No. KA-01/F-8387 plying on route Thirupathi to Bangalore, it was alleged that due to rash and negligent driving, caused the accident whence the pedestrian, a minor girl aged 9 years, succumbed to grievous injuries. The Traffic Inspector attached to Mulbagil Depot is said to have prepared the rough sketch of the scene of accident and submitted his report, following which disciplinary proceeding was initiated by issuing articles of charge and a domestic enquiry, held extending an opportunity of hearing to the respondent followed by a report of the Enquiry Officer holding the charge proved. To the second show cause notice, respondent submitted a reply, which when found not satisfactory, the Disciplinary Authority by order dated 21.11.2008 dismissed the respondent from

service.

2. Respondent instituted a petition before the labour court invoking Section 10(4-A) of the Act. numbered as I.D. 56/09, which was resisted by filing counter statement of the petitioner. In the premise of pleadings of the parties, labour court framed four issues, of winch, the first issue related to validity of the domestic enquiry Enquiry Officer was examined as M.W. 1 and 35 documents marked as Exs. M.1 to M.35. There after wards, respondent workman filed a memo conceding to the fairness of the domestic enquiry and accordingly, labour court by order dated 5.4.2010 answered the issue in the affirmative holding the domestic enquiry as fair and proper. Respondent did not choose to lead evidence over the allegation of victimization. Labour Court having regard to the material on record declined to accept the rough sketch of the scene of accident Ex. M. 13 as proof of the allegation of rash and negligent driving and opined that the finding recorded by the Enquiry Officer and Disciplinary Authority over the said charge was perverse. By the award dt. 21.1.2011, impugned, the petition filed by the respondent was allowed and reliefs granted.

3. Although, learned counsel for the petitioner contends that the explanation to the articles of charge that, when the bus was moving cautiously at the spot, a child suddenly emerged from the footpath on to the road, resulting in the accident was sufficient to establish the charge, I am afraid, is unacceptable. The charge of rash and negligent driving was required to be established by the petitioner-Corporation, on the basis of the records placed before the Enquiry Officer. The sketch-Ex. M 13, of the scene of accident, was pressed into service to establish the allegation. The labour court, found that the sketch did not depict the true state of facts, since the bus was shown to be behind the spot of accident and the brake marks and hence not credible evidence. The testimony of the Reporting Officer not being an eye witness, was not in the direction of establishing the charge, while the witnesses to the accident were not examined. In that view of the matter, the labour court, in my opinion, did arrive at the correct conclusion, that the charge against the respondent is not proved. It is no doubt true that the labour court at paragraphs 19 and 20 did make uncalled for general observations which in my view does not vitiate the findings and conclusions. In the result, writ petition devoid of merit, is rejected.