
(2011) 03 KAR CK 0203
In the Karnataka High Court
Case No : Writ Petition No. 7134 of 2007

The Karnataka State Road Transport Corporation	APPELLANT
Vs	
Chikkaraje Urs	RESPONDENT

Date of Decision : 04-03-2011

Acts Referred:

Constitution of India, 1950 — Article 11A

Citation : (2011) 03 KAR CK 0203

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : Shwetha Anand, for the Appellant; V.S. Naik, for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopala Gowda, J.—The Respondent was a driver in the Petitioner-Corporation. On 18.03.1997, the Respondent was on duty, driving the bus bearing No. MEF-2245 from Marballi Hundi to Mysore. While driving the said bus on that route, on that day, it is alleged that a passenger travelling in the bus on footboard fell down, came under the wheel of the bus, sustained fatal injuries and succumbed on the spot. After receipt of the information about the accident, an Officer was sent for inspection to investigate and submit the report. The Officer having conducted the spot enquiry and drawn spot mahazar with the help of the persons who were present at the spot and the police, submitted the report. On receipt of TR-18 and the connected records, the Petitioner initiated disciplinary proceedings against the Respondent by issuing a show cause notice, since he was a daily wage driver. The explanation submitted by the Respondent having been found to be not convincing, the Petitioner appointed an Inquiry Authority to find out the truth of imputations made against the Respondent. The Inquiry Authority after conducting the enquiry submitted the finding holding the Respondent guilty of the charges levelled against him. The Disciplinary Authority after receiving the inquiry report, upon perusal of the inquiry record, being satisfied that the Respondent has committed the charged misconduct and taking

into consideration the gravity of the misconduct committed by the Respondent, passed an order on 23.07.1999 of removal of the name of the Respondent from the list of daily wage drivers and forfeited the right of the Respondent to seek permanent post in the Corporation.

2. The Respondent challenged the said order by raising an industrial dispute before the Labour Court at Mysore. The Petitioner contested the dispute. The legal representatives of the deceased, who incidentally was also a driver of the Petitioner-Corporation filed MVC 279/1997 against the Petitioner. The claim and the counter statement gave rise to the framing of issues. The Labour Court raised 5 issues. The issue with regard to domestic enquiry was held as fair and proper. However, considering the record, the Labour Court has passed the award dated 23.07.1999, whereby and whereunder, it set-aside the order passed by Disciplinary Authority and directed the Petitioner to reinstate the Respondent on the same terms and conditions applicable to him as on the date of dismissal and pay 50% backwages calculated on the basis of last drawn wages. The employer - corporation has challenged the said award in this writ petition.

3. By an order dated 12.07.2007, the impugned award insofar as it related to payment of backwages was stayed. By an order dated 07.08.2007, the Petitioner was directed to reinstate the Respondent subject to result of the writ petition. The Respondent having been reinstated, remained absent from 30.07.2008. A show cause notice having been issued and considering the reply submitted, the Inquiry Officer submitted a report dated 01.03.2010. Considering the report, the Petitioner issued show cause notice dated 04.03.2010 to the Respondent. The Respondent by a communication dated 03.02.2011 has resigned with a request to pay the monetary benefits.

4. Smt. Shwetha Anand, Learned Counsel appearing for the Petitioner, contended that, the Labour Court has committed an error of law and of jurisdiction in passing the award in favour of the Respondent. It was submitted that, the charge levelled against the Respondent having been proved, the name of the Respondent was removed from the list of trainee drivers and his right for permanent employment was forfeited. In the circumstances, it cannot be said that, no such order could have been passed and it was liable to be set-aside. She further submitted that, Labour Court was wrong in exercising the power u/s 11-A of the Act to direct reinstatement and award 50% backwages. It was, therefore, submitted that, the petition deserves to be allowed by setting aside the award passed by the Labour Court.

5. Sri V.S. Naik, Learned Counsel appearing for the Respondent, on the other hand submitted that, the Labour Court recorded a finding of fact and in the circumstances, it was right in exercising the power u/s 11-A of the Act and no fault can be found against such an action. Learned Counsel submitted that, in exercise of the supervisory jurisdiction, this Court should not interfere with the discretionary and equitable order passed by the Labour Court. The counsel, therefore submitted that, the petition may be dismissed. Learned Counsel

submitted that,- the subsequent event of the Respondent resigning from the service has no bearing for consideration of matter on hand.

6. I have perused the record of the writ petition. The point for consideration is:

Whether the Labour Court was justified in passing the impugned award?

7. The Labour Court has recorded categorical finding that the domestic enquiry conducted against the workman was procedurally fair and proper and hence, answered issue No. 1 in the affirmative. The record would indicate that, when the Respondent was driving the bus, Ramalingu had boarded the bus from the front side door and was standing on the foot board of the said door, lost the balance and fell down and the wheel of the bus ran over him, resulting Ramalingu sustaining fatal injuries and died on the spot. It is apparent from the record that, deceased Ramalingu, who had boarded the bus was standing on the foot board of the bus which was overcrowded, lost his grip, fell down and the bus moved over him. If the bus was overcrowded and people were standing on the foot board, the Respondent should not have moved the bus, till all the passengers came inside the bus and the door was closed. There is negligence on the part of the Respondent in driving the bus on 18.03.1997 from Marballi Hundi to Mysore and as a result of which, the accident occurred and Ramalingu having fallen from the foot board came under the wheel of the bus and died. The Respondent's misconduct amply established-

8. The Petitioner gave effect to the interim order dated 07.08.2007 and reinstated the Respondent to duty, subject to result of the writ petition. The Respondent having remained continuously absent, enquiry having been conducted thereafter, when the show cause notice dated 04.03.2010 was issued, has submitted the resignation on 03.02.2011. Considering the fact that the driving of the bus by the Respondent has resulted in a passenger, incidentally the driver of the Petitioner-Corporation sustained fatal injuries and died on account of negligent driving by the Respondent, in my opinion, the Labour Court was not justified in passing the impugned order directing reinstatement with 50% backwages. The award passed by the Labour Court, impugned in this writ petition is irrational and illegal. The order passed by the Petitioner removing the name of the Respondent from the list of trainee drivers and forfeiting the Respondent from claiming permanent employment in the Corporation is commensurable with the delinquency. In the facts and circumstances of the case, in my opinion, the Labour Court is not justified in exercising the power u/s 11-A of the Act and in modifying the punishment. The punishment imposed on the trainee driver for the proved misconduct is justified. There is no irrationality.

In the result, the writ petition is allowed and the impugned Award is quashed. The dispute raised by the Respondent before the Labour Court being devoid of merit shall stand dismissed.

The parties are directed to bear their respective costs.