

(2011) 12 KAR CK 0199

In the Karnataka High Court

Case No : Writ Petition No. 28610 of 2011 (L-KSRTC)

The Management of KSRTC Davanagere Division, Davanagere

APPELLANT

Vs

Sri Mallikarjunajah Conductor Batch No. 165

RESPONDENT

Date of Decision : 01-12-2011

Acts Referred:

Citation : (2011) 12 KAR CK 0199

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : Hareesh Bhandaryt, for the Appellant; S.P. Ramesha, for the Respondent

Final Decision : Allowed

Judgement

Ram Mohan Reddy

1. Petitioner-Road Transport Corporation aggrieved by the award dt. 14/10/2010 in I.D. No. 55/09 of the Industrial Tribunal, Hubli, setting aside the order dt. 11/9/1996, directing withholding of respondent's one ensuing annual increment with cumulative effect, has presented this petition.

2. Petitioner initiated disciplinary action over certain allegation of misconduct leading to the order dt. 11/9/1996 holding the respondent guilty of the misconduct and imposing a minor punishment of withholding one ensuing annual increment with cumulative effect. The workman, through the trade union, initiated conciliation proceeding in the year 2008, which when resulted in a failure report, led to the order dt 1/12/2008 of the State Government referring the points of dispute for adjudication to the Industrial Tribunal. Parties entered appearance, filed their respective pleadings where afterwards, the Industrial Tribunal framed additional issues, of which the 3rd issue related to, whether the claim of the workman was stale on account of delay and laches, since the point referred for adjudication was, whether the dispute raised after the lapse of 10 years was justified, in addition to justification for the order of punishment.

Parties let in oral evidence through their witnesses and marked documents. The Labor Court by the award impugned, held that the delay in raising the dispute would not come in the way of extending the relief and on the merit of the charge, held the same not proved and as a consequence, punishment was unsustainable.

3. Learned Counsel for the petitioner submits that the Industrial Tribunal recorded a perverse finding that as the petitioner did not challenge the order of Reference of the Government, the delay in raising the dispute was inconsequential. On the merit of the matter, learned Counsel submits that the evidence of MW-1 was sufficient to establish the charge against the workman that he had not received luggage charges of Rs. 18/- for 3 units of luggage, from passengers traveling from Davanagere to Gangavathi and therefore the finding of the Industrial Tribunal that the charge was not proved, is perverse.

4. Per contra, learned counsel for the respondent workman submits that in the claim statement it was alleged that an appeal was preferred to the appellate authority calling in question the order dt. 11/9/1996 and as the workman was awaiting orders thereon, when not passed, led to the initiation of conciliation proceeding in the year 2008 and hence there was no delay. Learned Counsel seeks to sustain the award impugned as being well merited, fully justified and not calling for interference.

5. There can be no dispute that one of the points referred by the State government for adjudication before the Industrial Tribunal was, whether the dispute raised after a lapse of 10 years is justified. The Industrial Tribunal, in the premise of pleadings of parties had framed Issue No. 3 as to, whether the claim of the workman was stale on account of delay and laches. Thus the burden of establishing that there was no delay in initiating the proceedings to raise the industrial dispute was on the workman-respondent. In order to establish that there was no delay, the explanation offered by the workman as set out in the claim statement is that an appeal was filed in which no orders were passed. Admittedly in the oral testimony of WW-1, there is not a whisper over the explanation for the delay. So also in the cross-examination of MW-1, there is not even a suggestion that the delay was on account of the failure of the Appellate Authority in not passing an order. If truly the respondent-workman had preferred an appeal, there is no reason forthcoming as to why relevant material constituting substantial legal evidence of the fact of having filed an appeal, was not produced before the Industrial Tribunal. In the circumstances, there can be no other conclusion but to hold that the delay was not explained satisfactorily and in fact no industrial dispute existed or could have even said to have been apprehended on the date when the Reference was made, ie., 12 years after the order passed by the employer.

6. The observations of the Apex Court in *The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others*, , in the circumstances is apposite:

6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Sec. 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Sec. 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case, When the matter has become final, it appears to us to be rather incongruous that the reference be made under Sec. 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in Question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial dispute was *ex facie* bad and incompetent.

7. In the present appeal it is not the case of the respondent that the disciplinary proceedings, which resulted in his dismissal, were in any way illegal or there was even any irregularity. He availed his remedy of appeal under the rules governing his conditions of service. It could not be said that in the circumstances an industrial dispute did arise or was even apprehended after a lapse of about seven years of the dismissal of the respondent. Whenever a workman raises some dispute it does not become an industrial dispute and the appropriate Government cannot in a mechanical fashion make the reference of the alleged dispute terming it as an industrial dispute. The Central Government lacked power to make reference both on the ground of delay in invoking the power under Sec. 10 of the Act and there being no industrial dispute existing or even apprehended. The purpose of reference is to keep industrial peace in an establishment. The present reference is destructive to the industrial peace in an establishment. The present reference is destructive to the industrial peace and defeats the very object and purpose of the Act. The Bank was justified in thus moving the High Court seeking an order to quash the reference in question.

7. The finding of the Labor Court on Issue No. 3 that the petitioner-Corporation had not challenged the order of Reference of the government and therefore there is no delay in raising the dispute, is perverse and unsustainable.

8. In the result, the writ petition is allowed. The award impugned quashed and the Reference rejected for delay and laches.