

(2011) 12 KAR CK 0109

In the Karnataka High Court

Case No : Writ Petition No. 11688 of 2011 (L-KSRTC)

The Management of KSRTC Davanagere Division Davanagere	APPELLANT
Vs	
T. Kalyana Gowda Traffic Controller (Conductor) KSRTC, Davanagere Division Davanagere	RESPONDENT

Date of Decision : 05-12-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 11 A

Citation : (2011) 12 KAR CK 0109

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : Hareesh Bhandary, for the Appellant; Rajashekhar, for the Respondent

Final Decision : Allowed

Judgement

Ram Mohan Reddy

1. Petitioner-Road Transport Corporation aggrieved by the award dt. 4.10.2010 in ID 121/2008 of the Industrial Tribunal, Hubli interfering with the order dt. 1.12.1999 imposing the punishment of reduction of one annual increment of the respondent with cumulative effect for proved misconduct, to modify the same to withholding of one increment for a period six months without cumulative effect and entitling the respondent to monetary benefits with 6% interest thereon from the date when it was denied, has presented this petition.

2. The order imposing minor penalty when subjected to conciliation proceeding ending in a failure report under the Industrial Disputes Act, 1947, for short "ID ACT", the State Government by order dt. 24.9.2008 referred the industrial dispute for adjudication to the Industrial Tribunal, Hubli, whence it was registered as ID 121/2008. Parties having entered appearance, filed their respective pleadings, the Industrial Tribunal framed additional issues, one of which related to whether the claim of the workman had become stale due to delay and laches.

The workman was examined as WW-1 and documents of the petitioner corporation marked when confronted to the witness in cross examination. The industrial Tribunal having regard to the material on record and the evidence both oral and documentary held the charge of non-issue of tickets after collection of fare from the passengers proved. While answering issue No.3 on the question of delay observed that the petitioner had not challenged the order of the State Government referring the dispute and therefore there was neither delay nor had the dispute become stale and accordingly interfered with the order of punishment in exercise of extraordinary discretion u/s 11-A of the Act.

3. The pleadings of the parties indicating a dispute over the delay and laches in raising the Industrial Dispute, resulting in the framing of an additional issue ought to have been answered on the basis of the evidence adduced by the parties. The burden of establishing that there was no delay and laches and that the dispute was not stale when referred to the Industrial Tribunal, was on the workman since the order is of the year 2000 and the reference is of the year 2008. The workman having not placed relevant material to the satisfaction of the Industrial Tribunal over the delay and laches in raising the dispute, the Industrial Tribunal was not justified in recording its finding over issue No.3 that failure on the part of the petitioner-Corporation to challenge the reference order, the dispute was not stale and there was no delay and laches, in my opinion, that finding is perverse.

4. The Apex Court has repeatedly held that stale claims should not be referred vide In The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others, ; Assistant Executive Engineer, Karnataka v. Shivalinga, (2002) 1 LLJ 457SC , In Regional Provident Fund Commissioner Vs. M/s. K.T. Rolling Mills Pvt. Ltd., , it was observed that if a power is conferred by the statute without mentioning the period within which it could be invoked, the same has to be done within a reasonable period, as all powers must be exercised reasonably and exercise of the same within reasonable period would be a facet of reasonableness.

5. In the instant case, the respondent did not choose to challenge the order imposing the minor punishment for over eight years. In the absence of material dates and relevant particulars relating to the explanation for the inordinate delay, the Labour Court, in my opinion, fell in error in observing that there was no delay, on the premise, that there was laches on the petitioner-Corporation in not challenging the reference order.

6. There is yet another reason for interference with the award impugned. The Industrial Tribunal having held the misconduct proved, nevertheless interfered with the punishment by invoking its extraordinary discretion. In The General Secretary, South Indian Cashew Factories Workers' Union Vs. The Managing Director, Kerala State Cashew Development Corporation Ltd. and Others, , the Apex Court having regard to Section 11-A of the "ID Act" held that it only applies in cases of discharge or dismissal of a workman as clearly mentioned in the section itself and not otherwise and therefore, on that score too interference by

the Labour Court with the order of the petitioner Management which is neither dismissal nor discharge of the respondent from service is unsustainable.

7. In the result, this petition is allowed. The award impugned calls for interference.