

(2015) 12 KAR CK 0145

In the Karnataka High Court

Case No : WP Nos. 61174/2012 and 63030/2011 (L-KSRTC)

The Management of NWKRTC

APPELLANT

Vs

Ramachandra

RESPONDENT

Date of Decision : 02-12-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(4-A), 32(2)(b), 33(2), 33(2)(b), 33(c)(2)

Citation : (2015) 12 KAR CK 0145

Hon'ble Judges : R.S. Chauhan, J.

Bench : Single Bench

Advocate : Shivakumar S. Badawadagi, Advocate, for the Appellant; R.S. Ravi Hegde, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—Since both these petitions arise out of the award dated 27.08.2010, since the parties before the court are same, both these petitions are being disposed of by this common order.

2. In W.P. No. 63030/2011, the North West Karnataka Road Transport Corporation ("The Corporation", for short) has challenged the award dated 27/8/2010, whereby the learned Labour Court has set aside the punishment order dated 11/8/2007, and has directed the Corporation to reinstate the respondent-workman, and to pay him 50% of the back wages from the date of his dismissal till the date of his reinstatement into the service, and to give him continuity of service and other consequential benefits.

3. In W.P. No. 61174/2012 the Corporation has challenged the order dated 30/7/2011 whereby the learned Labour Court has allowed the application filed by the respondent-Workman under Section 33(c)(2) of the Industrial Dispute Act, 1947, ("the Act" for short), and has directed the Corporation to pay the arrears of back wages, quantified as Rs. 1,95,683/- along with an interest of 6% p.a. from the date of the application till the date of realisation.

4. Briefly, the facts of the case are that in 1997, the respondent- workman was appointed as a Conductor by the Corporation. While the respondent was working as a Conductor at Raibag Depot, he submitted 12 bills for the period from 19/9/2005 till 29/9/2005, which were found to be tampered with; it was discovered that the tickets had been reissued, which caused loss of Rs. 166/- to the Corporation. Therefore, on 23/12/2005 the respondent-workman was served with a show cause notice. On 5/1/2006, the respondent submitted his reply. Since the disciplinary authority was not satisfied by the reply submitted by the respondent, on 5/1/2006, it appointed the Enquiry Officer. After due completion of the enquiry, the enquiry Officer submitted his report wherein he found the respondent guilty of the alleged misconduct. Thereafter, the disciplinary authority issued a second show cause notice to the respondent. Since the respondent was involved, even on earlier occasion, in thirty-seven cases of the similar nature, by order dated 11/8/2007, the respondent was dismissed from service.

5. Since the respondent was aggrieved by the dismissal order dated 11/8/2007, he filed a petition under Section 10(4-A) of the Act, before the learned Labour Court. After going through the oral and documentary evidence, the learned Labour Court passed the impugned order dated 27/8/2010. Hence, the W.P. No. 63030/2011 before this Court.

6. Meanwhile, since the award passed in favour of the respondent had not been implemented, the respondent continue to be under suspension. He filed an application under Section 33(C)(2) of the Act, against the Corporation. By the impugned order dated 30/7/2011, the said application was allowed in the aforementioned terms. Hence, the W.P. No. 61174/2012 before this Court.

7. Mr. Shivakumar S. Badawadgi, the learned counsel for the petitioner, has pleaded that the learned Labour Court has given self-contradictory award. On the one hand, it was held that the enquiry held against the respondent workman was proper one, yet it has equally concluding that the enquiry was an illegal one. Moreover, it is not justified in setting aside the punishment order as no reason whatsoever has been given. Thus, the impugned award deserves to be interfered with.

8. On the other hand, Mr. Ravi Hegde, the learned counsel for the respondent has pleaded that the respondent had raised the contention that prior to dismissal of the respondent from the service, as a dispute was already pending before the Industrial Tribunal, Bangalore, in the form of ID No. 148/2015, the Corporation was required to take the permission from the Industrial Tribunal prior to passing the punishment order. Hence, there was non compliance of Section 33 (2)(b) of Act. Even if the finding of the Labour Court are is contradictory, the fact that the compliance of Section 32(2)(b) has not been done, the dismissal order would be an illegal. Thus, the impugned award is legally sustainable. Hence, the learned counsel for the respondent has supported the impugned award.

9. A bare perusal of the said impugned award clearly reveals that a contention

was raised by the respondent with regard to the violation of Section 33(2)(b) of the Act. However, for reasons best known to the Tribunal no issue was framed with regard to violation of Section 33(2)(b) of the Act.

10. A bare perusal of the said impugned award clearly reveals that on the one hand, the learned Tribunal opined that the departmental enquiry was legally valid, yet in para 16 of the impugned award, it held that the departmental enquiry was an unfair one. But, be that as it may, there is no doubt that before the dismissal order dated 11/8/2007 was passed, no permission was taken from the Industrial Tribunal, Bangalore, while I.D. 148/2007 was pending before the said Tribunal. Thus, clearly there was a non-compliance of Section 33(2) b of I.D. Act. Therefore, the dismissal order would necessarily have to be set aside on this ground alone. Even if this ground has not been taken note of by the learned Tribunal, the impugned award cannot be interfered with. For, although the logic given by the learned Tribunal may be unjustified, but nonetheless the conclusion drawn by the learned Tribunal, that the punishment order of dismissal was illegal one, is legally valid.

11. Thus, for the reasons stated above, this Court does not find any merit in the present petition. W.P. No. 63030/11. It is, hereby, dismissed.

12. As par as the merit of W.P. No. 61174/12 is concerned, suffice it to say that once the award dated 27/8/2010 was passed, and since there was no stay granted by this Court, the Corporation was legally bound to implement the same. Since the Corporation failed to implement the said award, the respondent was certainly justified in filing his application under Section 33(c)(2) of the Act. In consonance with the award, the Corporation was duty bound to pay 50% of the back wages from the date of disposal till the date of reinstatement. According to the learned counsel for the petitioner- Corporation, the respondent has been reinstated on 8/4/2011. Therefore, the learned Tribunal was certainly justified in directing that the Corporation to pay an amount of Rs. 1,95,683.00 along with an interest at 6% p.a. from the date of filing of the application under Section 33(c) (2) of the Act till realisation. Hence, this Court does not find any illegality and perversity in the impugned order dated 30/7/2011.

13. This petition being devoid of merits. It is, hereby dismissed.

14. The learned counsel for the Corporation has prayed that a reasonable time should be given to the Corporation for the payment of back wages. Therefore, this Court grants Corporation one month's time from the date of the receipt of the certified copy of this order for making the payment of back-wages along with interest 6%p.a. to the respondent-workman.