

(2000) 03 KAR CK 0088
In the Karnataka High Court
Case No : Writ Appeal No. 5977 of 1998

The Managing Director, K.S.R.T.C., Bangalore	APPELLANT
Vs	
Gopalappa Amarappa Salimani and Another	RESPONDENT

Date of Decision : 15-03-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (4)

Citation : (2001) 2 KarLJ 256 : (2001) 4 KCCR 312 SN : (2001) 1 LLJ 943

Hon'ble Judges : N. S. Veerabhadraiah, J;G. C. Bharuka, J

Bench : Division Bench

Advocate : Sri L. Govindaraj, for the Appellant;

Judgement

G.C. Bharuka, J.—This intra-Court appeal has been preferred by the Karnataka State Road Transport Corporation ("the Corporation" for short) questioning the appropriateness of awarding 50% back wages to the respondent-conductor from 16-12-1985 till the date of the award (Annexure-D) i.e., 12-2-1993.

2. The respondent was appointed as a conductor in the Corporation's Bijapur Division. On 13-3-1981 when he was on duty as conductor in Corporation's bus bearing No. MYF 4450 running from Athani to Bijapur it was checked at stage No. 11/10 by the checking squad. On verification, it was found that out of 34 adult passengers travelling in the bus 15 were without tickets. On enquiry, the passengers revealed that the respondent-conductor despite collecting Rs. 2.20 from each of them as fare but he did not issue tickets to them. It was found that the respondent had already closed the stage entries against stage 10 in all respect except for denominations of paise 0.40 and Rs. 1.80 tickets. Accordingly, the checking squad served an offence memo on the respondent the receipt whereof was duly acknowledged by him. The checking inspectors also recorded the statements of passengers in writing and issued tickets to them. They also made endorsement on the waybill. Subsequently, they submitted a report to the disciplinary authority.

3. On the basis of the said report article of charges were issued to the respondent on 4-4-1981. The disciplinary authority found the charges well-proved. Accordingly, he awarded the punishment of dismissal from service. This order was also affirmed in the statutory appeal.

4. Thereafter, on the basis of a demand raised by the respondent, the Government of Karnataka by its notification dated 16-12-1985 referred the dispute to the Industrial Tribunal at Hubli which was numbered as Ref. 159 of 1985. The Tribunal by its order dated 2-7-1990 held that the domestic enquiry conducted by the Corporation was not fair and proper and accordingly directed the Corporation to lead evidence in respect of the charges.

5. Thereafter the case was posted for evidence. But before the evidence could be recorded the Advocate for the respondent filed I.A. 3 for recalling the earlier order dated 2-7-1990 to the extent it related to the giving of liberty to the Corporation to lead evidence. The same was allowed by an order dated 18-10-1990 and the case was straightaway posted for arguments. Ultimately, the Tribunal by its impugned award held that since the Corporation had failed to discharge its burden of substantiating the charges therefore the punishment of dismissal cannot be sustained in law. Anyhow, keeping in view the facts and circumstances of the case it directed reinstatement with 50% back wages from the date of dismissal till reinstatement.

6. The validity of the said award was questioned by the Corporation in writ jurisdiction of this Court by preferring Writ Petition No. 27247 of 1994 in which the impugned judgment has been passed by the learned Single Judge.

7. It is not in dispute that the Corporation had already reinstated the respondent in its service from 25-2-1992 when the matter was still pending adjudication before the Tribunal. Therefore, the only question which remained to be examined by this Court was awarding of back wages was justified or not.

8. In order to assail the award one of the questions raised before us is that the Tribunal had erred in reviewing its order dated 2-7-1990 whereby it had permitted the Corporation to lead evidence in respect of the charge on the ground that the Tribunal being a quasi-judicial authority and a creature of the statute could not have reviewed its earlier order on merit because the statute did not permit.

9. In the case of Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, , para 4, it has been held that.-

"It is well-settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to our notice from which it could be gathered that the Government had power to review its own order".

10. In the case of Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, , para 13, the Supreme Court after referring the above judgment has

further held that.-

"Furthermore, different considerations arise on review. The expression "review" is used in two distinct senses, namely, (1) a procedural review which is either inherent or implied in a Court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the Court in *Narshi Thakershi's* case, *supra*, held that no review lies on merits unless a statute specifically provides for it, obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected *ex debito justitiae* to prevent the abuse of its process, and such power inheres in every Court or Tribunal".

11. Now coming to the facts of the present case, the question to be addressed is whether the Tribunal by its order dated 18-10-1990 had reviewed its earlier order, dated 2-7-1990 by which the Corporation was permitted to lead evidence can be said to have merely exercised its power of jurisdiction of procedural review and not the substantive review which admittedly the Act does not confer on it.

12. In the case of *The Cooper Engineering Limited Vs. Shri P.P. Mundhe*, , para 22, it has been held that.-

"We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication".

13. Subsequently, in the case of *Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd. and Another*, , para 34, it has been held that.-

"Having given our most anxious consideration to the question raised before us, and minutely examining the decision in *Cooper Engineering Limited's* case, *supra*, to ascertain the ratio as well as the question raised both on precedent and on principle, it is undeniable that there is no duty cast on the Industrial Tribunal or the Labour Court while adjudicating upon a penal termination of service of a

workman either u/s 10 or u/s 33 to call upon the employer to adduce additional evidence to substantiate the charge of misconduct by giving some specific opportunity after decision on the preliminary issue whether the domestic enquiry was at all held, or if held, was defective, in favour of the workman. Cooper Engineering Limited's case, supra, merely specifies the stage at which such opportunity is to be given, if sought. It is both the right and obligation of the employer, if it so chooses, to adduce additional evidence to substantiate the charges of misconduct. It is for the employer to avail of such opportunity by a specific pleading or by specific request. If such an opportunity is sought in the course of the proceeding the Industrial Tribunal or the Labour Court, as the case may be, should grant the opportunity to lead additional evidence to substantiate the charges. But if no such opportunity is sought nor there is any pleading to that effect no duty is cast on the Labour Court or the Industrial Tribunal suo motu to call upon the employer to adduce additional evidence to substantiate the charges".

14. In our opinion, the above decision of the Supreme Court is merely an authority on the proposition that after domestic enquiry found to be unfair or improper it is not the duty of the Tribunal to ask the management to lead evidence and therefore on failure to do so the award cannot be held to be invalid. But no decision has been brought to our notice wherein it has been held that if the Tribunal on a oral request or otherwise grants such an opportunity then it acts in excess of its jurisdiction rendering such an order to be nullity.

15. On the contrary, in the case of Rajendra Jha Vs. Presiding Officer, Labour Court, Bokaro Steel City, District Dhanbad and Another, , para 16, though no application was made by the management seeking leave to lead evidence nonetheless the same granted by the Labour Court. It has been held by the Supreme Court that.-

"..... But, in the case before us, the Labour Court had the jurisdiction to decide whether to allow the employers to lead evidence or not. It may have acted irregularly in the exercise of that jurisdiction but that is to be distinguished from cases in which the Court inherently lacks the jurisdiction to entertain a proceeding or to pass a particular order".

16. Furthermore, granting of an opportunity to the management after holding domestic enquiry being not fair, no palpable injustice was to be caused to the respondent-workman. Rather, it would have merely facilitated the Tribunal to come to a correct conclusion as to whether the facts of the case require any interference at its end u/s 11-A of the Act. The Tribunal has sought to review its order dated 2-7-1990 thereby denying the Corporation to lead evidence in support of the charges found to be proved in the enquiry on a pure question of law that the order to the said extent was ultra vires its powers. Therefore, the review of the order was not merely procedural but in fact it was a substantive review and as such impermissible.

17. Accordingly, we are of the view that the management was unjustly denied of leading evidence in respect of the charges framed against the respondent. Admittedly, in the domestic enquiry, charges of misappropriation of Corporation's revenue were found established and the same was affirmed in the internal appeal as well. Even the learned Single Judge has found that the charges to be proved. In view of the present facts of the case and at this length of time, it is of no use to remand the case to the Tribunal for fresh adjudication after giving opportunity to lead evidence to the Corporation.

18. In the case of U.P. SRTC v. Basudeo Chaudhary, (1997) 11 SCC 370 , para 5, it has been held that.-

"Having regard to the misconduct that has been found established against the petitioner, it is not possible to say that the Corporation, in removing the petitioner from service, has imposed a punishment which is disproportionate to the misconduct".

19. In the present case, since the respondent had already been reinstated during the pendency of the adjudication proceedings itself, we allow the appeal by merely holding that the respondent will not be entitled to back wages as granted by the Tribunal and affirmed by the learned Single Judge. No costs.