

Mallappa H vs the Divisional Controller

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Court : Karnataka Orders

Decided On : Feb-02-2024

Judge : N.S.Sanjay Gowda

Appeal No. : WP/107766/2016

Appellant : Mallappa H

Respondent : The Divisional Controller

Judgement :

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IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH DATED THIS THE 2ND DAY OF FEBRUARY, 2024 BEFORE THE HON'BLE MR JUSTICE N.S.SANJAY GOWDA WRIT PETITION NO.107766 OF 2016 (L-KSRTC) BETWEEN: MALLAPPA S/O HANAMAPPA HIREKURABAR, AGED ABOUT 39 YEARS, OCC: NIL, R/O: AT: BUDIHAL, POST: HIREMURAL, TQ: MUDDEBIHAL, DIST: VIJAYAPUR. PETITIONER (BY SHRI RAVI HEGDE, ADVOCATE) AND: THE DIVISIONAL CONTROLLER, Digitally signed by MANJANNA

MANJANNA E E Date:

N.W.K.R.T.C., HAVERI DIVISION, 2024.02.06 +0530 HAVERI, DIST: HAVERI. RESPONDENT (BY SMT. VEENA HEGDE, ADVOCATE) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE WRIT OF CERTIORARI OR ANY OTHER WRIT OR ORDER QUASHING THE IMPUGNED AWARD PASSED IN K.I.D. NO.79/13, DATED:03.02.2016, ON THE FILE OF LABOUR COURT, HUBBALLI VIDE ANNEXURE-F. THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN B GROUP, THIS DAY, THE COURT MADE THE FOLLOWING: -2-

ORDER

1. The petitioner was charged with not issuing tickets to three passengers and after conducting an enquiry, wherein he was found guilty, the NWKRTC has proceeded to terminate the petitioner from services.

2. Being aggrieved, the petitioner raised a dispute before the Labour Court and the Labour Court has also affirmed the said order of dismissal and hence the petitioner is before this Court.

3. The facts as could be ascertained from the

impugned award is that, the bus was carrying a total of 81 passengers and out of which, the petitioner had not issued tickets to three passengers. It was the case of the petitioner that he was in the process of issuing tickets and the bus was checked in the midst of two stages and therefore the allegation made that he was guilty of pilferage of money would not be sustainable.

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4. Learned counsel appearing for NWKRTC submitted that, the evidence recorded clearly indicated that the petitioner had not issued tickets to three

passengers and the respondent-NWKRGC had fact collected the penalty from those passengers and this by itself indicated that there was a deliberate attempt on the part of the petitioner to pilfer. It is also contended that the petitioner had a

history of 25 NINC (non-issue non- collected) cases and therefore this was not an appropriate case to exercise discretion in favour of the workman.

5. After going through the record, the finding that

the petitioner was guilty of pilferage cannot be accepted in its entirety having regard to the fact that there were 81 passengers and the petitioner had not issued tickets only in respect of three passengers. If a bus which is designed to carry about 50 people is transporting 81 people it is obvious that the conductor would have some difficulty in ensuring that he has issued tickets to all the passengers. It is quite probable that in the crowd of 81 people there

-4- would be a possibility of conductor missing one or two passengers. Unless there was clear evidence indicating that the petitioner was guilty of deliberately not issuing tickets, the allegation of pilferage cannot be held to be proved.

6. In this case admittedly, the passengers who

paid the penalty were not examined nor was any record taken from them that they had offered to pay the fare, but the petitioner had taken the fare but had not issued them with tickets or that, he refused to issue them tickets despite the specific demand made by the passengers.

7. In the light of the peculiar fact that there were 81 passengers travelling in the bus and tickets were not issued only three persons, in my view, the extreme punishment of dismissal was not warranted.

8. The material on record also indicates that, the petitioner had a previous history of 25 NINC cases. Learned counsel for the workman however submits that -5-

even in the second show cause notice, this allegation was not made against the petitioner and even in the charge sheet, no mention was made about the past history. He submits that, unless there was clear evidence produced to indicate that the petitioner had a dubious history, the reasoning of the Tribunal in affirming the punishment of dismissal was unwarranted.

9. In my view, having regard to the fact that no

evidence was adduced by the NWKRTC to indicate that the petitioner was subjected to 25 penalties earlier, it would not be safe to assume that the petitioner was guilty of being an habitual offender. However, since an allegation was made against the petitioner that he was guilty of past offences, in my view, interest of justice would be made by

substituting the punishment of dismissed with reinstatement and reduction of the petitioners pay by two stages. The petitioners would not also be entitled for any back wages or for continuity in service. -6-

10. The reinstatement of the petitioner shall be made within a period of two months from the date of

receipt of copy of this order

The writ petition is therefore disposed off. Sd/- JUDGE EM/CT:BCK List No.: 1 Sl No.: 64

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