

Management of Ksrtc by Its Divisional Controller Vs. B.C. Hiremath

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Court : Karnataka

Decided On : Feb-01-2001

Reported in : ILR2001KAR5346; (2002)ILLJ600Kant

Judge : Ashok Bhan and ;N. Kumar, JJ.

Acts : [Industrial Disputes Act, 1947](#) - Sections 4A; [Constitution of India](#) - Articles 226 and 227

Appeal No. : W.A. No. 4807/2000

Appellant : Management of Ksrtc by Its Divisional Controller

Respondent : B.C. Hiremath

Advocate for Def. : Prabhudev, Adv.

Advocate for Pet/Ap. : Basavaraj V. Sabarad, Adv.

Judgement :

Ashok Bhan, J.

1. Karnataka State Road Transport Corporation, (for short, the appellant) through its Divisional Controller, Hubli, has filed this appeal against the order of the single Judge dismissing the Writ Petition filed by the appellant thereby upholding the award made by the Labour Court, Hubli, in K.I.D. No. 21/1988 dated February 24,

1998.

2. Facts: Respondent-workman, (hereinafter referred to as respondent No. 1) was working as a Conductor in the Corporation in the year 1977. While he was conducting Bus No. MYF 5305 plying from Hubli to Giriyal, the vehicle was subjected to checking by the Checking staff at Mavanoor cross. It was found that he had failed to issue tickets for 7 passengers despite collection of fare of 0.55 ps from the passengers. On seeing the checking staff the respondent hurriedly tore 10 tickets and handed them over to the passengers sitting next to him. Checking staff also found that there was over writing on the way bill. A report of the illegalities committed by the respondent were submitted by the checking staff to the Disciplinary Authority. It was decided to hold a domestic enquiry. Articles of charges with necessary details and particulars were served on the workman. Respondent submitted reply to the charges levelled against him which were not found satisfactory. Enquiry was ordered. An enquiry officer was appointed. Enquiry Officer submitted his report recording a finding of 'guilt proved' on the charges levelled. Disciplinary Authority after going through the enquiry report and the material available on the record, passed an order dated December 9, 1977 dismissing the respondent from the service of the Corporation. Prior to this the respondent was alleged to have been involved in as many as 19 cases of misconduct. He had been punished in some of them.

3. Respondent did not take any steps to question the order of dismissal before the appropriate Court of law. The Legislature of Karnataka introduced a State Amendment incorporating Section 4-A after Sub-section (4) of Section 10 of the Industrial Disputes Act, (hereinafter referred to as 'the Act'), permitting the workman to approach the Court. It provided that notwithstanding anything contained in Section 9-C, the workman concerned, in the case of a dispute falling within the scope of Section 2-A, may, within six months from the date of communication to him of the order of discharge, dismissal, retrenchment or termination or the date of commencement of the Industrial Disputes (Karnataka Amendment) Act, 1987, whichever is later, apply, in the prescribed manner, to the Labour Court for adjudication of the dispute. The Labour Court is to dispose of such application in the same manner as a dispute referred under Sub-section (1).

Taking advantage of the amendment introduced by the State in the Act, workman raised an Industrial Dispute in the Labour Court, Hubli in the year 1988 seeking setting aside of the order of dismissal passed against him,

4. Notice was issued in response to which reply statement was filed. On the pleadings of the parties the following issues were framed by the Labour Court:

1. Whether the domestic enquiry conducted by management is fair and proper?

2. Whether the management is justified in dismissing claimant from service?

3. To what relief the said workman is entitled to?

4. What award?

5. What order?

5. Issue No. 1 was taken as a preliminary issue and decided on June 17, 1995. It was held that the domestic enquiry was not held in a fair and proper manner. Parties were permitted to lead their evidence. Appellant produced M.W.1. Several documents were also produced. Default history sheet was produced as Ex.M.10. M.W.1 deposed on the basis of record as he was not a member of the team which had checked the bus. Out of the three persons of the checking staff 2 were dead and the third one had retired. He was not in a position to come and depose before the Court due to old age. Documents produced were marked. The workman did not produce any evidence. Labour Court recorded a very mixed and a confused finding. On the one hand it held that the management had failed to prove the charges against the workman and on the other hand it recorded the following findings:

'Now coming to the next aspect of the case though pilferage is serious offence, an opportunity has to be given to the claimant to improve himself in future but that has not been given. Therefore, leniency has been shown to the claimant and he is to be reinstated.'

6. On the delay caused in approaching the Court, and its effects, the Labour Court recorded the following finding:

'There is serious lapse on the part of the claimant that though he was dismissed long back, he kept quiet till 1988 and he filed this petition after amendment to the Industrial Disputes Act by the Karnataka State Government. In fact no reason was offered by claimant either in the claim statement or by adducing oral evidence, what made him to file this petition so late. In fact, there is no reason to condone the delay as this Court, has already passed orders on preliminary' issue and has gone a step ahead by granting interim relief. Under the circumstances, I would like to observe that the claimant is not entitled for any back wages on account of delay, there is no reason to condone it but already as he has been granted with the interim relief to that extent the claimant is entitled.'

7. On this finding the claim petition was partly allowed in the following terms:

'Petition is partly allowed.

Respondent is directed to reinstate the claimant into service and claimant is entitled for 50% of the salary last drawn by him from June 27, 1995 till his reinstatement and no other monetary benefit.'

8. Aggrieved against the award of the Labour Court, both the management-appellant as well as the respondent-workman filed separate Writ Petitions. Appellant-management filed W.P. No. 26462/1998 seeking quashing of the award, whereas respondent- workman filed W.P. No. 22869/1998, seeking full back wages.

9. Learned Single Judge dismissed both the Writ Petitions and recorded the following finding:

'As stated above, the Conductor had not issued tickets to 7 passengers despite collecting fare of Rs. 0.55. Under the circumstance, the Labour Court has rightly held that dismissal order is disproportionate to the gravity of offence. In addition to that as there was inordinate delay in approaching the Labour Court, the Labour Court also declined to grant full back wages up to June 27, 1995. This order also does not call for interference. Granting only 50% of back wages from June 27, 1995 is reasonable.'

10. It is evident from the reading of the order of the single Judge that the Single Judge proceeded on the assumption that the respondent was guilty of not issuing tickets to 7 passengers despite collecting fare of Rs. 0.55 from each of them. The punishment of dismissal awarded by the Disciplinary Authority was held to be disproportionate to the gravity of the offence. Keeping in view the nature of the charge and the delay in approaching the Labour Court the reinstatement with 50% back wages from June 27, 1995 was found to be reasonable. Appellant has come up in further appeal.

11. Counsel for the parties have been heard at length.

12. Labour Court has recorded a finding:that there was a serious lapse on the part of the workman in not raising the dispute within a reasonable time. He kept quiet for a period of 11 years and taking advantage of the State amendment in introducing Sub-section (4-A), the dispute was raised after 11 years without giving any reason and adducing any evidence. Though a case for condonation of delay was not made out, but keeping in view the fact that the domestic enquiry was held not to be fair and proper, the workman became entitled to be taken back in service pending decision of the dispute before the Court. Taking a sympathetic view he was ordered to be reinstated with 50% back wages from June 27, 1995. :

13. There is nothing in the record to show as to why the domestic enquiry was held to be not fair and proper. Out of the three members of the checking staff two had died and the third one had retired. Due to old age he had become incapacitated to appear as a witness. The management was called upon to prove the charges after lapse of 20 years. Management had produced a witness who deposed on the basis of the official record. Labour Court has not given any reasons for not relying on his evidence, which was duly supported by documentary evidence. No clear cut finding has been recorded by the Labour Court exonerating him of the charges levelled against him; rather a lenient view based on sympathetic consideration was taken. Single Judge proceeded as if the charges were proved but order of dismissal passed by the authority was disproportionate to the gravity of the offence.

14. Labour Court in paragraph 12 of its order which has been reproduced above, concedes that the case of pilferage is a serious offence but an opportunity has to be given to improve himself in future which has not been done. This finding clearly indicates that the Labour Court was of the view that the workman had pilfered the money but took a lenient view to give an opportunity to the respondent to improve himself, losing sight of the fact that earlier the workman had been charge sheeted in 19 cases and in some of them he had been punished for the misconduct. Single Judge proceeded as if the charges are proved and the order of dismissal as disproportionate to the gravity of the offence. Supreme Court in a recent judgment in *Janatha Bayaar (SKCCWS) Ltd. v. Secretary, Sahakari Naukarara Sangha* AIR 2000 SC 3129 : 2000 (7) SCC 517 : 2000-II-LLJ-1395 while considering as to whether the High Court is justified in confirming the order passed by the Labour Court reinstating the respondent workman with 25% back wages in spite of specific finding of fact that the charges of breach of trust and misappropriation of goods for the value given in the said charges had been clearly established, held that the order of reinstatement of a workman against whom misappropriation is established would be unjustified. A proved act of misappropriation cannot be taken lightly even though a number such mis-appropriation cases remain undisclosed. In cases of misappropriation workman cannot be rewarded or legalised any reinstatement in service with full or part back wages. After referring to the case laws, the Supreme Court in paragraph 6 found as under 2000-II-LLJ-1395 at p. 1397:

'6. As stated above, the learned single Judge and the Division Bench in writ appeals confirmed the findings given by the Labour Court that charges against the workmen for breach of trust and misappropriation of funds entrusted to them for the value mentioned in the charge-sheet had been established. After giving the said findings, in our view, the Labour Court materially erred in setting aside the order passed by the management removing the workmen from service and reinstating them with 25% back wages. Once an act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employees in service. Law on this point is well settled. *Re: Municipal Committee, Bahadurgarh v. Krishnan Behari in UPSRTC v. Basudeo Chaudhary* this Court set aside the judgment passed by the High Court

in a case where a conductor serving with U.P. State Road Transport Corporation was removed from service on the ground that the alleged misconduct of the conductor was an attempt to cause loss of Rs. 65/- to the Corporation by issuing tickets to 213: passengers for a sum of Rs. 2.35 but recovering at Rs. 5.35 per head and also by making entry in the way bill as having received the amount of Rs. 2.35, which figure was subsequently altered to Rs. 2.85. The Court held that it was not possible to say that the Corporation removing the conductor from service has imposed a punishment which is disproportionate to his misconduct. Similarly in Punjab Dairy Development Corporation Ltd. v. Kala Singh this Court considered the case of a workman who was working as a Dairy Helper-cum-cleaner for collecting milk from various centers and was charged for the misconduct that he inflated the quantum of milk supplies in the milk centers and also inflated the quality of fat contents where there were less fat contents. The Court held that in view of the proof of misconduct a necessary consequence will be that the management had lost confidence that the workman would truthfully and faithfully carry on his duties and consequently the Labour Court rightly declined to exercise the power under Section 11-A of the Industrial Disputes Act to grant relief with minor penalty.'

15. Further in paragraph 8 it was observed thus:

'In case of proved misappropriation, in our view, there is no question of considering past record. It is the discretion of the employer to consider the same in appropriate cases, but the Labour Court cannot substitute the penalty imposed by the employer in such cases.'

16. In the present case except for denying the back wages practically no punishment is imposed on the workman, although the misconduct was taken to have been proved and there was an inordinate delay of 11 years in raising the dispute. Because of the finding recorded on the preliminary issue that departmental enquiry was not fair and proper by the Labour Court and the workman was ordered to be reinstated, on sympathetic ground by showing indulgence, with continuity of service and 50% of the back wages from June 27, 1995 onwards. Such sort of sympathy and indulgence from the Court is not

warranted when the workman comes to Court after a delay of 11 years. Evidence gets obliterated. Witnesses die.

17. Keeping in view the over all circumstances of the case and the fact that the respondent is working for the past 5 years, we do not disturb the order of reinstatement of the workman but he shall not be entitled to the continuity in service between December 9, 1977 and June 27, 1995. His service for this period shall stand forfeited. He shall not be entitled to any back wages but would be entitled to the wages for the period he has actually worked.

18. Appeal is accepted to the extent indicated above. No costs.

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