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Court : Karnataka

Decided On : Jun-06-2011

Judge : Ram Mohan Reddy

Appeal No. : Writ Petition No. 10292 of 2010 C/w Writ Petition No. 7755 of 2010 (L-KSRTC)

Appellant : Prabhulingappa H.M.

Respondent : The Divisional Controller K.S.R.T.C., Kolar

Advocate for Pet/Ap. : For the Petitioner: K. Hanumantharayappa, Advocate. For the Respondents: B.L. Sanjeev, Advocate.

Judgement :

(Prayer: This writ petition is filed under Articles 226 and 227 of the Constitution of India praying to issue a writ in the nature of certiorari quashing the award of the III Addl. Labour Court, Bangalore dated 31.10.2009 passed in reference No.14/2006 at Annexure-B and etc.)

1. WP No. 10292/2010 is filed by the workman while WP No. 7755/2010 by the Road Transport Corporation - employer calling in question the award dated 31.10.2009 in Reference No. 14/2006 of the III Addl. Labour Court, Bangalore. The challenge to the award by the workman is in so far as denying backwages, continuity of service for promotion and increments, consequential benefits, increments, promotions and withholding four annual increments with cumulative

effect, by modifying the order terminating his services from the Corporation. The Road Transport Corporation has challenged the very same award in so far as exercise of discretion under Sec. 11-A of the Industrial Disputes Act, 1947, for short Act, to modify the order of termination to one of reinstatement with certain benefits.

2. The workman when appointed as a Driver in the Public Road Transport Corporation produced a Transfer Certificate, certifying to have passed 7th standard from Government Higher Primary School, Mangasandra, which, on verification revealed was fabricated. The workman having made a false representation, disciplinary proceeding was initiated, by issuing an Articles of charge, followed by appointing an Inquiring Authority, who extended reasonable opportunity of hearing to the workman and submitted a report dated 18.12.2008, holding the charge proved. The Disciplinary Authority by order dated 2.9.2003 dismissed the workman from service, which led to conciliation proceeding and an order dated 21.1.2006 of the State Government referring the industrial dispute for adjudication before the III Addl. Labour Court, Bangalore, under the Industrial Disputes Act, 1947 (for short 'Act'), registered as Ref. No 14/06. In the premise of pleadings of parties, the Labour Court framed an additional issue over the validity of the domestic enquiry. Parties, entered trial, whence the Road transport Corporation examined the Inquiring Authority as MW-1 and marked 22 documents as Exs.M-1 to M-22 while the workman was examined as WW-1 and no documents were marked. The Labour Court passed an order answering the additional issue in the affirmative holding the domestic enquiry as fair and proper. Thereafterwards, the workman was further examined, on allegation of victimization, whence 10 documents were marked as Exs. W-1 to W-10.

3. Labour Court, having regard to the material on record and the evidence both oral and documentary marshaled in the domestic enquiry, observed that the oral testimony of the Head Master of the Primary School, Mangasandra coupled with the entries in the original admission register, not disclosing the name of the workman, was credible evidence. The defence of the workman that the Head Master examined had not issued the transfer certificated in the year 1985, was held to be inconsequential in view of the original admission register produced by

the Head Master which did not disclose the name of the workman as having been admitted to the school. Labour Court, having recorded a finding that the misconduct was proved, nevertheless, on an assumption that no minimum qualification was required for the post of Driver and that the transfer certificate was only to ascertain the date of birth of the workman coupled with the fact that in similar instances, the Road Transport Corporation took a lenient view, to hold that the punishment of dismissal was grossly disproportionate to the misconduct proved and invoked the extra-ordinary jurisdiction under Section 11-A of the Act, to modify the punishment of dismissal to reinstatement by withholding four increments with cumulative effect as a measure of punishment, by the award impugned.

4. Having heard the learned counsel for the parties, perused the pleadings and examined the award impugned, the following two questions arise for decisions making:

“I. Whether the Labour Court was not justified in invoking Section 11A of the Act entitling the workman to equitable consideration and relief as contended by the Employer Corporation?

II. Whether in the facts and circumstances the Labour Court was justified in denying backwages, continuity of service for promotion and increments, consequential benefits, increments, promotions and withholding four annual increments with cumulative effect as contended by the workman?”

Re-Point-I:

5. The answer to this question need not detain the Court for long, in the light of the observations of the Supreme Court in ‘UNION OF INDIA and ORS. v. M. BHASKARAN and ORS (1996 (1) LLJ 781),’ in the circumstances, is apposite:

“When once fraud on the employer is detected, the appointment orders themselves are tainted and vitiated by fraud and acts of cheating on the part of the employees. The appointment orders are liable to be recalled and voidable at the opinion of the employer concerned. Once the fraud of the employees in getting

such employment was detected, the employees were proceeded against in departmental enquiries and called upon to have their say and thereafter have been removed from service. Orders of removal would amount to recalling of fraudulently obtained erroneous appointment orders which were avoided by the employer after following the due process of law and complying with the principles of nature justice. Fraudulently obtained appointment orders could be legitimately treated as voidable at the option of the employer and could be recalled by the employer and in such cases merely because the employees have continued in service for number of years on the basis of such fraudulently obtained employment orders cannot create any equity in their favour or any estoppels in favour of the employee".

6. To the similar effect are the observations of the Apex Court, in the following opinions:

(i) 'KERALA SOLVENT EXTRACTIONS v. A. UNNIKRISHNAN and ANR (1996 (2) LLJ 888).'

(ii) 'DISTRICT COLLECTOR and CHAIRMAN, VIZIANAGARAM SOCIAL WELFARE RESIDENTIAL SCHOOL SOCIETY and ANOTHER v. M. TRIPURA SUNDARI DEVI (1990 (3) SCC 655)'

(iii) 'UNION OF INDIA v. A. NAGAMALLESHWAR RAO (1998 (1) SCC 700)'

(iv) 'UNITED INSURANCE CO. LTD. v. RAJENDRA SINGH and ORS (2000 (3) SCC 581)'

7. A Division Bench of this Court in 'THE MANAGEMENT OF VISL v. B. VEERANNA GOWDA PATIL (ILR 2004 KAR 4399)', following the aforesaid decisions of the Apex Court, declined to interfere in the matter of termination of service after a disciplinary proceeding, extending reasonable opportunity of hearing and having found the workman to have obtained an appointment by fraudulent means by producing forged document/academic documents, disentitling the workman to equitable consideration or relief.

8. In the factual matrix, the Labour Court's finding that there was no educational qualification for appointment to the post of Driver, is factually incorrect, since the Karnataka State Road Transport Corporation (Cadre and Recruitment) Regulations, 1992 under the heading "traffic department" prescribes educational qualification of 4th standard for appointment to the post of Driver Class-III. In the other words, the Labour Court did surmise, conjecture and guess while drawing the interference in the absence of proved facts and therefore, there is no legitimacy to the interfere and the conclusion.

9. So also the Labour Court's conclusion that in identical circumstances, similarly placed workmen were permitted to continue in service by imposing minor punishment, would enure to the benefit of the workman, in my considered opinion, is illegal and unsustainable. Article 14 of the Constitution of India provides for equality which is a positive concept and cannot be enforced in a negative manner. Benefits extended to some persons in an illegal or irregular manner, cannot be claimed by others on the plea of equality. Wrong order or judgment passed in favour of one person would not entitle another to claim benefits. This is the law laid down by the Apex Court 'STATE OF BIHAR and ORS. v. KAMESHWAR PRASAD SINGH and ANR (2000 (9) SCC 94).' and in the case of 'STATE OF UTTARANCHAL v. ALOK SHARMA and ORS ((2009) 7 SCC 647).'

10. The Labour Court's observation that the workman had served the Corporation for eight years and hence calls for equitable consideration, is wholly misplaced and contrary to the observations of the Apex Court in 'BANK OF INDIA and ANOTHER v. AVINASH D. MANDIVIKAR and ORS. (2005 AIR SCW 4477 = (2005) 7 SCC 690)', following its earlier observations in 'R. VISHWANATHA PILLAI v. STATE OF KERALA and ORS (2004 (2) SCC 105 para 9).' which reads thus:

"A similar plea about long years of service was considered by this Court in 'R. VISHWANATHA PILLAI v. STATE OF KERALA and ORS (supra).' to be inconsequential. In para 19 it was observed:(SCC pp.116-17)

"19. It was then contended by Shri Ranjith Kumar, learned Senior Counsel for the appellant that since the appellant has rendered about 27 years of service, the

order of dismissal be substituted by an order of compulsory retirement or removal from service to protect the pensionary benefits of the appellant. We do not find any substance in this submission as well. The rights to salary, pension and other service benefits are entirely statutory in nature in public service.

The appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eye of the law. The right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on a false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for a Scheduled Caste, thus depriving a genuine Scheduled Caste candidate of appointment to that post, does not deserve any sympathy or indulgence of this court. A person who seeks equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practicing fraud."

11. In 'MAHINDRA and MAHINDRA LTD. v. N. B. NARAWADE (2005 (3) SCC 134)', the Apex Court observed thus:

"20. It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of description has been very well difined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been

observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment."

This observation was followed by the Apex Court in 'L and T KOMATSU. v. N. UDAYAKUMAR (2008 (1) SCC 224)'.

12. The exercise of discretion by the Labour Court under Section 11-A of the Act was unavailable in the facts and circumstances of the case, more particularly, since the appointment was based on a fraud played on the employer and therefore, to hold that the punishment of dismissal was disproportionate to the gravity of misconduct held, proved, so as to disturb the conscience of the Court, is illegal.

Re-Point I : is answered in the affirmative.

13. Re-Point II:

In the view that I have taken on Point I the answer to Point II, is that, it is unnecessary and inconsequential.

In the result, WP No. 10292 / 2010 filed by the workman is rejected while WP No. 7755 / 2010 filed by the Road Transport Corporation is allowed. Award dated 31.10.2009 of the III Addl. Labour Court, Bangalore in Reference No. 14/2006 is quashed and the Reference stands rejected.

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