North West Karnataka Road Transport Corporation Vs Shankar Rao

Court: Karnataka High Court

Date of Decision: June 19, 2001

Acts Referred: Industrial Disputes Act, 1947 â€" Section 11 A

Citation: (2001) 4 KCCR 2839

Hon'ble Judges: Chidananda Ullal, J; Ashok Bhan, J

Bench: Division Bench

Advocate: L. Govindraj, for the Appellant; R.B. Annappanavar, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Chidananda Ullal, J.
This appeal is directed against the order dated 26.9.2000 in Writ Petition No. 5291 of 1997 passed by the learned

Single Judge, in passing whereof, the learned Single Judge while allowing the writ petition, he had set aside the rejection of the Reference No.

12/1995 by the Labour Court and further ordered for reinstatement of the workman without continuity of service and backwages.

2. In this appeal the appellant-NWKRTC is represented by the learned Counsel, Sri L. Govindraj whereas the Respondent-workman is

represented by the learned Counsel, Sri R.B. Annappanavar.

3. The learned Counsel for the appellant had taken us through the impugned order under challenge. It was argued by him that the learned Single

Judge had entered into an error in setting aside the order of the Labour Court in rejecting the reference to confirm the order of termination of the

services of the Respondent-workman. He further argued that the Respondent-workman while discharging his duties as Conductor on Sangli-

Jamkhandi route found to have not issued tickets to 18 passengers in the bus inasmuch as they were travelling in the bus without tickets. According

to him, the said act was with malafide intention either to make illegal gain at the cost of his employer or to put it under loss and injury. While

drawing our attention to the reported decision of this Court in Mullur K.G. Vs. Management of K.S.R.T.C., Belgaum Division, , (the judgment

was dismissed by first of us in different combination) it was pointed by him that at para-8 thereof, it has been observed therein that the denial of

backwages by itself would not be a punishment in a case where the charge of misappropriation had not been proved. He further pointed out that

the Division Bench further observed therein that such a situation would breed indiscipline in the service and the Courts cannot be a party to the

breeding of indiscipline amongst the employees.

4. The above observations came to be made by the Division Bench in the said case in following the Supreme Court decision in the case of

Karnataka State Road Transport Corporation Vs. B.S. Hullikatti, . Therefore, Sri Govindraj prayed that the impugned order under challenge be

set aside and the order of Labour Court be restored.

5. The learned Counsel appearing for the Respondent-workman on the other side supported the impugned order passed by the learned Single

Judge. It was also argued by him that the learned Single Judge had rightly observed that there was no allegation against the workman that he had

collected the money without issuing tickets.

6. In the light of the above submissions made, the sole question that arises for our consideration is whether the learned Single Judge had erred in

setting aside the award of the Labour Court confirming the order of termination of the service of Respondent-workman by the appellant-employer.

7. In our experience till recent the Courts were showing more sympathy in the matter of discharge of workman, when its opinion was that the order

of dismissal was disproportionate to the gravity of offence committed by the workman and lessen the rigour of punishment in exercising the

jurisdiction vested u/s 11A of the Industrial Disputes Act, varied the order of termination by ordering reinstatement of the workman either by not

granting full backwages or by granting part of the backwages. But that attitude of the Courts were found fault with by the Supreme Court when it

had come down heavily rather very heavily and had observed that proven cases of misappropriation did not call for judicial review of punishment

imposed u/s 11A of the Act by showing sympathy as basis for reinstatement and that is not called for.

8. In the case of Karnataka State Road Transport Corporation Vs. B.S. Hullikatti, , the Supreme Court had held that the principle of res ipsa

loquitur viz., the facts speak for themselves is clearly applicable in a case where the conductor charged 50 paise per ticket less from as many as 35

passengers could only be to get financial benefit by the conductor and that the said act was either dishonest or was so grossly negligent that the

conductor was not fit to be conductor, for such action or inaction of his is bound to result in financial loss to the Karnataka State Road Transport

Corporation.

9. In para-5 of the said judgment, the Supreme Court observed as hereunder:

On the facts as found by the Labour Court and the High Court, it is evident that there was a short-charging of the fare by the Respondent from as

many as 35 passengers. We are informed that the Respondent had been in service as a conductor for nearly 22 years. It is difficult to believe that

he did not know what was the correct fare which was to be charged. Furthermore, the appellant had during the disciplinary proceedings taken into

account the fact that the Respondent had been found guilty for as many as 36 times on different dates. Be that as it may, the principle of res ipsa

loquitur, namely, the facts speak for themselves is clearly applicable in the instant case. Charging 50 paise per ticket less from as many as 35

passengers could only be to get financial benefit by the conductor. This act was either dishonest or was to so grossly negligent that the Respondent

was not fit to be retained as a conductor because such action or inaction of his is bound to result in financial loss to the appellant-Corporation.

10. In facts and circumstances of the case in hand, it appears to us that the above decision of the Supreme Court is clearly applicable to the facts

and circumstances of the case in hand and as such, in our considered view, the learned Single Judge was in error in setting aside the order of the

Labour Court in confirming the order of termination of the workman.

11. In that view of the matter, it is obvious that the impugned order passed by the learned Single Judge is liable to be interfered with by restoring

the order of Labour Court in rejecting the reference before it.

12. In the result, the impugned order dated 26.9.2000 in Writ Petition No. 5291 of 1997 stands set aside. We restore the order of Labour Court

passed in Ref. No. 12/1995 (old Nos. Ref. 57/1987 and 104/1993) whereby, it had confirmed the order of termination of the Respondent-

workman in rejecting the reference.

The writ appeal therefore stands allowed in the above terms.