Divisional Controller, N.E.K.R.T.C vs H. Amaresh on 17 July, 2006

Equivalent citations: AIR 2006 SUPREME COURT 2730, 2006 (6) SCC 187, 2006 AIR SCW 3701, 2006 LAB. I. C. 3983, 2006 (7) SCALE 163, 2006 LAB LR 930, (2007) 1 SERVLJ 211, (2007) 1 RAJ LW 67, 2006 (3) UPLBEC 2240, (2006) 5 ALLMR 218 (SC), (2006) 4 CTC 345 (SC), 2006 (8) SRJ 413, (2006) 5 KANT LJ 513, (2006) 4 MAD LJ 610, (2006) 3 PAT LJR 409, (2006) 5 SERVLR 721, (2006) 3 UPLBEC 2240, (2006) 5 SUPREME 573, (2006) 7 SCALE 163, (2006) 110 FACLR 931, (2006) 3 LABLJ 232, (2006) 3 LAB LN 697, (2006) 3 SCT 582, (2006) 3 CURLR 11

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Bench: Ar. Lakshmanan, Lokeshwar Singh Panta

CASE NO.:
Appeal (civil) 7993 of 2004

PETITIONER:
Divisional Controller, N.E.K.R.T.C.

RESPONDENT:
H. Amaresh

DATE OF JUDGMENT: 17/07/2006

BENCH:
Dr. AR. Lakshmanan & Lokeshwar Singh Panta

JUDGMENT:

J U D G M E N T Dr. AR. Lakshmanan, J.

This appeal is directed against the final judgment and order dated 22.07.2003 passed by the High Court of Karnataka at Bangalore in Writ Appeal No. 6439 of 2000. By the impugned judgment, the Division Bench, while disposing off the appeal, confirmed the findings of the Labour Court and of the learned Single Judge with regard to reinstatement and set aside the findings on back-wages. Though the respondent has been served and the affidavit and proof of service stating therein that the show cause notice was received by the sole respondent on 04.11.2004, there was no response or representation on behalf of the respondent. The respondent was also called absent. We, therefore, decided to hear the appeal on merits and also carefully perused the pleadings, the order of the Labour Court, judgment of the Single Judge and of the Division Bench of the High Court and other relevant records.

We also heard the learned argument of Ms. Anitha Shenoy, learned counsel for the appellant-Corporation. BACKGROUND FACTS:

> The respondent joined the Corporation as a conductor. While he was on duty, the appellant-Corporation noticed that he was under the influence of alcohol and did not issue tickets to the passengers. The appellant-Corporation issued Articles of Charge to the respondent-conductor and he replied to the same. The charges, which are grave in nature, are enumerated as below:
>
> 1. That it is reported that you are in a habit of consuming alcohol while on duty and created bad scene of the Corporation among the public by spoiling the image of the Corporation apart from financial loss to the Corporation. (not proved)
>
> 2. That on 27.12.90 you were booked on Devadurga Hosur N/o Schedule No.16/B. 16 along with Sri. Allapa driver No. 2022 but you were not able to discharge duties due to intoxication and after having consumed alcohol and you are not able to perform the schedule duty. In place another conductor had to be arranged inspite of acute shortage of conductor. (not proved)
>
> 3. Further the passenger of schedule No. 47 B/Hospet, 16B, Hosur N/o. were unnecessarily detained at bus stand from 21-15 hours to 22-30 hours, and you went away without getting dispatched from the controller. (not proved)
>
> 4. That on 28.12.90 after completion of the above said duties at about 14 hours, the KSRTC cash held by you was checked and found Rs. 360-95 as short and you were found in drunken condition. (proved) Not satisfied with the reply, the appellant-Corporation conducted the enquiry in accordance with the principles of natural justice and 'Conduct & Discipline' Regulations. The Inquiry Officer found the charges levelled against the respondent proved. A true copy of the Inquiry Report dated 11.12.1991 has been filed and marked as Annexure-P1. It is useful to reproduce the Inquiry Officer's report in paras 4 and 5.
>
> "4. That act of mis-appropriation noticed after checking the way bill and many irregularities, namely failed to show the sale of tickets and over writing. Several places not shown the number of passengers and trip wise collection not mentioned target of revenue was Rs. 1250/- but the delinquent deposit sum of Rs. 638/75 paise. Lastly cash was remitted very late; hence these are the imputations of statement. The M.W.1 has given the detail as to the manner how he notices the irregularities as violations and misconduct having found in drunken state on duty.

In support he has got marked Ex. M.1 to 4, the documents which have not been refuted nor tested the veracity of witness. I have carefully examined the evidence of M.W.1 and the documents marked fully reveals that the delinquent has committed not only misconduct but misappropriated the cash by short remittance. I see no reason why the testimony of M.W.1 should be discarded when

delinquent has failed to test the statement by cross examination.

5. In reply by way of written in defense the delinquent has simply denied the charges saying as baseless.

On case full consideration of all the aspects of case unhesitantly I can say that the delinquent has not created a doubt of evidence led by management and I hold that management has fully brought home the charges. There is no reason to discard the testimony of M.W.1, accordingly I hold that all the charges have been proved by the management. Hence this report."

The Disciplinary Authority, after perusing the details of the inquiry proceedings, replied to the respondent to the Articles of Charge and other available material, agreed with the findings of the Inquiry Officer and dismissed the respondent from service. Aggrieved by the order of dismissal, the respondent raised an industrial dispute under Section 10(4) of the Industrial Disputes Act, 1947 before the Labour Court, Gulbarga to which the Corporation replied.

The Presiding Officer, Labour Court, by his order dated 30.08.1996, while deciding the preliminary issue regarding the validity of inquiry proceedings held the same to be illegal and invalid in view of the denial of reasonable opportunity to the respondent.

The Labour Court, by its Award dated 17.12.1996, held that out of 4 charges levelled against the respondent, the 4th charge regarding pilferage against the respondent stood proved. As regards punishment, dismissal from service was substituted with reinstatement and 75% backwages. Aggrieved by the award dated 17.12.1996, the appellant-Corporation filed the writ petition before the High Court of Karnataka at Bangalore. The learned Single Judge, by his order dated 11.09.2000, upheld the findings of the Labour Court but modified the back-wages and reduced it to 25%.

Aggrieved by the order of the learned Single Judge, the Corporation filed an appeal before the Division Bench of the Karnataka High Court. The Division Bench, by the impugned judgment and order, affirmed the findings of the Labour Court and of the learned Single Judge with regard to reinstatement and set aside the findings on back wages. Hence the special leave petition was filed by the Corporation and notice was ordered on 17.11.2003. On 03.12.2004, none appeared on behalf of the respondent and leave was granted.

We heard Ms. Anitha Shenoy, learned counsel appearing for the appellant-Corporation. We have been taken through the pleadings, two orders passed by the Labour Court, order of learned Single Judge and of the learned Judges of the Division Bench. We have carefully perused those orders. A careful perusal of the order dated 17.12.1996 of the Labour Court would only reveal the total non-application of the mind by the Presiding Officer of the Labour Court, Gulbarga and the inconsistent findings rendered by the said Court. There are lot of discrepancies and mistakes in the award of the Labour Court on factual as well as legal aspects of the matter. The Labour Court at one place has observed as follows:-

> "Ex.M.1 goes to show that the claimant was negligent in remitting the amount. But no inference can be drawn against him that he was under the influence of intoxication, and there was shortage of fund with the claimant. The shortage of fund could be due to so many reasons. Therefore the claimant has committed some misconduct which is not a simple in nature."

In another place, the Labour Court in para 22 has observed as under:-

> "I have already stated above that the Respondent has not proved charges 1 to 3. But he has proved charge No.4. I have also stated above that the charge No.4 is grave in nature and as such some reasonable punishment is necessary."

There is absolutely no precision in regard to the factual aspects and findings rendered by the Labour Court. In the said award, the Labour Court directed reinstatement of the respondent despite holding him guilty of the charge of pilferage levelled against him and directed reinstatement with back wages. In our view and as rightly pointed out by learned counsel for the appellant any dereliction of duty in this regard is highly detrimental to its financial well being and against public interest. We shall now consider the judgment of the High Court. The High Court, in our view, has erred in affirming the award of the Labour Court insofar as the award of reinstatement is concerned. As rightly urged by Ms. Anitha Shenoy that the charges of pilferage was established against the respondent- workman such misconduct is grave and has the effect of disrupting the services of a public transport system. This Court in the judgment reported in (2002) 10 SCC 330

- Regional Manager, RSRTC vs. Ghanshyam Sharma (3 Judges) held that the proved acts of misconduct either to a case of dishonesty or of gross negligence and bus conductors who by their actions and inactions cause financial loss to the Corporation ought not to be retained in service. The judgment in Karnataka SRTC vs. B.S. Hullikatti reported in (2001) 2 SCC 574 (2 Judges) was also referred to and relied on by the 3 Judges Bench in the above judgment. This Court in (2001) 2 SCC 574 (2 Judges) has held in para 6 as follows:-

> "It is misplaced sympathy by the Labour Courts in such cases when on checking it is found that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the Bus Conductors to collect the correct fare from the passengers and deposit the same with the company. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare."

The High Court and the Labour Court failed to consider all the cogent evidence and documents produced by the Corporation before them. The Labour Court has miserably erred by not considering that the respondent was in a drunken condition when there was no denial on the part of the workmen to that effect. By not considering this, the High Court has also erred. The order of reinstatement passed by the Labour Court and its affirmation by the High Court is contrary to the law declared by this Court in (2001) 2 SCC 574 wherein it was held that it is misplaced sympathy by

courts in awarding lesser punishments where on checking it is found that the bus conductors have either not issued tickets to a large number of passengers and deposit the same with the Corporation. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare. It was finally held that the order of dismissal should not have been set aside. As already noticed, this view was reiterated by a 3 Judges Bench of this Court in the Regional Manager, RSRTC case (supra).

In the instant case, the mis-appropriation of the funds by the delinquent employee was only Rs. 360.95. This Court has considered the punishment that may be awarded to the delinquent employees who mis-appropriated funds of the Corporation and the factors to be considered. This Court in a catena of judgments held that the loss of confidence as the primary factor and not the amount of money mis-appropriated and that the sympathy or generosity cannot be a factor which is impermissible in law. When an employee is found guilty of pilferage or of mis-appropriating a Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment. The judgment in Karnataka State Road Transport Corpn. Vs. B.S. Hullikatti, (2001) 2 SCC 574 was also relied on in this judgment among others. Examination of passengers of vehicle from whom the said sum was collected was also not essential. In our view, possession of the said excess sum of money on the part of the respondent, a fact proved, is itself a mis-conduct and hence the Labour Court and the learned Judges of the High Court misdirected themselves in insisting on the evidence of the passengers which is wholly not essential. This apart, the respondent did not have any explanation for having carried the said excess amount. This omission was sufficient to hold him guilty. This act was so grossly negligent that the respondent was not fit to be retained as a conductor because such action or inaction of his was bound to result in financial loss to the appellant irrespective of the quantum.

In this context, it is useful to refer to the findings of the domestic tribunal which has already been extracted above in paragraph (supra). Before the Inquiry Officer Exh. M1-M4 were marked, which have not been refuted nor was the veracity of witness decided. The Inquiry Officer has stated that he has carefully examined the evidence of MW.1 and the documents marked which fully reveals that the delinquent has committed not only misconduct but misappropriated the cash. MW 1 was not cross examined by the delinquent employee. In reply, the delinquent has simply denied the charges stating it baseless. The Inquiry Officer, on a careful consideration of all aspects of the case, unhesitantly held that the delinquent was guilty of the charges and that all the charges have been proved. Once a domestic Tribunal based on evidence comes to a particular conclusion normally it is not open to the tribunal and courts to substitute their subjective opinion in place of the one arrived at by the domestic tribunal.

Coming to the question of quantum of punishment, this Court in Divisional Controller, KSRTC (NWKRTC) vs. A.T. Mane, (2005) 3 SCC 254 has held as under:-

> "Coming to the question of quantum of punishment, One should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary

> factor for awarding punishment; on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating the Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such a person and awarding a punishment of dismissal."

We may also beneficially refer to a judgment rendered by a 3 Judges Bench of this Court reported in (2005) 3 SCC 401 M.P. Electricity Board vs. Jagdish Chandra Sharma. This Court held that the tribunals would not sit in appeal over the decision of the employer unless there exists a statutory provision in this behalf. Moreover, Labour Courts must act within the four corners of the statute concerned, in terms of the provisions thereof. When the Labour Court having held that charge No.4 stood proved, no interference by the learned Single Judge or by the Division Bench was called for. In the instant case, the jurisdiction vested with the Labour Court has been exercised capriciously and arbitrarily in spite of the finding that Charge No.4, with regard to the pilferage, has been proved beyond any doubt. In our opinion, the conclusion arrived at by the High Court in ordering reinstatement was shockingly disproportionate in the nature of charge No.4 found proved. When charge No.4 is proved, which is grave in nature, interference with the punishment of dismissal cannot be justified. Similarly, the High Court gets jurisdiction to interfere with the punishment in the exercise of its jurisdiction under Article 226 of the Constitution only when it finds that the punishment imposed is shockingly disproportionate to the charges proved.

Ms. Anitha Shenoy also cited a recent decision of this Court reported in (2005) 7 SCC 447 Rajasthan State Road Transport Corpn. And Others vs. Zakir Hussain (Ruma Pal and Dr. AR. Lakshmanan, JJ). The respondent therein was also a conductor of the appellant-Corporation. He challenged the termination of his service as being in violation of the provisions of the Standing Order. However, without availing the remedy available to him under the Industrial Disputes Act, 1947 he approached the Civil Courts and obtained decrees in his favour. It was challenged by the management before the High Court. The High Court declined to interfere with the orders passed by the lower Court since there is concurrent finding on fact by both the Courts below and that no substantial question of law arises, the appellant-Corporation preferred the special leave petition before this Court questioning the correctness of the orders passed by the courts below and of the High Court particularly on the question of jurisdiction of civil courts to entertain and try the suit instead of an industrial dispute. This Court held that the civil court has no jurisdiction and that the jurisdiction cannot be conferred by any order of the court and that where an act creates an obligation and enforces the performance in a specified manner the performance cannot be enforced in any other manner. It was held that the employees of the State Road Transport Corporation are not civil servants and, therefore, they are not entitled to protection under Article 311 of the Constitution and that their terms of appointment are governed by the letter of appointment and, therefore, the management was well within its right to terminate the services of the respondent during the period of probation if their services were not found to be satisfactory during the said period and in such an event the appellant- Corporation was not obliged to hold an enquiry before terminating the services. In the concluding part of the judgment, this Court has observed that since the respondent-workman has not acted bona fide in instituting the suit, the respondent was not entitled to any back wages and having regard to the facts and circumstances of the said case, it

would not be appropriate to order refund of the back wages paid to him and that he shall not be allowed to continue in service any further and shall be discharged forthwith.

In the instant case, even though charge No.4 has been proved beyond any doubt, the Labour Court taking a lenient and sympathetic view, passed certain directions which were modified by the learned Single Judge and of the Division Bench. While entertaining this special leave petition, this Court has only ordered notice to the respondent. The order of the High Court and of the Division Bench has not been stayed even though the Division Bench observed that having regard to the gravity of the charges proved against the respondent, it would be in the interest of justice to modify the order passed by the learned Single Judge to the extent he has directed the appellant- Corporation to pay 25% back wages. The Division Bench deleted the direction in regard to the payment of back wages but retained the order in regard to the reinstatement. The said order is ex- facie illegal and contrary to the principles laid down by the various decisions of this Court which have been referred to in paragraphs supra and also on the proved facts and circumstances of the case. Having accepted all the facts that the charges of short remittance was proved and yet the learned single Judge and the learned Judges of the Division Bench proceeded to pass an order ordering reinstatement which clearly goes against the mandate of the various judgments of this Court. In our view, even short remittance amounts to mis-conduct and, therefore, applying the rulings of this Court, the impugned order ought not to have been passed by the Division Bench ordering reinstatement. We, therefore, have no hesitation to set aside the order passed by the learned Judges of the Division Bench and restore the order of dismissal of the respondent from service. It is stated that pursuant to the order of the Labour Court the respondent was reinstated in service. Since there was no stay granted by this Court the respondent had continued in service of the Corporation. In view of the law laid down by this Court and of the facts and circumstances of this case, the respondent, in our opinion, has no legal right to continue in service any further. We, therefore, direct the appellant- Corporation to immediately discharge the respondent from service. However, we make it clear that the salary paid to the respondent and other emoluments during this period shall not be recovered from the respondent. We also make it further clear that in view of the order of dismissal the respondent shall not be entitled to any further emoluments.

For the foregoing reasons, we allow the appeal filed by the appellant-Corporation and set aside the orders passed by the Labour Court, learned Single Judge and also of the Division Bench as perverse and are against the proved facts and circumstances of the case. No costs.

We place on record our appreciation for the able assistance rendered by Ms. Anitha Shenoy, learned counsel for the appellant at the time of hearing.