

## **Devendra Swamy vs Karnataka State Road Transport Corpn. on 5 October, 2001**

**Equivalent citations:** [2002(92)FLR400], JT2001(10)SC433, (2002)ILLJ454SC, (2002)9SCC644, 2002(4)SCT609(SC), AIR 2002 SUPREME COURT 2545, 2002 (9) SCC 644, 2002 AIR SCW 2777, 2002 LAB. I. C. 2475, 2002 AIR - KANT. H. C. R. 1920, (2001) 10 JT 433 (SC), (2002) 4 ALLMR 249 (SC), 2001 (10) JT 433, 2002 (4) ALL MR 249, 2002 LAB LR 284, 2002 SCC (L&S) 1093, (2002) 92 FACLR 400, (2002) 1 LABLJ 454, (2002) 2 LAB LN 16, (2002) 4 SCT 609, (2002) 1 CURLR 323

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**Bench:** R.C. Lahoti

### **JUDGMENT**

1. Leave granted.

2. The appellant was a conductor in KSRTC, KH Road, Bangalore. On 17-1-1985 at about 5.00 p.m. the checking staff intercepted the bus plying on route and found that there were 49 passengers in the bus but the appellant, the duty conductor, had not issued tickets to 8 passengers in spite of fare having been collected from them. The departmental enquiry on charges of misconduct was held against him and the punishment of dismissal from service was imposed, While imposing such punishment the Disciplinary Authority took into consideration previous service history of the appellant wherein the appellant was found to have been involved in more than 41 cases of similar nature. Earlier the appellant was penalised even by imposing punishment of withholding of his increments and still the appellant did not show any sign of improvement.

3. The appellant put in issue the finding of departmental proceedings as also punishment imposed therein by raising an industrial dispute under Section 10(1)(c) of I.D. Act. The learned Labour Court found enquiry to be defective and gave the employer an opportunity of adducing evidence to substantiate the charges in the proceedings before the Labour Court. The Labour Court also found the charge of misconduct proved. However, it formed an opinion that since the amount of defalcation involved in the incident dated 17th January, 1985 was small, penalty of dismissal would be too harsh. The Labour Court further held that considering the peculiarities and various factors of the present case, it would meet the ends of justice if the worker, the appellant was ordered to be reinstated subjecting him to punishment of loss of backwages and other consequential benefits. In spite of holding so vide para 15 of the award, while formulating the operative part of the award the Labour Court directed the appellant to continue in service, 'to be reinducted in the same post where he was working and where from he was removed with denial of two increments with cumulative effect.' The employer was also directed to pay the appellant-workman all his backwages along with

consequential benefits and costs of the proceedings.

4. The award of the Labour Court was put in issue by respondent-Corporation by filing the writ petition before the High Court of Karnataka. A learned single Judge of the High Court dismissed the petition recording the finding that the exercise of power by the Labour Court under Section 11(A) of the I.D. Act could not be termed as illegal. The respondent-Corporation preferred a writ appeal which was filed after the expiry of period of limitation. The Division Bench condoned the delay in filing the appeal. On merits, the Division Bench found that the award of the Labour Court and the order of learned single Judge confirming the same were not justified as interfering with the discretion of Disciplinary Authority in the matter of awarding punishment was totally uncalled for. Accordingly, the appeal was allowed, the order of the learned single Judge was set aside, the award of the Labour Court was quashed and the order of the Disciplinary Authority awarding major punishment of dismissal from service was restored. The employee has filed this appeal by special leave putting in issue the order of the Division Bench condoning the delay in filing the appeal as also the final order allowing the writ appeal.

5. Having heard the learned counsel for the parties, we are satisfied that in the facts and circumstances of this case, a Division Bench did not err in condoning the delay in filing the appeal. The lawyer engaged by the respondent-Corporation was holding the papers and did not inform the Corporation of the decision in the writ appeal. The Corporation, having felt convinced of the default on the part of the lawyer, removed him from the panel of the Corporation and engaged another counsel through whom the writ appeal was filed. Sufficient cause for condoning the delay in filing the appeal was made out. Discretion to condone delay under Section 5 of Limitation Act has been judiciously exercised by High Court, placing reasons on record and is not open to interference by this Court.

6. So far as the merits of the case are concerned, there also we find the order of the Division Bench to be unexceptionable. It was pointed out that the appellant had committed similar defalcations/misconduct on 41 occasions prior to the initiation of this departmental enquiry and was found guilty and punished, which was a weighty factor, kept in view of the Disciplinary Authority and was also brought to the notice of the Labour Court but the Labour Court did not suitably advert to the material so brought la its notice. In the counter filed in this Court, the respondent-Corporation has stated on the affidavit of Assistant Law Officer of the Corporation that subsequent to the appellant having been reinstated in the year 1993 pursuant to the interim order passed by the High Court, between 1994 and 8th November, 2000, he was found to have been involved in 36 instances of misconduct. This fact is not disputed by the appellant in rejoinder filed to the counter-affidavit of the respondent. Thus the appellant has not learnt any lesson and is incorrigible.

7. The Division Bench of the High Court relied on the decisions of this Court in *State of Haryana v. Rattan Singh* ; *U.P. State Road Transport Corporation v. Basudeo Chaudhary* (1997 (11) SCC 370); *U.P. State Road Transport Corporation v. Subhash Chandra Sharma and Ors.* for forming opinion that unless punishment is shockingly disproportionate to the charge which has been proved the punishment awarded by the Disciplinary Authority should not be interfered in exercise of power of

judicial review. In our opinion, the Division Bench was right in taking the view which it has taken. The opinion formed by the Labour Court that punishment of dismissal imposed by the management on the workman was too harsh and undeserved, was perverse finding and arrived at by ignoring the material as to previous acts of misconduct and punishments awarded to the appellant brought to the notice of Disciplinary Authority and the Labour Court. We are also of the opinion that the gravity of change of misconduct for which the disciplinary proceedings were initiated and which charge was found to be substantiated by the Labour Court seen in the light of previous service record of the appellant fully justified the punishment awarded by Disciplinary Authority.

8. No case is made out calling for interference with the order of the Division Bench which is a very fair, reasonable and just order.

9. The appeals are dismissed though without any order as to costs.