H.S. Chandra Shekara Chari

Vs

Divisional Controller, KSRTC

Civil Appeal No. 2457 of 1999

(S. Saghir Ahmand, D.P. Wadhwa JJ)

30.03.1999

JUDGMENT

S. Saghir Ahmad, J.

1. Leave granted. We have heard the learned Counsel for the parties.

2. The appellant was dismissed from service by the respondent by order dated 30th July, 1988 which was challenged before the Labour Court and the Labour Court by its Award dated 1st August, 1994, directed as under :

> "Claim statement filed by the 1st party workman under Section 10(4-A) of the Industrial Disputes Act, 1947 (Karnataka Amendment Act, 1987), for his re-instatement into service with continuity and for back wages is allowed and is accepted. Second party Management is not justified in dismissing the Ist party workman from service on 30.7.1988. The order of dismissal of Ist party workman from service, dated 30.7.1988 passed by the IInd party Management is set aside. IInd party Management is directed to reinstate the Ist party workman into service to his original post and there shall be continuity of service of the Ist party workman under IInd party Management. Ist party workman is also entitled for the back wages from the date of dismissal, i.e. 30.7.1988, till the date of passing his award. Parties are directed to bear their own costs."

3. This order was passed by the Labour Court as it was found that the charges against the appellant were not proved. The relevant finding of the Labour Court is as under :-

> "From the available materials it is seen that the findings of the Enquiry Officer are perverse and the Management is guilty of victimising the Ist party workman, and as such, interference by this Court is necessary. Ist party workman has succeeded in showing and proving that the order of dismissal passed against him, is unjust and improper."

While recording its finding on issue No. 3, the Labour Court further observed as under :-

> "From the available materials it is seen that IInd party Management has failed to prove the charges levelled against the Ist party workman and has failed to establish the misconduct alleged to have been committed by the Ist party workman. When IInd party Management has failed to prove the charges levelled against the Ist party

> workman, then it is to be held that the punishment inflicted on the Ist party workman by the IInd party Management, namely, the dismissal of Ist party workman from service, amounts to harsh punishment and it suggests victimisation of the Ist party workman."

4. A perusal of the Award further shows that issue No. 1 which has to the following effect :-

> "Where (whether ?) the IInd party proves that it had conducted a proper and valid enquiry for the misconduct of the Ist party ?" was decided in the affirmative on 4.12.1993. The finding on this issue is not available to us as it has not been made part of the Award nor has any counsel filed a copy of that finding either with the Special Leave Petition or with the Counter Affidavit. We, therefore, proceed on the basis that it was found as a fact by the Labour Court that the respondents had conducted a proper and valid enquiry. Whether in that enquiry the charges were established or proved has been answered by the Labour Court while dealing with other issues. We have already reproduced above the relevant portion of the finding of the Labour Court.

5. The respondents challenged the findings and the award of the Labour Court in a writ petition in the High Court and the learned Single Judge disposed of the writ petition by judgment dated 24th July, 1996 observing as under :

> "As the Labour Court has re-appreciated the evidence and came to the conclusion regarding the charge, I find that a re-appraisal of the evidence is not called at this stage *only question that now survives is regarding the quantum of punishment to be imposed.*e award of the Labour Court states that the worker be ordered to be re-instated. Thus part of the award need not be disturbed. Besides, the Labour Court has awarded full back wages to the worker from the date of dismissal. This perhaps is not correct. It is not as if that the worker was totally innocent and he was illegally terminated. *facts in this case clearly show that with better proof the charges could have been established.* so, the worker cannot be rewarded with full back wages. Besides, he has a record of 40 previous similar conducts. Hence the order of dismissal of the workman from service is set aside and the management is directed to re-instate the workman into service to his original post with continuity of service. A portion of the back wages must be disallowed to him by way of punishment."

The writ appeal filed by the appellant against the above order was dismissed by the Division Bench on the ground of limitation. The Division Bench, however, observed as under :

> "We have examined the appeal on merits also. There is no merit in the appeal and the same is also dismissed."

6. The judgments passed by the learned Single Judge as also by the Division Bench, which summarily dismissed the writ appeal, cannot be sustained for the simple reason that while the Labour Court, after holding that the charges against the appellant were not established, proceeded to direct reinstatement with back wages, the Single Judge, while refusing to go into the appreciation of evidence, considered only one question, namely, the question relating to the quantum of punishment to be imposed on the appellant. The learned Single Judge observed :

> "It is not as if that the worker was totally innocent and that he was illegally terminated. The facts of this case clearly show that with better proof the charges could have been established."

7. It was for this reason that full back wages were not awarded to the appellant. Once the Tribunal had found that the charges against the appellant were not established, it was not open to the learned Single Judge, who had rightly refused to re-appraise the evidence, to say that with better proof the charges could have been established. The learned Single Judge had no jurisdiction, not even under Section 11A of the Industrial Disputes Act, 1947, to enter into the question whether the charges could have been established by better or further evidence. That is not the function of the Court or any quasi-judicial authority. If it is found as a fact that the charges are not established, then the necessary consequences have to follow and, as a corollary thereto, appropriate orders are to be passed. There may be circumstances justifying non-payment of full back wages, but they cannot be denied for the reasons that the charges could have been established with better proof. If "better proof" was available with the management and it was not furnished or produced before the court, a presumption would arise that such proof, if furnished, would have gone against the management. We are surprised that the view pronounced by the learned Single Judge, which falls in the realm of speculation, has been upheld by the Division Bench.

8. In this situation, therefore, we remand the whole case back to the learned Single Judge to re-hear it on merits, subject to the condition that in compliance of the award passed by the Labour Court, the appellant shall be put back to duty and all the arrears of salary and allowances shall be paid to him within three months and during the pendency of the writ petition the monthly salary shall continue to be paid to the appellant as and when it falls due. The appeal is disposed of accordingly.
Appeal disposed of