A THE MANAGING DIRECTOR, THE NORTH EAST KARNATAKA ROAD TRANSPORT CORPORATION

v.

K. MARUTI

NOVEMBER 17, 2006

B

[DR. AR. LAKSHMANAN AND ALTAMAS KABIR, JJ.]

Labour Laws:

C *Industrial Disputes (Karnataka Amendment) Act, 1947:*

Misconduct—'Badli' conductor—Found collecting money from passengers and not issuing tickets to them—Removal of name from list of 'Badli' Conductors—Labour Court holding the disciplinary inquiry to be D *fair and proper but directing his reinstatement on the list of 'badli' conductors—High Court affirming the order—Held, delinquent being a 'badli' conductor, was not entitled to reinstatement—A conductor holds the post of trust—A person guilty of breach of trust should be imposed punishment of removal from service—Orders of High Court and Labour Court set aside—Karnataka Road Transport Corporation C and D Regulations, 1971.*

E

Respondent was employed as a 'badli' conductor in the appellant-Corporation. During the said employment he had been punished by imposing fine for misconduct. Again, on a particular date when his bus was checked by the checking squad, it was found, *inter alia,* that he failed to issue tickets to some passengers despite collection of money while to some others he neither F **issued tickets nor collected the requisite fare. An inquiry was held and ultimately his name was removed from the list of 'badli' conductors. The respondent approached the Labour Court which passed an order holding that the inquiry held was fair and proper and posted the matter for recording the evidence. However, ultimately the Labour Copurt set aside the termination** G **order and directed the appellant-Management to reinstate the respondent on the list of 'badli' conductors, but without back wages.**

The Management having unsuccessfully challenged the order of Labour Court in writ petition before Single Judge and in consequent writ appeal

H

before Division Bench of the High Court, filed the present appeal. A

Allowing the appeal, the Court

HELD : 1.1. The order passed by the High Court is erroneous on the face of the record. The High Court, ought to have seen that the misconduct was duly established in the inquiry and despite it, the Labour Court had B persuaded itself to reinstate the delinquent in service. The High Court was not justified in altering the quantum of punishment when the enquiry was held to be fair and proper, charge was proved and no evidence was led before the Labour Court. It also failed to note the order removing the name of the respondent from the list of 'badli' conductors, and the fact that the punishment C imposed on the delinquent official was not shockingly disproportionate to the gravity of the misconduct proved against him coupled with his history and he being a 'badli' conductor. The Division Bench also erred in rejecting the plea of the Management that the Labour Court was not justified in ordering reinstatement of the respondent as regular employee on the ground that such a plea was not raised before the Single Judge when as a matter of fact the D plea had been taken both before the Labour Court and the Single Judge of the High Court. [153-G-H; 154-A-C]

1.2. In the instant case, the position held by the employee (conductor) is one of faith and trust. A conductor holds the post of trust. A person guilty of breach of trust should be imposed punishment of removal from service. E The respondent's conduct in not collecting the requisite fare at the designated place from persons who had travelled was in violation of various regulations contained in the provisions of the Corporation C & D Regulations, 1971. The orders passed by the High Court and the Labour Court are also set aside.

[155-B, E] F

Regional Manager, RSRTC v. *Ghanshyam Sharma,* [2002] 10 SCC 330; *Karnataka SRTC* v. *B.S. Hullikatti,* [2001] 2 SCC 574; *Divisional Controller, N.E.K.R.T.C.* v. *H. Amaresh,* [2006] 6 SCC 187; *V. Ramana* v. *A.P. SRTC & Ors.,* [2005] 7 SCC 338; *Madhur Coats Ltd.* v. *Madhan Kumar & Ors.,* (2000) 85 FLR 933 and *Madras; and Management of T.I. Diamond Chain Ltd.* v. *P.L. Ramanathan & Anr.,* (2005) (107) FLR 714, relied on. G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5094 of 2006.

From the Judgment and Order dated 25-2-2005 of the High Court of Karnataka at Bangalore in W.A. No.1565/2004(L-KSRTC).

H

A Basava Prabhu S. Patil, V.N. Raghupathy, B. Subrahmanya Prasad and Narayan P. Kengasur for the appellant.

The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J. Leave granted.

B

The sole respondent was served through the Court on 10.1.2005. However, nobody has appeared for the respondent. We heard Mr. Basava Prabhu S. Patil, learned counsel appearing for the appellant-Management.

This appeal is directed against the final order dated 25.2.2005 passed by C the High Court of Karnataka at Bangalore in Writ Appeal no.1565 of 2004, wherein Division Bench of the High Court rejected the appeal filed by the appellant herein and ordered accordingly. This Court on 22.8.2005 issued notice to the sole respondent and interim stay was granted in the meantime. The respondent was in the employment of the appellant Corporation as a badli conductor. During his course of employment as badli conductor between D the period from 1992 to 1995, he had an unedifying history of misconduct and had been punished by imposing fine. While he was conducting the bus on 12.8.1992, the said bus came to be checked by the checking squad at stage no.2 and it was noticed that the respondent had failed to issue tickets to 6 passengers despite collection of money, failed to issue tickets to 4 passengers E who were travelling from Sanganakal to KEB, Bellary and had not collected the requisite fare. The respondent had closed the stage no.3 by keeping single digit blank in respect of Rs.1.25 denomination with an intention to re-issue the said denomination tickets in the next trip and the respondent had closed the CWP against the stage no.2 except the Rs.1.75 denomination. The Disciplinary authority directed holding of an enquiry into the articles of F charge in terms of the Corporation C & D Regulations, 1971 by appointing an Inquiry Officer. The Inquiry Officer after having issued notices to both the parties conducted a detailed enquiry in respect of the charges levelled against the respondent. The proceedings were conducted following the mandatory provisions of the Corporation C & D Regulations, 1971 and G affording adequate opportunity to the delinquent workman to defend his case. The Disciplinary Authority, on re-appraisal of the connected records, came to the conclusion as of the Inquiry Officer and looking at the nature of the offence and its result passed an order on 18.5.1998 removing the name of the respondent from the list of badli conductors.

H Aggrieved by the order of dismissal, the respondent approached the

Labour Court by filing a petition under section 10(4-A) of the Industrial Disputes (Karnataka Amendment) Act, 1947 challenging the legality and correctness of the dismissal order passed against him on 18.5.1998. The Labour Court after issuing process to the parties concerned by its order dated 2.1.2002 passed an order holding that the enquiry held was fair and proper. After passing of the preliminary order on issue no.1, i.e. whether the domestic enquiry conducted by the respondent against the claimant is fair and proper, the matter was posted for recording of evidence. The respondent, however, failed to appear before the Court and accordingly the evidence was taken as closed. Later after hearing the arguments, instead of dismissing the petition, vide order dated 25.3.2003 the Labour Court set aside the termination order dated 18.5.1998 and directed the appellant-Management to take the respondent back on the list of badli conductors. However, the Labour Court held that the respondent was not entitled for any back wages and continuity of service.

The appellant-Management aggrieved by the order passed by the Labour Court, approached the High Court of Karnataka by filing a writ petition under Articles 226 and 227 of the Constitution of India and urged several grounds for consideration. The respondent-workman also approached the High Court by filing writ petition.

The learned Single Judge of the High Court dismissed the writ petition and thereby upheld the order passed by the Labour Court. The Management preferred writ appeal no.1565 of 2004 and urged several grounds for consideration amongst others. The Division Bench by a common order dated 25.2.2005 rejected the writ appeal filed by the Management and also by the respondent, thereby confirmed the orders passed by the learned Single Judge and the Labour Court. Aggrieved by the said order, the Management has come up on appeal before this Court.

We have heard learned counsel appearing for the appellant-Management and perused the records. In our opinion, the order passed by the High Court is erroneous on the face of the record. The High Court, in our opinion, ought to have seen that the misconduct was duly established in the enquiry and despite it, the Labour Court had persuaded itself to reinstate the delinquent in service. The learned Single Judge also confirmed the order passed by the Labour Court. In our opinion, the High Court was not justified in altering the quantum of punishment when the enquiry was held to be fair and proper, charge was proved and no evidence was led before the Labour Court while questioning the order of the Disciplinary Authority dismissing the delinquent

A workman. Likewise, the High Court also failed to notice the order removing the name of the respondent from the list of badli conductors. The High Court has also erred in taking note of the fact that the punishment imposed on the delinquent official was not shockingly disproportionate to the gravity of the misconduct proved against him coupled with his history and he being a badli conductor. In our opinion, the Division Bench have erred in rejecting the plea B of the Management that the Labour Court was not justified in ordering reinstatement of the respondent as regular employee on the ground that such a plea was not raised before the learned Single Judge when as a matter of fact the plea had been taken both before the Labour Court and the learned Single Judge of the High Court.

C

The learned counsel for the appellant, at the time of hearing, placed strong reliance on the two decisions of this Court, one reported in [2002] 10 SCC 330 *(Regional Manager, RSRTC* v. *Ghanshyam Sharma)*, which was also a case of bus conductor carrying passengers without issuing tickets. This Court, in the above case, held that carrying the passengers without tickets D amounts to dishonesty or grave negligence and for such misconduct punishment of removal from service is justified. This Court also further observed that the Labour Court was not justified in directing the reinstatement with continuity of service but without back wages. This Court has also relied upon a judgment reported in [2001] 2 SCC 574 (*Karnataka SRTC* v. *B.S. Hullikatti*). E In the said judgment, this Court has held that in such cases where the bus conductors carry passengers without ticket or issue tickets at a less rate than the proper rate, the said acts would *inter alia* amount to either being a case of dishonesty or of gross negligence and such conductors were not fit to be retained in service because such inaction or action on the part of the conductors results in financial loss to the Road Transport Corporation. This Court has F also observed that in cases like the present, orders of dismissal should not be set aside. The learned counsel for the appellant also cited judgment reported in [2006] 6 SCC 187 (*Divisional Controller, N.E.K.R.T.C.* v. *H. Amaresh*). In this case, this Court was considering the case of misappropriation of a small amount of State Road Transport Corporation's fund by a conductor and held it a grave act of misconduct, which resulted in financial loss to the G Corporation. This Court also held that punishment of dismissal from service awarded by the Disciplinary Authority did not call for any interference by the Labour Court or the High Court and hence the order of reinstatement passed by the High Court was set aside. This Court also in a catena of decisions held that the Tribunal should not sit in appeal over the decision of any H employer unless there exists a statutory provision in this behalf. This Court

also observed that 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. A

In the instant case, the position held by the employee (conductor) is one of faith and trust. A conductor holds the post of trust. A person guilty of breach of trust should be imposed punishment of removal from service. The respondent's conduct in not collecting the requisite fare at the designated place from persons who had travelled were in violation of various regulations contained in the provisions of the Corporation C & D Regulations, 1971. B

The following judgments can be usefully referred to for the above proposition. They are: C

1 *V. Ramana* v. *A.P. SRTC & Ors.*, [2005] 7 SCC 338.

2 *Madhur Coats Ltd.* v. *Madhan Kumar & Ors.*, (2000) 85 FLR 933 Madras. D

3 *Management of T.I. Diamond Chain Ltd.* v. *P.L. Ramanathan & Anr.*, (2005) 107 FLR 714.

We, therefore, set aside the final order dated 25.2.2005 passed by the High Court of Karnataka in Writ Appeal No.1565 of 2004 and allow the appeal filed by the Management. The orders passed by the learned Single Judge of the High Court and the Labour Court are also set aside. No costs. E

R.P. Appeal allowed.