

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JANUARY, 2022

BEFORE

THE HON'BLE MS. JUSTICE JYOTI MULIMANI

WRIT PETITION NO.31347 OF 2016 (L-KSRTC)

BETWEEN:

1. DIVISIONAL CONTROLLER, KSRTC
CENTRAL DIVISION,
BENGALURU-560027
2. THE MANAGING DIRECTOR, KSRTC
CENTRAL OFFICES, KH.ROAD,
BENGALURU-560027.

NOW REPRESENTED BY
CHIEF LAW OFFICER
KARNATAKA ROAD
TRANSPORT CORPORATION,
CENTRAL OFFICES, SHANTHINAGAR,
BENGALURU-560027. ...PETITIONERS

(BY SMT.SHWETHA ANAND, ADVOCATE)

AND:

SRI J R CHANDRASHEKARAI AH
DRIVER-CUM-CONDUCTOR,
BADGE NO.4334, 4TH DEPOT,
KSRTC, BENGALURU CENTRAL DIVISION,
BENGALURU-560027.

RESIDING AT
M.JAKKANAHALLI

HONNEENAHALLI POST,
KADUR TALUK
CHIKKAMAGALORE DISTRICT-577101. ...RESPONDENT
(BY SRI.K.SRINIVASA, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES
226 AND 227 OF THE CONSTITUTION OF INDIA, SEEKING
CERTAIN RELIEFS.

THIS WRIT PETITION COMING ON FOR PRELIMINARY
HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE
FOLLOWING:

ORDER

Smt.Shwetha Anand, learned counsel for petitioners
and Sri.K.Srinivasa, learned counsel for respondent have
appeared through video conferencing.

2. The facts are stated as under:-

It is stated that the respondent was working in the
Corporation as a Driver cum Conductor, while driving the
ST Volvo Bus on 06.10.2009 on the Route Bangalore to
Ramanathapura- Thiruvananthapuram, at about 5:30 am
near Haripada, the said bus collided against a Hero Honda
Motorbike resulting in death of both the Rider and Pillion.

The accident occurred due to the rash and negligent driving of the bus by the respondent-Driver.

On the basis of the report of Assistant Traffic Manager, the Disciplinary Authority issued Articles of charges for which, the respondent submitted his Reply. Not satisfied with the Reply, the Disciplinary Authority initiated disciplinary proceedings and conducted an enquiry in accordance with the C & D Regulations and in conformity with the principles of natural justice. The Enquiry Officer concluded the enquiry proceedings and submitted the report holding that the respondent being the Corporation employee, ought to have taken care and avoided the accident and held that the accident has occurred due to the rash and negligent driving of the bus by the respondent-Driver.

It is stated that after considering the Enquiry Report, relevant records and Reply submitted by the respondent, Disciplinary Authority on an independent assessment

passed an order on 26.09.2012 and dismissed the respondent from the service of the Corporation.

It is also stated that subsequent to the accident, a case was also registered pursuant to the charge sheet filed by the CIP of Haripada in CrI.No.543/2009 against the respondent for the offences punishable under Sections 279 and 304 (A) of I.P.C. numbered as C.C.No.88/2010 before the Court of Judicial First-Class Magistrate –II, Haripada and the Magistrate passed order on 21.10.2011 and acquitted the respondent on the ground that the material witness turned hostile the prosecution and the prosecution failed to prove the guilt of the accused/respondent beyond reasonable doubt.

The respondent raised a dispute under Section 10 (4) (A) of the Industrial Disputes Act, 1947 before the Presiding Officer, III Additional Labour Court at Bangalore, and the same was numbered as I.D.No.36/2012. The Labour Court recorded the evidence and adjudicated the dispute and passed the award on 21.12.2015 and set aside

the dismissal Order and directed the Corporation to reinstate the respondent into service within one month from the date of Award with continuity of service but without back wages from the date of dismissal till date of reinstatement by withholding three annual increments with cumulative effect.

It is this award which is challenged in this writ petition on various grounds as set out in the writ petition.

3. Smt.Shwetha Anand, learned counsel for petitioners submits that the award of Labour Court is erroneous, replete with several mis-directions and errors and the same is apparent on the face of the record.

Next, she submitted that the Court has erred in not appreciating the fact that the respondent has committed identical misconduct in the past and has been punished with minor penalties and has not improved his behavior.

A further submission was made that the respondent has a history of causing accidents due to his rash and

negligent driving and has in the past committed identical misconduct 5 times, 2 minor accidents and 3 major accidents which is evident from the History sheet.

Learned counsel vehemently contended that the punishment is proportionate to the misconduct. Hence, the dismissal being just and proper punishment, the same could not have been interfered with by the Labour Court. The disciplinary measures-initiated against an errant employee.

Lastly, she submitted that appropriate writ may be issued and the writ petition may be allowed.

Learned counsel relied upon the following decisions.

1. *CIVIL APPEAL NO 7403/2021-MAHARASHTRA STATE ROAD TRANSPORT CORPORATION VS DILIP UTTAM JAYABHAY.*
2. *(2000) 5 SCC 82 - DALBIR SINGH VS STATE OF HARYANA.*
3. *W.A.No.2389/2000 - THE DIVISIONAL CONTROLLER, KSRTC VS RAJA ALI.*

4. *W.A.No.918/2002 - KARNATAKA STATE ROAD TRANSPORT CORPORATION VS M.ACHUTHA MANIYANI.*

5. *(2006) 8 SCC 52 – NORTH-EAST KSRTC VS DEVIDAS MANIKRAO SADANANDA.*

4. Sri.K.Srinivasa, learned counsel for respondent justified the award. He submitted that the Labour Court in extenso referred to the material on record and set aside the dismissal order.

It is submitted that the Criminal Court acquitted the respondent. The respondent has not committed any misconduct as alleged by the Corporation. Accordingly, it is submitted that the petition is devoid of merits and hence, the same may be dismissed.

5. Heard learned counsel for petitioners and respondent and perused the Annexures with care.

The short point which requires consideration is whether the Labour Court justified in interfering with the punishment order of dismissal?

The facts have been sufficiently stated. It is not in dispute that the Workman was appointed as a Driver in the Corporation. However, he was dismissed from service on certain acts of misconduct. The order of dismissal is at Annexure-'E'. The Authority has referred to the past history record of Workman.

Ex.M23 is the History sheet and the same depicts that the respondent-Workman has involved in 5 misconduct cases. It is significant to note that the Labour Court though refers to the past antecedents of the respondent-Workman but has misdirected itself by not giving weightage to the past antecedents of the delinquent Workman.

The charges leveled and established against the Workman are serious in nature. The rash and negligent

driving has resulted in death of two persons. It is relevant to note that in the Departmental enquiry, it has been specifically found that due to rash and negligent driving on the part of the driver, the accident took place in which two persons died. Hence, it cannot be said that the punishment of dismissal imposed is shockingly disproportionate to the misconduct. In the Departmental proceedings every aspect has been considered. The Labour Court has not interfered with the findings recorded by the Enquiry Officer in the departmental proceedings.

I have perused the award with care. The Labour Court has not recorded a finding that the punishment was harsh or disproportionately excessive. It interfered with the punishment only on the ground that the Corporation ought to have extended one more chance to the Workman to mould his character. The Labour Court also observed that the Workman was charged for the offences punishable under Sections 279 and 304 (A) of I.P.C., which does not come within the purview of Moral turpitude.

It is perhaps well to observe that the order of punishment depends upon the gravity of misconduct. It is needless to say that the employer shall consider the gravity of the misconduct, the previous record of the employee, if any, and any other extenuating or aggravating circumstances that may exist. In imposing the punishment, such requirements have necessarily to be complied with.

It is significant to note that if the order of dismissal is based on the charges proved against the delinquent in the domestic enquiry, the fact that the past record of the Workman was clean would be of no consequence, but on the other hand, if the punishing Authority relies on the past record of the delinquent, for imposing punishment, it is incumbent on it to give him an opportunity to offer other explanation regarding such record.

In the present case, the charges leveled against the Workman are proved and hence, he was dismissed from

service. The notice was issued and the Domestic Enquiry is conducted adhering to the principles of natural justice. In my opinion, the punishment order of dismissal is just and proper. The Labour Court has exceeded in its jurisdiction while interfering with the order of dismissal passed by the Disciplinary Authority.

It is needless to observe that the consistent view of the Supreme Court is that in the absence of a finding that the punishment was shockingly disproportionate to the gravity of the charges established, the Labour Court should not interfere with the punishment. It is therefore, held that the punishment of dismissal does not call for interference.

Counsel for petitioner has cited number of cases, but I do not think that the law is in doubt. Each decision turns on its own facts. The present case is also tested in the light of the aforesaid decisions.

6. The Writ Petition is ***allowed***. The award dated:21.12.2015 passed by the III Additional Labour Court, Bengaluru in I.D.No.36/2012 is set aside and the order of dismissal dated:26.09.2012 is confirmed.

**Sd/-
JUDGE**

TKN/VMB