A DAVALSAB HUSAINSAB MULLA

v.

NORTH WEST KARNATAKA ROAD TRANSPORT CORPORATION

(Civil Appeal No. 8487 of 2013)

B SEPTEMBER 24, 2013

[T.S. THAKUR AND FAKKIR MOHAMED IBRAHIM KALIFULLA, JJ.]

C *Labour Law:*

Dismissal of workman – Misconduct – Workman travelling in Corporation Bus without ticket – On being caught, misbehaving with the checking squad and threatening the D *Checking Inspector of his life – In disciplinary inquiry charges found proved – Past conduct also considered – Order of dismissal – Labour Court held the order fully justified – Held: Having regard to the gravity of the misconduct found proved against the appellant in an enquiry held for that purpose by* E *way of disciplinary procedure prescribed in the relevant rules, the conclusion of Labour Court on this aspect cannot be assailed.*

Industrial Disputes Act, 1947:

F *s.11-A – Power of Labour Court to give appropriate relief in case of discharge of dismissal of workman – Exercise of discretion – Explained – Held: In the instant case, Labour Court examined the scope of exercising its discretion u/s. 11A in order to interfere with punishment imposed on appellant —* G *Having regard to the factors, referred by Labour Court, it rightly declined to exercise its discretionary jurisdiction u/s. 11A to interfere with the punishment of dismissal – However, it is open to appellant or his dependants to approach the authorities concerned for settlement of any benefits payable*

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under the provisions of the Act as well as under Employees' Pension Scheme, 1995 – Employees' Provident Fund and Miscellaneous Provisions Act, 1952 – s.6A.

The appellant, while working as a driver in the employment of the respondent Corporation, was found to have been travelling in the Corporation bus without ticket. The checking squad imposed the usual penalty on him, whereupon he abused the Checking Inspector and also threatened to do away with his life. He misbehaved with other officials also. On the following day, he entered the checking section and threatened the Checking Inspector to burn him in the presence of the staff. A joint report was submitted by the employees leading to disciplinary proceedings which culminated in the order of his dismissal from service. The appellant raised an industrial dispute and the Labour Court passed the award holding the dismissal as fully justified. In the writ petition filed by the appellant, the single Judge of the High Court modified the award of dismissal and ordered withholding of two increments with cumulative effect with continuity of service but without back wages. The Division Bench, however, set aside the order of single Judge and restored the award of dismissal as was passed by the Labour Court.

Dismissing the appeal, the Court

HELD: 1.1. The Labour Court, while considering the issues raised before it as regards the validity of the enquiry, examined the procedure followed in the domestic enquiry and found no flaw in the same. There is also no flaw in the conclusion of the Labour Court, and the enquiry held against the appellant was fair and proper. [Para 5] [832-E-G]

1.2. As regards as the misconduct alleged against the appellant, apart from his admission that he travelled on

A 30.11.1995 without a valid ticket, his conduct of misbehaviour towards his superiors and other employees on 30.11.1995 as well as on 01.12.1995 was fully established by the evidence placed before the enquiry officer and the Labour Court. He also threatened B the Checking Inspector of his life. The Labour Court found that the evidence conclusively proved the misconduct alleged against the appellant. The Labour Court also made a specific reference to the past conduct of the appellant wherein he was involved in 27 other C default cases, and on a number of earlier occasions also he misbehaved with superior officers and refused to perform his duties, apart from disobeying the orders of his superiors, and his involvement in a case of assault on other employees. The cumulative effect of the said D facts resulted in the Corporation passing the order of dismissal against the appellant. Having regard to the gravity of the misconduct found proved against the appellant in an enquiry held for that purpose by way of disciplinary procedure prescribed in the relevant rules, the conclusion of the Labour Court on this aspect cannot E be assailed. [para 5-7] [832-G; 833-A-B, C-D; 834-A-B, G]

2.1. As far as the discretionary power of the Labour Court u/s. 11A of the Industrial Disputes Act, 1947 is concerned, the exercise of such power will always have F to be made judicially and judiciously. Under the said provision, wide powers have been vested with the Labour Court to set aside the punishment of discharge or dismissal and in its place award any lesser punishment. Therefore, high amount of care and caution should be G exercised by the Labour Court while invoking the said discretionary jurisdiction for replacing the punishment of discharge or dismissal. Before exercising the said discretion, the Labour Court has to necessarily reach a finding that the order of discharge or dismissal was not H justified. The satisfaction to be arrived at by the Labour

Court while exercising its discretionary jurisdiction u/s. 11A of the Act must be based on sound reasoning and cannot be arrived at in a casual fashion. In this context, it will be appropriate for the Labour Court to assess the gravity and magnitude of the misconduct found proved against the employee concerned, the past conduct of the employee, the repercussion it will have in the event of interference with the order of discharge or dismissal in the day to day functioning of the establishment which will have far reaching effects on the other workmen etc. It should always be remembered that any misplaced sympathy would cause more harm to the establishment, which provides source of livelihood for a large number of employees, than any good for the employee concerned. [Para 8-9] [834-H; 835-A-E; 836-A-C]

Royal Printing Works v. Industrial Tribunal and Another **1959 (2) LLJ 619 – relied on.**

2.2. In the instant case, Labour Court examined the scope of exercising its discretion u/s. 11A of the Act in order to interfere with the punishment imposed on the appellant. Having regard to the factors referred by the Labour Court, it rightly declined to exercise its discretionary jurisdiction u/s. 11A of the Act. The single Judge of the High Court by merely stating that the Labour Court had only considered the interest of the Corporation and not the interest of the employee, set aside the said award which was correctly rectified by the Division Bench. The Division Bench was, therefore, well in order in having set aside the order of the Single Judge and restored the order of dismissal passed against the appellant. It leaves no scope to interfere with the order impugned in the appeal. [Para 5,7 and 10] [833-B-C; 834-G-H; 837-F-G]

3. Having regard to the gravity of the misconduct found proved against the appellant and his past record

of service, he deserves no sympathy. However, in the light of the provisions prevailing under Employees' Pension Scheme, 1995, formulated u/s. 6A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, it is open to the appellant or his dependants to approach the authorities concerned for settlement of any benefits payable under the provisions of the said Act as well as under the Employees' Pension Scheme, 1995. [Para 11 and 13] [838-B; 839-B-C]

Case Law Reference:

1959 (2) LLJ 619 Relied on Para 9

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8487 of 2013.

From the Judgment & Order dated 13.08.2009 of the High Court of Karnataka Circuit Bench at Dharwad in Writ Appeal No. 2499 of 2007 (LK).

Shankar Divate for the Appellant.

V.N. Raghupathy for the Respondent.

The Judgment of the Court was delivered by

FAKKIR MOHAMED IBRAHIM KALIFULLA, J. 1. Leave granted.

2. This appeal is directed against the judgment of the Division Bench of Karnataka High Court dated 13.08.2009 passed in Writ Appeal No.5040 of 2008 and Writ Appeal No. 2499 of 2007. By the common judgment, the Division Bench, while setting aside the order of the Learned Single Judge reducing the quantum of punishment imposed on the appellant, upheld the order of dismissal passed by the respondent-Corporation. In this appeal the challenge is to the order passed in Writ Appeal No.2499 of 2007.

3. Shorn of unnecessary details, the case of the appellant was that he was working as a driver in the respondent Corporation and that on 30.11.1995, he was travelling in the Corporation bus without ticket which was detected by the checking squad. The checking squad imposed the usual penalty on the appellant. It is stated that enraged by the action of the checking squad, the appellant abused the Checking Inspector by using filthy language and also threatened to do away with his life. The appellant also stated to have attempted to assault the Checking Inspector. Subsequently, he is stated to have approached the coordinator in the Divisional Office Belgaum and behaved in an arrogant manner with the said officer. Apart from abusing the officials of the checking squad in filthy language in the presence of other employees, he is also stated to have thrown a challenge that he would close the gate of the office and indulge in *Satyagraha*. Again on the next day i.e. on 01.12.1995, he is sated to have entered the Divisional Line checking section and threatened the Checking Inspector by stating that he would burn him in the presence of other officials and the employees. A joint report was submitted by those employees based on which a charge sheet was issued to the appellant calling for his explanation. The appellant while denying the charges replied that penalty was collected from him by Checking Inspector and that he went to the office of the coordinator only to report about what had happened when the checking squad intercepted him when he was travelling in the bus.

4. The disciplinary authority ordered for an enquiry to be held by appointing an enquiry officer. The appellant fully participated in the enquiry and the enquiry officer recorded a finding that the charges levelled against the appellant were proved. After issuing a second show cause notice along with a copy of the findings, the order of dismissal came to be issued against the appellant. The appellant raised an industrial dispute which was adjudicated by the Labour Court wherein an award came to be passed holding that the order of dismissal was fully

A justified and there was no scope to invoke Section 11A of the Industrial Disputes Act (hereinafter called 'the Act') to interfere with thes punishment imposed on the appellant. When the appellant preferred a writ petition challenging the said award of the Labour Court, Hubli on 20.12.2005 in KID 20/2003, the B Learned Single Judge allowed the Writ Petition, set aside the award of the Labour Court, modified the order of dismissal by ordering withholding of two increments with cumulative effect without consequential benefits and without back wages but with continuity of service. There was a further direction to the C respondent Corporation to reinstate the appellant within four weeks from the date of the order of the Learned Single Judge. The Division Bench, however, set aside the order of the Learned Single Judge and upheld the order of dismissal.

5. We heard Mr. Shankar Divate, learned counsel D appearing for the appellant and Mr. B. Subramanya Prasad, learned counsel appearing for the respondent-Corporation. We have also perused the orders of the Labour Court,the Learned Single Judge as well as that of the Division Bench of the High Court. Having bestowed our serious consideration, we find that E the act of the appellant in having travelled in the Corporation bus on 30.11.1995 without valid ticket was not in dispute. The Labour Court, while considering the issue raised before it as regards the validity of the enquiry, examined the procedure followed in the domestic enquiry and found that there was no F flaw in the manner in which the enquiry was held against the appellant. We also do not find any flaw in the said conclusion of the Labour Court and that the enquiry held against the appellant was fair and proper. As regards the misconduct alleged against the appellant, apart from his conduct of G travelling in the bus without a valid ticket, the further allegation was that on that day, namely, 30.11.1995 as well as on the subsequent date i.e. 01.12.1995, he threw a challenge towards the checking squad, and in particular, the concerned Inspector who demanded the ticket from him, namely, one Shri D.R. H Hiremath, and also behaved in a rude manner towards other

officers in the Divisional Office. The rude behaviour of the appellant was explained by those employees in the enquiry and the Labour Court found that there was no defect in the enquiry apart from the fact that the evidence placed before the enquiry officer conclusively established the misconduct alleged against the appellant as found proved by the enquiry officer. The Labour Court also examined the scope of exercising its discretion under Section 11A of the Act in order to interfere with the punishment imposed on the appellant and stated in detail as to how and why it was not in a position to exercise its discretion in his favour.

6. In the light of the gravity of the misconduct found proved against him as well as the past conduct wherein he was involved in 27 other default cases, where on number of earlier occasions also he misbehaved against superior officers and refused to perform his duties, apart from disobeying the orders of his superior, his involvement in a case of assault against other employees, the Labour Court by making specific reference to Exhibit M14 which contained the past record of the appellant stated that he was involved in nefarious activities and was highly indisciplined. When the said award of the Labour Court was subject matter of challenge, the same came to be interfered with by the Learned Single Judge by stating that the Labour Court was not justified in not invoking its discretionary power under Section 11A of the Act on the ground of interest of Corporation and without considering the interest of the appellant. Without assigning any reason, the Learned Single Judge held that the punishment was disproportionate and while setting aside the award of the Labour Court modified the award by withholding of two increments with cumulative effect and without back wages and consequential benefits. The Division Bench, however, on finding no flaw in the order of the Labour Court set aside the order of the Learned Single Judge and restored the punishment of dismissal.

7. Having considered the above factors, we are also

A convinced that there were no good grounds to interfere with the impugned judgment of the Division Bench. Having regard to the act of misconduct found proved against the appellant in an enquiry held for that purpose by way of disciplinary procedure prescribed in the relevant rules, the conclusion of the Labour B Court on this aspect cannot be assailed. As far as the misconduct alleged against the appellant apart from his admission that he travelled on 30.11.1995 without a valid ticket, the evidence placed before the enquiry officer and the Labour Court fully established his other conduct of misbehaviour C towards his superiors and other employees on 30.11.1995 as well as on 01.12.1995. Such misbehaviour was by way of abusing his superior officers for the simple reason that the checking squad questioned his conduct of travelling in the Corporation bus without a valid ticket. They were not mere D abuses of simple nature. The exact wording used by the appellant which has been recorded by the trial Court in its award discloses that in the course of such abuse he also threatened Mr. Hiremath, the Checking Inspector by alleging that he will be done away with. Such a conduct of the appellant towards his superiors and other employees was rightly E condemned by the respondent-Corporation while proceeding against him by way of disciplinary action and by passing the order of dismissal. Apart from the conduct which took place on 30.11.1995 and 01.12.1995 and for which he was proceeded against, the appellant's past record was also demonstrated to F be very bad. He was proceeded against on 27 occasions earlier also for his different acts of misconduct in which on one occasion he indulged in the conduct of threatening a co-employee. The cumulative effect of the above resulted in the Corporation passing the order of dismissal against the G appellant. Having regard to the above factors, the Labour Court rightly declined to exercise its discretionary jurisdiction under Section 11A of the Act to interfere with the punishment of dismissal imposed on the appellant.

H 8. As far as the discretionary power of the Labour Court

under Section 11A of the Act is concerned, the exercise of such power will always have to be made judicially and judiciously. Under the said provision, wide powers have been vested with the Labour Court to set aside the punishment of discharge or dismissal and in its place award any lesser punishment. Therefore, high amount of care and caution should be exercised by the Labour Court while invoking the said discretionary jurisdiction for replacing the punishment of discharge or dismissal. Such exercise of discretion will have to depend upon the facts and circumstances of each case. Before exercising the said discretion, the Labour Court has to necessarily reach a finding that the order of discharge or dismissal was not justified. A reading of Section 11A of the Act makes it clear that before reaching the said conclusion, the Labour Court should express its satisfaction for holding so. It has to be remembered that the question of exercise of the said discretion will depend upon the conclusion as regards the proof of misconduct as held proved by the management and only if it finds that the discharge or dismissal was not justified. Therefore, the satisfaction to be arrived at by the Labour Court while exercising its discretionary jurisdiction under Section 11A of the Act must be based on sound reasoning and cannot be arrived at in a casual fashion, inasmuch as, on the one hand the interference with the capital punishment imposed on the workman would deprive him and his family members of the source of livelihood, while on the other hand the employer having provided the opportunity of employment to the concerned workman would be equally entitled to be ensured that the employee concerned maintains utmost discipline in the establishment and duly complies with the rules and regulations applicable to the establishment. In that sense, since the relationship as between both is reciprocal in equal proportion, when the employer had chosen to exercise its power of discharge and dismissal for stated reasons and proven misconduct, the interference with such order of punishment cannot be made in a casual manner or for any flimsy reasons.

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A 9. In this context, it will be appropriate for the Labour Court to assess the gravity and magnitude of the misconduct found proved against the employee concerned, the past conduct of the employee, the repercussion it will have in the event of interference with the order of discharge or dismissal in the day
B to day functioning of the establishment which will have far reaching effects on the other workmen and so on and so forth. It should always be remembered that any misplaced sympathy would cause more harm to the establishment which provides source of livelihood for many number of employees than any
C good for the employee concerned. It will be worthwhile to refer to the repercussions that would result in the event of any misplaced sympathy shown to an employee who indulges in certain acts of misconduct which has been lucidly explained in a decision of the Madras High Court reported as *Royal Printing*
D *Works v. Industrial Tribunal and Another* – 1959 (2) LLJ 619 - wherein Hon. Balakrishna Ayyar, J. (as he then was) stated the position as under:

> "There are certain passages in the order of the tribunal which as I understand them suggest that carelessness on
E the part of an employee in relation to his work would not justify serious punishment. With this view I definitely disagree. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. I shall not refer to the classic example of the sentry who sleeps
F at his post and allows the enemy to slip through. There are more familiar instances. A compositor who carelessly places a plus sign instead of a minus sign in a question paper may cause numerous examinees to fail. A compounder in a Hospital or chemists' shop who makes
G up the mixtures or other medicines carelessly may cause quite a few deaths. The man at an airport who does not carefully filter the petrol poured into a plane may cause it to crash. The railway employee who does not set the point carefully may cause a head-on collision. Misplaced
H sympathy can be of great evil. Carelessness and

indifference to duty are not the high roads to individual or national prosperity." A

(emphasis supplied)

10. We feel it appropriate to add one more instance such as the present one where an employee by violating the rules of the Corporation travelled without a valid ticket had the audacity to question the authority of the checking squad and posed a serious threat of taking away the life of the concerned Checking Inspector. Not stopping with that he went to the office of the higher official and created a ruckus in the office by throwing a challenge that he would indulge in a *Satyagraha* apart from abusing the concerned Checking Inspector in the presence of all other employees once again threatening to take away his life by burning him. Such an extreme misbehaviour towards the higher officials and fellow employees cannot be dealt with lightly and any sympathy shown to a person of such mindset while working in an establishment will definitely cause more harm than good for the establishment and all others working therein. Therefore, in the case on hand, the conduct of the employee towards the establishment as well as its fellow employees and higher authorities was highly condemnable and, therefore, there was absolutely no scope for exercising the discretionary power vested in the Labour Court under Section 11A of the Act. The Labour Court, therefore, rightly declined to exercise the said jurisdiction vested in it in his favour. Unfortunately, the learned Judge by merely stating that the Labour Court had only considered the interest of the Corporation and not the interest of the employee set aside the said award which was correctly rectified by the Division Bench. The Division Bench was, therefore, well in order in having set aside the order of the Learned Single Judge and restoring the order of dismissal passed against the appellant. We too, therefore, do not find any scope to interfere with the order impugned in this appeal. B C D E F G

11. Learned counsel for the appellant made a fervent H

A prayer that the appellant had rendered service of more than 23 years and that such service should not go without any terminal benefits inasmuch as he has got a family to support and, therefore, a lenient view should be taken. Having regard to the gravity of the misconduct found proved against the appellant B and his past record of service, we have no sympathy for the appellant. However, on instructions, the respondent has filed an affidavit sworn to by the Deputy Chief Law Officer of the respondent Corporation to a specific query posed to the Corporation as to whether the appellant would be entitled to C claim pension on the basis of the prevalent Rules/ Scheme for payment of pension even if the dismissal of an employee from service is sustained. The said affidavit is dated 2nd May, 2013. The Deputy Chief Law Officer has referred to para 12(8) of the Employees' Pension Scheme, 1995 formulated under Section D 6A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (Act 19 of 1952) which specifically states that if a member ceases to be in employment by way of RETIREMENT OR OTHERWISE earlier than the date of superannuation from which pension can be drawn, the member may on his option either be paid pension as admissible under E that Scheme on attaining the age exceeding 50 years or he may be issued a Scheme certificate by the Commissioner indicating the pension of his service, the pensionable salary and the amount of pension due on the date of exit from the employment.

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12. Paragraph 4 of the said affidavit of the Deputy Chief Law Officer reads as under:

> "4. In view of Para 12(8) of the Scheme, if a member G ceased to be in employment by way of retirement or otherwise, he is eligible for pension as admissible in law to the extent of contribution made by the employer. It is submitted that as the word used in Para 12(8) of the Scheme as regards eligibility is "by way of retirement or otherwise". As the word used under Para 12(8) of the

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Scheme is "otherwise" and as there is no specific provision under the Scheme as regards the employees who are dismissed from service, it can be included the dismissed employees also if he has put pensionable service. Hence this affidavit." A

13. In the light of the provisions prevailing under Employees' Pension Scheme, 1995 governed by the provisions of Act, 19 of 1952, we only wish to state that it is open to the appellant or his dependants (if any) to approach the concerned authorities for settlement of any benefits payable under the provisions of Act 19 of 1952, as well as under the Employees' Pension Scheme, 1995. In the event any such application is made by the appellant or by any of his dependants or nominee, the authorities of the respondent Corporation, as well as the authorities constituted under the provisions of Act 19 of 1952 shall consider the same in accordance with the provisions of the said Act and the Scheme and pass appropriate orders expeditiously, preferably within one month from the date of filing of such application. The appeal, however, fails and the same is dismissed. B C D E

R.P. Appeal dismissed.