

CASE NO.:
Appeal (civil) 129 of 2007

PETITIONER:
North East Karnataka Road Transport Corporation

RESPONDENT:
M.Nagangouda

DATE OF JUDGMENT: 09/01/2007

BENCH:
Dr.AR. Lakshmanan & Altamas Kabir

JUDGMENT:

J U D G M E N T
(Arising out of S.L.P.(c) No.24222/2005)

ALTAMAS KABIR, J.

Leave granted.

This appeal is directed against the judgment and final order dated 1st July, 2005 passed by the High Court of Karnataka at Bangalore in Writ Appeal No.2446/2005 choosing not to interfere with the findings recorded in the award of the Tribunal as also the order of the learned Single Judge that on account of the forced idleness of the respondent-workman, he would be entitled to full back wages on reinstatement.

For a proper appreciation of the order passed by the Tribunal and the High Court, it is necessary to set out a few facts in brief.

The respondent-workman was working as a Conductor of Kudligi Depot of the appellant-corporation. On 5th October, 1980, while the said respondent was on duty in vehicle No.MYF-2613 plying between Hadagali to Medalagatta, the said bus came to be checked by the Central Line Checking Squad, Bangalore at Medalgatta Stage No.3. The allegation against the respondent is that he had failed to issue tickets of 0.90 paise denomination to four passengers despite collection of requisite fare at the boarding point. On the basis of the report submitted by the Checking Squad, disciplinary proceedings were initiated against the respondent and he was served with Articles of Charges. The respondent filed his written statement of defence denying the charges levelled against him. However, the disciplinary authority was not satisfied with the defence taken by the respondent and appointed the Assistant Traffic Manager as Enquiring Authority to conduct an enquiry against the respondent.

Enquiry was duly conducted on 21st January, 1981 and on the materials available, the Enquiring Authority held the respondent to be guilty of misconduct. Accepting the reports submitted by the Enquiring Authority, the Disciplinary Authority by its order dated 27th August, 1981 dismissed the respondent from service with immediate effect under powers vested in it by Regulation 19 (3) under Part-III of the KSRTC Servants (C & D) Regulations, 1971. The respondent approached the Assistant Labour Commissioner for conciliation. As the same failed, the matter was referred to the Labour Court by the Government of Karnataka vide Reference dated 22nd November, 1982. The Terms of Reference were as follows:-

"(i) Is the Management justified in dismissing M. Nagangouda, Ex-Conductor, Kudligi Depot, Bellari Division from service with effect from 27.08.1981?

(ii) If not to what other relief the said workman is entitled?"

The said reference, being Reference No.46/1992, came up before the Labour Court which in its turn framed the following issues for consideration:-

- (a) Whether the domestic enquiry is fair and proper ?
- (b) Whether the order of termination passed by the respondent is legal and valid ?
- (c) What order ?"

On 20th October, 1994, the Labour Court heard issue No.1 as a preliminary issue and held that the domestic enquiry was not fair and proper. On 3rd January, 1995, while the proceedings were pending before the Labour Court, the respondent filed an interim application which was allowed by the Labour Court and the appellant-corporation was directed to pay 50 % of the salary last drawn by the respondent. In view of the aforesaid order, the appellant was permitted to obtain work from the respondent on the strength of a joint memorandum filed by the parties. Subsequently, on 23rd February, 1998, the Labour Court allowed the respondent's claim petition by ordering his reinstatement into service and also holding that he was entitled to receive 50 % of the back wages. Aggrieved by the aforesaid order, the respondent filed a Writ Petition No.26409/1998 before the High Court of Karnataka which remitted the matter back to the Labour Court with a direction to pass appropriate orders with regard to back wages, continuity of service and other consequential benefits, after affording an opportunity to both the parties. After remand, the Tribunal vide its Order dated 10th August, 2001, allowed the Reference and held that the respondent was entitled to receive full back wages from the date of the order of dismissal till the date of the award with continuity of service and all consequential benefits.

The appellant-corporation challenged the award passed by the Tribunal by way of a Writ Petition No.46673/2003 contending that the award of the Labour Court was erroneous on the face of the record and the conclusions arrived at were untenable. One of the grounds taken by the appellant was that the Labour Court having found that the respondent is engaged in agricultural operations, should not have held that the same was not an alternative employment.

The Writ Petition filed by the appellant came to be listed for final hearing before the learned Single Judge on 2nd February, 2005, and by his Order of even date the Single Judge dismissed the Writ Petition holding that the management had not been able to establish that the respondent was engaged in any gainful employment during the period of dismissal. The learned Judge also came to a finding that when the misconduct was not proved, there could be no justification in denying grant of back wages and

that the conclusion arrived at by the Industrial Tribunal was neither perverse nor arbitrary.

Being aggrieved by the above, the appellant preferred an appeal. The Writ Appeal was taken up for hearing by the Division Bench of the High Court on 1st July, 2005 and was dismissed, thus confirming the orders passed by the learned Single Judge and the Industrial Tribunal.

As indicated hereinbefore, this appeal is directed against the judgment and order of the Division Bench.

At the very outset it was submitted on behalf of the appellant that the Corporation had no grievance against the award as was made by the Labour Court on 23rd February, 1998 and that the Corporation was ready and willing to reinstate the respondent and to pay 50 % of the salary last drawn by him. The Corporation was, however, aggrieved by the subsequent award passed by the Labour Court after remand whereby the Labour Court altered its earlier directions after coming to a finding that the respondent was entitled to full back wages and not 50 % as had been directed earlier. It was sought to be urged that after coming to a finding on the basis of the evidence of the respondent himself that during the period of termination of his services, he was engaged in agriculture and that he was receiving certain amounts therefrom, it was not open to the Labour Court to observe that "gainful employment" would not include such income from agriculture. It was urged that income from any source, whether from employment in an establishment or from self-employment, would have to be treated as income for the purposes of deciding whether the respondent would be entitled to receive full back wages. It was urged that both the Tribunal and the High Court erred in taking a view to the contrary and the orders passed on the basis thereof were liable to be set aside.

On behalf of the respondent the stand taken before the Labour Court and the High Court was reiterated and it was contended that engaging in agricultural work would not amount to being gainfully employed and hence the orders passed by the Tribunal as affirmed by the High Court for payment of full back wages to the respondent, did not call for any interference.

We have carefully considered the submissions made on behalf of the respective parties in the backdrop of the facts of the case. Since the finding on the issue as to whether the domestic enquiry had been fairly and properly held had been decided in favour of the respondent and had not been challenged by the appellant, the only issue which was remitted by the High Court to the Tribunal was whether the respondent would be entitled to full back wages from the date of his dismissal till the date of the award, with continuity of service and consequential benefits.

On the said question, we are unable to accept the reasoning of the Labour Court that the income received by the respondent from agricultural pursuits could not be equated with income from gainful employment in any establishment.

In our view, "gainful employment" would also include self-employment wherefrom income is generated. Income either from employment in an establishment or from self-employment merely differentiates the sources from which income is generated, the end use being the same. Since the respondent was earning some amount from his agricultural pursuits to maintain himself, the Labour Court was not justified in holding that merely because the respondent was receiving agricultural income, he could not be treated to be engaged in "gainful employment".

The Single Judge of the High Court without looking into

this aspect of the matter merely observed that the management had not established that the workman was engaged in any gainful employment during the period of dismissal and on such finding, the learned Single Judge chose not to interfere with the award as passed by the Tribunal after remand.

The Division Bench which heard the Writ Appeal did not also consider the aforesaid aspect of the matter and mechanically disposed of the appeal with the observation that after going through the order of the learned Single Judge and the award of the Tribunal, it found no ground to interfere with the findings recorded therein.

In view of what we have stated hereinabove regarding the income received by the respondent for the period of his dismissal from service till the date of the award, we are of the view that the award passed by the Tribunal after remand and affirmed by the High Court, both by the learned Single Judge and the Division Bench is liable to be modified and the earlier award of the Labour Court dated 23rd February, 1998 is liable to be restored.

We, accordingly, allow the appeal and restore the award passed by the Labour Court dated 23rd February, 1998 and direct the respondent to give effect to the same expeditiously, if the same has not already been implemented.

In the event full back wages from the date of dismissal till the date of the award has already been paid to the respondent, the appellant-Corporation will be entitled to recover the same from the respondent.

There will be no order as to costs.