

(2006) 01 KAR CK 0010
In the Karnataka High Court
Case No : Writ Petition No. 26419 of 2005

Balachennamma A. (Smt.)	Vs	APPELLANT
Managing Director, K.S.R.T. Corporation and Another		RESPONDENT

Date of Decision : 02-01-2006

Acts Referred:

Citation : (2006) 109 FLR 1169

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : K. Srinivasa, for the Appellant; N.K. Ramesh, for the Respondent

Judgement

B.S. Patil, J.—The award passed by the Additional Labour Court, Bangalore, directing reinstatement of the workman without back wages but with continuity of service is challenged by the Management in Writ Petition No. 17315/2005.

2. The legal representative of the workman has filed Writ Petition No. 26419/2005 seeking direction to the second respondent to extend the death benefits payable consequent upon the death of the employee and to appoint her to a suitable post on compassionate grounds.

3. Both the cases are heard together and are disposed of by this common order.

4. It is the case of the petitioner-Management in W.P. No. 17315/2005 that the respondent-workman was found guilty of, unauthorised absence from duty from June 11, 1999 to September 25, 1999 without applying for leave and was therefore dismissed from service after following the procedure required by holding a disciplinary enquiry but the Labour Court having found that the misconduct was proved and the enquiry held was fair and proper has illegally interfered with the order passed by the disciplinary authority dismissing the respondent-workman holding that the, punishment imposed was disproportionate to the allegations of misconduct proved.

5. Learned Counsel Sri. N.K. Ramesh, appearing for the petitioner-Corporation

submits that having regard to the fact that the allegation of misconduct of unauthorised absence for a period of nearly four months was proved, the Labour Court was not justified in modifying the penalty and directing reinstatement with continuity of service though without back wages. He relied on a judgment in the case of Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate, particularly emphasising the fact that the disciplinary authority had taken note of the past conduct of the workman while imposing the serious I penalty of dismissal from service.

6. Learned Counsel appearing for the respondent-workman on the other hand contends that the allegations made regarding the past conduct and the alleged involvement of the employee in other past misconduct was not proved nor any material particulars regarding the alleged past misconduct were enumerated in the order imposing penalty by the disciplinary authority and therefore reliance placed on the alleged past misconduct while imposing major penalty of dismissal from service was totally erroneous.

7. Having heard the learned Counsel appearing for the parties, the only point that arises for consideration is:

Whether the Labour Court was justified in coming to the conclusion that the penalty of dismissal was shockingly disproportionate to the misconduct alleged?

8. The misconduct of unauthorised absence alleged is for the period from June 11, 1999 to September 25, 1999 . Though the employee had come forward with a plea that he was suffering from illness and therefore was compelled to stay away from duties the same has not been established. As such the Labour Court has found that the allegations of misconduct of unauthorised absence is established. The disciplinary authority has strongly relied on the past misconduct for the purpose of imposing the major punishment of 5 dismissal from service. The Labour Court at Para 15 of the award comes to the conclusion that the Management had failed to establish that the first party was a habitual absentee and that his past record disclosed that he was guilty of any such misconduct earlier. On the basis of the available evidence produced before it, the Labour Court has come to the conclusion that there was no past misconduct or unauthorised absence on the part of the workman. In this background the Labour Court has persuaded itself to come to the conclusion that the major punishment of dismissal from service for the misconduct of unauthorised absence was too harsh and shockingly disproportionate. This approach of the Labour Court cannot be characterised as arbitrary. The disciplinary authority chose to impose major punishment of dismissal on the ground that the employee was found guilty of similar acts of misconduct in the 25 past. Before the Labour Court no material is produced by the management to substantiate its stand or to show that in the past the employee was found guilty of misconduct and was penalised. In these circumstances, it cannot be said that the Labour Court committed any illegality in coming to the conclusion that the disciplinary authority has proceeded on a wrong assumption. Thus, in the facts and circumstances of this case, the

conclusion 35 arrived at by the Labour Court in setting aside the order imposing major penalty of dismissal from service cannot be found fault with. In the instant case the employee has subsequently passed away and it is his legal representatives 40 who are pursuing the litigation. Therefore, there is no merit in the contention of the petitioner-Management. The Judgment cited by the learned Counsel for the petitioner-Management has no application to the facts of 5 the present case.

9. As regards the prayer made by the legal representative of the employee in Writ Petition No. 26419/2005 seeking appointment on compassionate grounds and for settlement of terminal benefits, the learned Counsel appearing for the K.S.R.T.C. submits that in terms of the scheme framed in this regard, the case of the petitioner would be considered and action would be taken to disburse the benefits if she is legally entitled to. In that view of the matter, the question whether the wife of the deceased employee is entitled for appointment on compassionate grounds and the extent of the financial benefits to which she is entitled are matters to be examined and appropriate orders be passed by the Management. Hence, a direction in this regard has to be issued. Accordingly, I pass the following:

ORDER

Writ Petition No. 17315/2005 filed by the K.S.R.T.C. is dismissed. Writ Petition No. 26419/2005 is disposed of with a direction to respondents 1 and 2 the Managing Director, K.S.R.T.C. and the Divisional Controller, K.S.R.T.C., Bangalore Rural Division, to consider the request made by the petitioner Smt. Balachennamma for appointment on compassionate grounds and for settlement of terminal benefits in accordance with law. Appropriate orders in this regard shall be passed within a period of three months from the date of receipt of a copy of this order.

In the circumstances of the case, there shall be no order as to costs.