
(2013) 01 KAR CK 0194
In the Karnataka High Court
Case No : Writ Petition No. 6041 of 2007

Bangalore Metropolitan Transport Corporation

APPELLANT

Vs

B.H. Raj

RESPONDENT

Date of Decision : 22-01-2013

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(4-A), 17B

Citation : (2014) 1 AKR 645 : (2013) 137 FLR 623 : (2014) 2 KCCR 1428 :
(2013) 2 LLJ 571 : (2013) LLR 465

Hon'ble Judges : Ravi Malimath, J

Bench : Single Bench

Advocate : H.R. Renuka, for the Appellant; L. Shekar, for the Respondent

Final Decision : Allowed

Judgement

Ravi Malimath, J.—The respondent was working as Helper-A in the establishment of the petitioner. During the third week of May, 1998, he developed weakness and lack of appetite. He remained absent from duty with affect from 12.7.1998. He did not report for duty. Since he remained unauthorisedly absent, an Article of Charge was issued. He submitted his reply by denying the allegations. An enquiry was set up. He did not appear. Paper publication was taken up, even then, he did not appear. The enquiry ended in passing of the order dated 24.4.2000, terminating him from the services. Aggrieved by the same, he preferred a dispute u/s 10(4-A) of Industrial Disputes Act By the impugned order, the Labour Court allowed the petition and set aside the order of dismissal, directing the petitioner to reinstate the respondent into the original post with continuity of service and all consequential benefits but without back-wages. Aggrieved by the same, the present petition is filed. Smt. H.R. Renuka, the learned counsel for the petitioner contends that the order passed by the Labour Court is perverse and that the findings recorded by the Labour Court is not just and proper since the respondent has been unauthorisedly absent ever since 12.7.1998. The Labour Court has committed an error in accepting the medical

certificates, as produced in terms of Exs. M. 10 to 15.

2. I have examined each one of those documents. The Doctor therein narrates that he suffered abdominal tuberculosis and was anemic. He has suggested bed rest for the first occasion from 15.5.1998 to 10.11.1998 in terms of Ex. M-10, from 11.11.1998 to 20.4.1999 in terms of Ex. M-11, from 21.4.1999 to 23.7.1999 in terms of Ex. M-12 and from 25.7.1999 to 13.8.1999 in terms of Ex. M-15. He has stated that he is free from tuberculosis and fit to resume duty from 24.7.1999. Each one of the signatures on each of these documents varies. It does not appear to be the signature of the same person. However, even if the evidence is to be accepted as that of the very same Doctor, there is no sufficient material to show that medication has been taken in order to treat Tuberculosis. The learned Counsel for the respondent Submits that the medicines were taken free of cost from the Government Hospital. Even if the medicines were taken free of cost, prescription to that effect has not been produced.

3. Reliance placed on these exhibits being well-founded, absence from duty would necessarily have to be held as being wilful. In support of his case, the respondent relies on the judgment in the case of Krushnakant B. Farmer v. Union of India & Anr. reported in AIR 2012 SCW 1633, in particular reference to paras 16, 17, 18 and 19. I have considered the same. The Hon'ble Supreme Court therein held that the question whether "unauthorised absence from duty" amounts to failure of devotion of duty or behaviour unbecoming of a Government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances. The facts of the present case would show that his unauthorisedly absent from duty is wilful. It cannot be said to be of compelling circumstances. However, the same is not supported by any medical records. Therefore, the said judgment would not be of any avail. The Doctor has also not been examined. Under these circumstances, the findings recorded by the Tribunal is perverse and requires to be interfered with.

4. The workman was dismissed by an order dated 24.4.2000. After the Labour Court passed an order in the year 2006 directing reinstatement and even though the petitioner is willing to take him, he did not report to duty. However, by an order dated 5.7.2007, the petitioner was directed to reinstate the respondent within six weeks and on such reinstatement, the respondent was entitled for current wages and the reinstatement shall be subject to the result of the writ petition. Accordingly, I.A. 1/2007 was disposed of.

5. From the date of the said order, he has not reported for duty. Subsequently, by an order dated 10.9.2008, the learned Counsel for the respondent submitted that on account of injury to his left forearm which has been amputated, he is unable to discharge the work of Helper-A, This aspect was not brought to the notice of there Court when the earlier order dated 5.7.2007 was passed. Therefore, it was held that since the respondent is unable to do the work of Helper-A, the question of reinstatement does not arise and if there is no reinstatement, question is whether as per Section 17B wages should be paid or

not. Therefore, the learned Counsels were requested to address arguments on the said issue.

6. Considering the facts of the case, it is apparent that the respondent is not anxious to seek any employment nor any effort has been made by him either to get reinstatement or to obtain 17-B wages.

7. In the result, for the aforesaid reasons, in view of the fact that the order passed by the Labour Court is perverse, I am of the considered view that the petition requires to be allowed. Accordingly, the Writ Petition is allowed. Consequently, the order dated 3.8.2006 passed in I.D. No. 102/2000 by the Labour Court is set aside. The order dated 24.4.2000 passed by the Disciplinary Authority is restored.