
(2016) 01 KAR CK 0343
In the Karnataka High Court
Case No : W.A. NO. 2666 Of 2011 (L-KSRTC)

Bangalore Metropolitan Transport Corporation	APPELLANT
Vs	
V. Ramaswamy	RESPONDENT

Date of Decision : 28-01-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 11A

Citation : (2016) 3 AirKarR 382 : (2016) 1 CLR 899 : (2016) 149 FLR 711 :
(2016) LabLR 649 : (2016) 3 LLJ 525 : (2016) 3 LLN 160

Hon'ble Judges : Vineet Saran Honourable;B. Sreenivase Gowda, JJ.

Bench : Division Bench

Advocate : H.R. Renuka, Advocate, for the Appellant; C.V. Manjunath, Advocate,
for the Respondent

Final Decision : Allowed

Judgement

Vineet Saran, J. - This is an intra court appeal filed by the employer-Bangalore Metropolitan Transport Corporation (for short "BMTC") challenging the order of the writ Court whereby the writ petition was dismissed and the award of the Labour Court was upheld.

2. The brief facts of this case are that the respondent-workman joined as a temporary driver in BMTC in the year 1992. Subsequently, on a report submitted by the Assistant Traffic Superintendent relating to the unauthorised absence of the respondent-workman with effect from 10.6.2004, he was issued notice by the BMTC calling upon him to report to duty. When he did not report to duty, on 14.7.2004, he was issued with Article of Charges. The respondent-workman neither responded to the notice nor the Article of Charges. Thereafter, an enquiry was conducted in which the charge against the workman for having remained absent from duty from 10.6.2004 till the date of the enquiry was fully proved. Then, by order dated 8.2.2006, the respondent-workman was dismissed from service, which order was challenged by him before the Labour Court by raising an industrial dispute. Though the Labour Court by its award dated 18.5.2010,

held that the disciplinary enquiry conducted against the workman was fair and proper, and also agreed with the findings recorded in the enquiry report, yet it has held that the punishment of dismissal imposed on the workman was shockingly disproportionate to the charges proved, and thus, instead of punishment of dismissal from service, penalty of withholding five annual increments with cumulative effect" and reinstatement in service without back wages was directed. It was this order which was challenged by the appellant in the writ petition, which has been dismissed, against which, this appeal has been filed.

3. We have heard Ms. H.R. Renuka, learned counsel for the appellant, as well as Sri C.V. Manjunath appearing on behalf of Sri Kantharaja V. learned counsel for the respondent, and have perused the records.

4. The fact that the appellant remained absent from duty from 10.6.2004 onwards is admitted by the parties. It has also come on record that prior to such absence the respondent-workman had remained unauthorisedly absent earlier also for 17, 23, 39 and 42 days, for which he was awarded minor punishments, it is thus clear that the appellant was a habitual absentee. The charge which stood proved against the respondent-workman in the present case was of absence from duty for the period of one year and eight months. Though there was no explanation given by the respondent-workman before the enquiry officer, but before the Labour Court, he came up with the excuse of having filed a leave application and then having remained absent, first on account of illness, then his father's death and then his daughter's marriage.

5. Even if such explanation submitted at a later stage before the Labour Court is accepted, then too it is not understood as to why, if at all, any leave application had been filed, then after expiry of the time for which leave was sought, he did not report back on duty or file further application for extension of leave. The Rules do not provide for grant of leave for an indefinite period. An application for grant of leave can only be for a definite period and on expiry of the same, the workman is to either join back duty or apply for further leave. Such is not even the case of the appellant. Even if such explanation given before the Labour Court is accepted, then too it is not even his case that his leave had been sanctioned. It thus means that the workman wanted to work in the Corporation on his own whims and on his own terms and at his whims, and not as per Rules of service.

6. The Labour Court found all the charges against the respondent are fully proved. It also found that the workman had remained unauthorisedly absent on four earlier occasions, when he was awarded minor punishments. Even in such facts, the Labour Court still held that the punishment of dismissal from service awarded in the present case was shockingly disproportionate and hence, reduced the same and allowed the respondent to join duty.

7. In the facts of the present case, what we find is that it is actually the relief which has been granted by the Labour Court which is shocking, and not the

punishment imposed by the employer, which after holding a proper enquiry and the charges found to be proved. The workman absented himself without any reason and without prior permission or sanction of leave. He then chose not to participate in the enquiry proceedings despite having been served with the notice of enquiry. Earlier also he absented himself from duty for substantial periods, because of which minor punishments had been awarded. This time he absented for nearly two years. A public Corporation (BMTCL), which has a statutory obligation to provide transportation to the citizens, cannot run with employees (specially drivers) who proceed on leave without permission or grant of sanctioned leave. This is a case of a chronic defaulter as it is not once, but the workman in question had been unauthorisedly absent on several occasions earlier also. In *North-Eastern Karnataka RT Corpn. v. Ashappa* (2006) SCC (LandS) 942, the Apex Court in a similar case of a conductor of a transport Corporation where also the question was dismissal of bus conductor where he remained absent for three years, has in paragraph-8 of the judgment, held as under:

"Remaining absent for a long time, in our opinion, cannot be said to be a minor misconduct. The appellant runs a fleet of buses. It is a statutory organisation. It has to provide public utility services. For manning the buses, the service of the conductor is imperative. No employer running a fleet of buses can allow an employee to remain absent for a long time. The respondent had been given opportunities to resume his duties. Despite such notices, he remained absent. He was found not only to have remained absent for a period of more than three years, his leave records were seen and it was found that he remained unauthorisedly absent on several occasions. In this view of the matter, it cannot be said that the misconduct committed by the respondent herein has to be treated lightly."

8. The facts of this case being similar to the one before the Apex Court in the case of *Ashappa* (supra), we are of the opinion that the view taken by the Disciplinary Authority was fully justified in law. This we also say so because Statutory Corporations, which provide public utility services are to maintain certain standard of performance and if they are saddled with the liability to continue either incompetent or irresponsible employees in service, even when serious charges against them are found to be proved, then they will not be able to discharge their statutory responsibilities properly. Having sympathy for a workman who performs his duties dutifully but has faltered because of some valid reason is different from being negligent or careless, who repeatedly flouts the Rules of service and does not even respond to notices or participate in the enquiry proceedings even after service. No sympathy deserves to be given in the "latter case as it would adversely affect the discipline of the organisation and spoil the system, which should not be permitted by Court of law. While exercising its extraordinary writ jurisdiction, Court should exercise its discretionary powers only when it is just and equitable to grant the relief, which was not so in the present case as it would be at the cost of the public at large. As such, we are of

the opinion that the view taken by the writ Court was not justified in the facts of the present case.

9. The Labour Court has relied on the judgment of the Apex Court in the case of J.K. Synthetics Ltd. v. K.P. Agarwal ({2007) 2 SCC 433) wherein the question involved was different from the one at hand. The Apex Court, in that case, was considering the question that "when the punishment of dismissal is substituted by lesser punishment (stoppage of increments for two years), and consequently, the employee is directed to be reinstated, whether the employee is entitled to back wages from the date of termination to the date of reinstatement". The question involved in the present case is totally different and as such, the Labour Court had wrongly relied on the aforesaid judgment of the Apex Court and directed for reinstatement of service.

10. As we have already held, in the facts and circumstances of the present case, it was not the punishment of dismissal awarded which was shockingly disproportionate but, in our opinion, it is the order of reinstatement passed by the Labour Court, which is shocking to the conscience of this Court, and thus deserves to be set aside.

11. We, accordingly allow this appeal as well as the writ petition and set aside the order of the Labour Court.