
(2013) 01 KAR CK 0091
In the Karnataka High Court
Case No : Writ Petition No. 87213/2012 (L-K)

Devandrappa

APPELLANT

Vs

The Divisional Controller, NEKRTC

RESPONDENT

Date of Decision : 03-01-2013

Acts Referred:

Citation : (2013) 01 KAR CK 0091

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Judgement

S. Abdul Nazeer, J.—This writ petition is directed against the award in Ref. No. 24/2012 dated 27.7.2012 passed by the Presiding Officer, Labour Court, Gulbarga. The petitioner had been working with the respondent Corporation as a Driver. Disciplinary proceedings was initiated against him and it was alleged that he had unauthorisedly remained absent from 28.3.2008 to 10.10.2008. After holding an enquiry, the Corporation dismissed him from service on 18.2.2010. The petitioner challenged the said order by filing a claim petition before the Labour Court in Ref. No. 24/2012. The Labour Court has dismissed the said petition by its order at Annexure-C dated 27.7.2012.

2. I have heard the learned Counsel for the parties.

3. It is not in dispute that an industrial dispute relating to charter of demands in I.D. No. 148/2005 in which the workman is concerned is pending before the Industrial Tribunal at Bangalore. The workman was dismissed from service during the pendency of the said dispute. It is also not in dispute that the Corporation has not complied with the statutory requirements contained in the proviso to Section 33(2)(b) of Industrial Disputes Act, 1947 (for short "the Act") before passing the order of dismissal.

4. In North West Karnataka Road Transport Corporation vs. sadashiv (W.P. No. 63003/2011 disposed of on 7.8.2012), this Court has considered an identical matter. Relying on the decision of the Constitution Bench of the Apex Court in

Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, and the decision of this Court in Sanjay and Others vs. The Management of NWKRTC in W.P. No. 65378/2011 and other connected matters disposed of on 26.6.2012, it was held that the termination of the workman from service without compliance of the statutory requirements contained in the proviso to Section 33(2)(b) of the Act is void and inoperative.

5. In M.M. Narayana and Others vs. The Management of KSRTC (W.P. Nos. 24118-120/2009 and other connected matters disposed of on 13.7.2012), this Court has held that an order of discharge or dismissal passed against a workman without obtaining approval u/s 33(2)(b) would be nonest. If the management/ employer does not seek approval of the Board, Arbitrator, Court/Tribunal, etc., as required u/s 33(2)(b) on the ground that such aggrieved workman has a remedy u/s 33A of the Act, it would not validate such order of discharge or dismissal and in such cases, order of discharge or dismissal would be nonest and void.

6. Therefore, the award of the Labour Court in Ref. No. 24/2012 at Annexure-C dated 27.7.2012 cannot be sustained.

7. Learned Counsel for the petitioner-workman submits that the petitioner is not insisting for payment of any backwages provided the Corporation reinstates him within a time frame. The submission of the learned counsel for the petitioner-workman is placed on record. In the light of the above discussion, I pass the following order:

The award of the Labour Court at Annexure-C dated 27.7.2012 in Ref. No. 24/2012 is hereby quashed. The respondent Corporation is directed to reinstate the petitioner into service within a period of eight weeks from the date of receipt of a copy of this order with continuity of service and other consequential benefits. However, the petitioner is not entitled for any backwages. Writ petition is disposed of accordingly. No costs.