

(2023) 12 KAR CK 0033

In the Karnataka High Court

Case No : Writ Petition No. 30838 Of 2015 (L-KSRTC)

Divisional Controller, Karnataka State Road Transport
Corporation, Represented By Its Managing Director, Transport
House Central Office, K.H.Road, Shanthinagar, Bangalore -
560027

APPELLANT

Vs

J.Chandrashekar

RESPONDENT

Date of Decision : 14-12-2023

Acts Referred:

Citation : (2023) 12 KAR CK 0033

Hon'ble Judges : Jyoti Mulimani, J

Bench : Single Bench

Advocate : H.R. Renuka., M.C. Basavaraju

Final Decision : Allowed

Judgement

Jyoti Mulimani, J

1. Smt.H.R.Renuka., learned counsel for the petitioner and Sri.M.C.Basavaraju., learned counsel for the respondent have appeared in person.

2. The brief facts are these:

The respondent was appointed as a Trainee Driver cum Conductor in the establishment of the Corporation on 12.03.2009. Since then he has been working as Trainee Driver cum Conductor in the establishment of the Corporation. On 09.08.2010, the Tumkur Depot Manager submitted a report that the respondent remained absent unauthorizedly from 26.07.2010. Two call notices dated 09.08.2010 and 31.08.2010 were issued calling upon the respondent to report to duty. Since the respondent did not respond to the call notices, the show cause notice dated:13.11.2010 was issued to him. The respondent didn't reply to the show cause notice. Hence, inquiry officer was appointed. The inquiry notice sent by the inquiry officer was not received by the respondent. Hence, the inquiry notice was served on the respondent through the Divisional Controller. Despite

the service of notice, respondent did not chose to appear before the inquiry officer. Therefore, notice of inquiry was got issued through Kannada Prabha newspaper. Accordingly, notice was published in Kannada Prabha newspaper on 05.09.2011, fixing the date of inquiry on 20.09.2011.

On 20.09.2011, the respondent remained absent and he was placed ex-parte and the inquiry was proceeded with. The inquiry officer by his report dated:10.10.2011, held that the charges against the respondent that he has unauthorizedly remained absent from 26.07.2010 has been proved. After submission of the report by the inquiry officer, a copy of the inquiry report was sent to the respondent to have his say in the matter. The respondent didn't reply. Thereafter, the disciplinary authority after going through the entire records, including the inquiry report and also the fact that the respondent has been previously punished twice for having remained unauthorized absent for 44 days and 72 days, passed an order under KSRTC Employees (Conduct and Disciplinary) Rules, 1971 and removed the respondent from the service vide order dated:07.03.2012.

Aggrieved by the order of removal, the respondent raised an Industrial Dispute before the Principal Labour Court, Bengaluru in Reference No.36/2014. The Labour Court vide award dated:02.01.2015 held that the Corporation is not justified in removing the name of the respondent from the rolls of Trainee Driver cum Conductor and directed reinstatement of the respondent without backwages or continuity of service. It is this award that is called into question in this Writ Petition on several grounds as set out in the Memorandum of Writ Petition.

3. Learned counsel for the petitioner and the respondent have urged several contentions. Heard, the contentions urged on behalf of the respective parties perused the Writ paper with utmost care.

4. The point that requires consideration is whether the award of the Labour Court requires interference.

5. The facts are sufficiently stated and do not require reiteration. Suffice it to note that the respondent came under a disciplinary inquiry proceedings for the act of misconduct i.e., unauthorized absence and was visited with an order of punishment i.e., his name was removed from the rolls of trainee Driver cum Conductor.

6. The issue revolves around the act of misconduct i.e., unauthorized absence. The respondent is a trainee and only on satisfactory service, he is eligible to be confirmed, however he remained absent continuously from 26.07.2010 till the date of order of punishment. There is absolutely no convincing reason or acceptable explanation for such grave misconduct. Under the circumstances, the Labour Court is not justified in setting aside the order of punishment. Suffice it to note that from the date of appointment the respondent was appointed on 12.03.2009, he remained absent for 44 days from 22.04.2009 to 04.06.2009. Hence, he was punished with a penalty of Rs.1,000/- (Rupees One Thousand

only). Again, from 10.05.2010 to 20.07.2010 for a period of 72 days he remained unauthorizedly absent. For this misconduct, he was punished by extending the training period for three more months. The Labour Court has not taken into consideration that the Corporation has given sufficient opportunity to the respondent to improve himself, but he has failed to make use of such opportunities.

Furthermore, the sympathetic approach by the Labour Court is unsustainable in law. What is required to be considered is the act of misconduct. When the Labour Court holds that the misconduct is proved, exercise of discretionary power and modifying the order of punishment is untenable.

Lastly, learned counsel Smt.H.R.Renuka., submits that a memo has been filed stating that pursuant to the interim order passed by this Court on 02.11.2015, the respondent was reinstated into service and even after the reinstatement, the respondent has remained absent and the Corporation vide order dated:08.09.2018 removed the name of respondent from the rolls of trainee Driver cum Conductor. Counsel submits that the copy of order dated:08.09.2018 is furnished along with the memo and the same may be placed on record and appropriate order may be passed.

Submission is noted. Memo along with the copy of order dated:08.09.2018 is placed on record. A perusal of the same would reveal that even after the reinstatement, the respondent has remained absent duty unauthorizedly. Hence, his name is removed from the rolls of trainee Driver cum Conductor. The conduct of the respondent in remaining absent unauthorizedly depicts that he is not interested in discharging his duties. I may venture to say that such an employee does not deserve any sympathy much less a misplaced sympathy. For the reasons stated above, the award of the Labour Court is liable to be set-aside. Accordingly, it is set-aside.

7. The Writ of Certiorari is ordered. The award dated:02.01.2015 passed by the Prl. Labour Court, Bengaluru in Reference No.36/2014 vide Annexure-E is quashed. The order of removal dated:07.03.2012 is confirmed.

8. As a result, the Writ Petition is allowed.

In view of confirmation of the order of removal, the interim order granted by this Court stands discharged and pending interlocutory application if any are disposed of.