
(2015) 02 KAR CK 0272

In the Karnataka High Court

Case No : Writ Appeal No. 6479/2010 (L-KSRTC)

Divisional Controller, NEKRTC

APPELLANT

Vs

H.M. Momin

RESPONDENT

Date of Decision : 11-02-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(4-A), 11A

Citation : (2015) 02 KAR CK 0272

Hon'ble Judges : P.D. Waingankar, J.;A.S. Bopanna, J.

Bench : Division Bench

Advocate : Ravi V. Hosamani, for the Appellant

Final Decision : Dismissed

Judgement

A.S. Bopanna, J.—There is a delay of 84 days in filing the appeal. Hence, Misc. W. No. 60464/2011 is filed seeking condonation of delay. Though we are not satisfied with the reasons indicated in the affidavit seeking condonation of delay, only with a view to examine the merits of the contentions and to put at rest the matter, we have condoned the delay so as to take up the appeal for consideration.

Accordingly, Misc. W. No. 60464/2011 is allowed. The delay is condoned.

2. The appellant-Corporation is before this Court assailing the order dated 16/07/2010 passed in Writ Petition No. 60289/2010 wherein the learned Single Judge has upheld the award dated 28/08/2008 passed by the Labour Court in KID No. 153/2005.

3. The respondent was working as a driver in the appellant-corporation. He had joined the services in the year 1978 and his services was confirmed on 24/09/1980. After having rendered long service in the appellant's Corporation, he had remained unauthorisedly absent from 24/10/1999 to 08/12/1999. The appellant-corporation, therefore, instituted an inquiry in that regard and dismissed him from the service on 06/10/2005. The respondent claiming to be aggrieved had raised a dispute by filing a petition under Section 10(4-A) of the

Industrial Disputes Act, 1947, (the "I.D. Act" for short). The Labour Court, after taking into consideration the rival contentions, has, by the award dated 28/08/2008, arrived at the conclusion that the punishment accorded to the respondent is disproportionate and has therefore set aside the dismissal order and directed the appellant-corporation to treat the respondent to have been in service since as on the date of the award, the respondent herein had already attained the age of superannuation. The appellant-corporation claiming to be aggrieved by the same was before the learned Single Judge in Writ Petition No. 60289/2010. The learned Single Judge having considered the said aspect was of the opinion that the Labour Court was justified and in any event in a circumstance where the respondent had already attained the age of superannuation, the award did not warrant interference.

4. The learned counsel for the appellant while assailing the order passed by the learned Single Judge as also the award passed by the Labour Court would contend that the Labour Court having recorded a finding that the charge alleged against the respondent had been proved, ought not to have interfered with punishment that was imposed. It is contended that only sympathy could not have weighed with the Labour Court and therefore the award is liable to be set aside and the learned Single Judge had erred in that regard. The learned counsel has also relied on the decision of the Hon''ble Supreme Court in the case of Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc., .

5. In the light of the contentions put forth by the learned counsel for the appellant we have perused the appeal papers.

6. At the outset the reference to the decision cited by the learned counsel for the appellants would indicate that the Hon''ble Supreme Court has laid down that the exercise of discretion under Section 11A of the ID Act could be made only on existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the Court or the existence of any mitigating circumstances which require the reduction of the sentence or the past conduct of the workman which may persuade the Labour court to reduce the punishment.

7. In fact in our opinion, the said decision squarely applies to the instant facts in favour of the respondent. We are of the said opinion for the reason that the labour Court though has arrived at the conclusion that the misconduct has been proved has in fact referred to the most relevant fact i.e., the respondent had rendered 27 years of service as on the date of the dismissal order was passed and in the instant case, the dismissal was in respect of a charge of unauthorised absence for the first time after rendering 27 years of service. It is in that view, the Labour Court has recorded its observations that it shocks the conscience of the Court since the punishment is shockingly disproportionate to the gravity of misconduct. When the Labour court has exercised its discretion in an appropriate manner, certainly, the learned Single Judge was justified for not interfering with the award passed by the Labour Court.

Hence, we see no merit in the appeal. The same is accordingly dismissed. In view of dismissal of the appeal, application for stay also stands disposed.