

(2014) 01 KAR CK 0257

In the Karnataka High Court

Case No : Writ Petition No. 102717 of 2013 (LK)

Divisional Controller Nekrtc

APPELLANT

Vs

Kodlappa

RESPONDENT

Date of Decision : 27-01-2014

Acts Referred:

Citation : (2014) 01 KAR CK 0257

Hon'ble Judges : Mohan M. Shantanagoudar, J

Bench : Single Bench

Advocate : Deepak Barad, for Sri Veeresh B. Patil, for the Appellant; Sanjay M. Joshi, for the Respondent

Final Decision : Disposed Off

Judgement

Mohan M. Shantanagoudar, J.—Respondent is a workman working under petitioner-Corporation herein. He is a Helper in the Corporation. According to the petitioner, respondent remained unauthorizedly absent without permission of the petitioner-Corporation. He has been absenting himself from duty on quite number of occasions and he was imposed with minor penalties for the same. When he remained absent from 03.04.2010 to 26.08.2010, the enquiry came to be held against him after issuing articles of charges. The enquiry officer submitted the enquiry report against the workman. The disciplinary authority accepted the enquiry report and by applying its mind independently ordered for dismissal of the workman. Workman approached the Labour Court in KID No. 78/2011 questioning the order of dismissal. The Labour Court passed the impugned award allowing the claim petition of the respondent and directing the Corporation to reinstate the workman with back-wages, continuity of service etc. Corporation is aggrieved by the award of the Labour Court. Undisputedly, the respondent remained absent from 03.04.2010 to 26.08.2010. Though it is contended by the workman that leave applications are filed, such fact is not proved. The explanation offered by the workman was that he was suffering from jaundice during the relevant period. He has also stated that he looked after Mr.

Suresh who is the son of his sister and said Mr. Suresh has undergone surgical operation. But the workman has failed to prove the aforementioned factors.

2. The Labour Court, however, taking lenient view in the matter allowed the claim petition. The Labour Court has completely ignored Ex. M23-History sheet of the respondent which discloses that the respondent had remained absent unauthorizedly at an earlier point of time and he was imposed with minor penalties. However, the Labour Court has made much about non-production of leave priority register of the management. The Labour Court has to look into the entire material on record and based on preponderance of probabilities awards has to be passed. The matter of the Labour Court should not be decided as if it is a criminal case compelling the prosecution to prove its case beyond reasonable doubts. It is not for the management to prove its case beyond reasonable doubts. The matter should be decided based on preponderance of probabilities. Having gone through the entire material on record, I am of the considered opinion that the respondent had remained absent unauthorizedly during aforementioned period. It is also no doubt true that the management has not produced certain records which light have been produced. Having regard to the totality of the facts and circumstances of the case, in my considered opinion, interest of justice would be met if the order of reinstatement is not interfered with. It is brought to the notice of the Court by Sri Sanjay M. Joshi, learned counsel for the workman that 50% of the back wages are already disbursed in favour of the workman. Since 50% of the back wages are disbursed in favour of the workman, this Court does not propose to interfere in payment of 50% back wages. However, remaining 50% back wages shall not be paid to the workman. Apart from the same, penalty of withholding three increments without cumulative effect is also imposed. Accordingly, the following order is made:

The award of the Labour Court reinstating the workman with continuity of service is upheld. However, workman is not entitled to 50% of back wages. He is imposed with penalty of withholding of three increments without cumulative effect.

Petition is disposed of accordingly.