

(2000) 07 KAR CK 0027
In the Karnataka High Court
Case No : W.A. No. 7268 of 1999

Divisional Controller NWKRTC

APPELLANT

Vs

Raghavendra Madhava Katti

RESPONDENT

Date of Decision : 03-07-2000

Acts Referred:

Citation : (2001) ILR (Kar) 4199 : (2000) 4 KCCR 2416 : (2001) 3 LLJ 113

Hon'ble Judges : Manjula Chellur, J;G.C. Bharuka, J

Bench : Division Bench

Final Decision : Allowed

Judgement

G.C. Bharuka, J.—The respondent who is employed as a driver in the appellant - North West Karnataka Road Transport Corporation ("the Corporation" for short) had remained absent for 162 days without making any leave application. Accordingly he was subjected to disciplinary proceedings and ultimately as a major punishment he was dismissed from service as provided under the Karnataka State Road Transport Corporation Servants (Conduct and Discipline) Rules, 1970. Thereafter the respondent raised an industrial dispute before the Labour Court.

2. The Labour Court, having come to the conclusion that the enquiry conducted by the Disciplinary Authority was not fair and proper, permitted the management and the respondent to lead evidence. The management examined the Depot Manager, Bagalkot, as its witness. He duly substantiated the charge against the respondent. In the cross-examination it was suggested that the reason for the absence of respondent was due to the disease he was suffering from water infection. But the Depot Manager categorically negated the suggestion by further stating that the respondent- delinquent was not suffering from any disease since he always saw him wandering in front of him and despite warning he did not report to duty. He also denied the suggestion that the respondent had made any application for leave. The respondent did not lead any evidence in support of his defence. He just filed the xerox copy of an alleged medical

certificate issued by a doctor which was marked as Ex. M-8. The Labour Court, relying on that certificate alone and without even addressing to the nature of the disease said to have been suffered by the respondent directed for his reinstatement with 50% back wages. On being challenged in this Court, the learned single Judge has also affirmed the order of the Labour Court. Now the Corporation has come up in appeal before us.

3. From the facts as noticed above it is quite clear that the respondent had remained unauthorisedly absent for 162 days without even making any application for leave much less with any acceptable reason. If one has to accept the evidence of the Depot Manager, which has gone uncontroverted on the record, then one has to reasonably conclude that the respondent is guilty of gross misconduct since despite the reminders, he had refused to report to duty though he was wandering about in the Corporation's office. The Supreme Court in the case of *Burn and Co. Limited v. Their Workmen* AIR 1959 SC 529 : 1959 I LLJ 450, has held that unauthorised absence is gross misconduct and gross violation of discipline. It cannot be disputed that unauthorised absence greatly jeopardises the functioning of the establishments and particularly if a driver of a road transport corporation remains absent it will certainly have serious repercussions on the functioning of the Corporation and hinder services to the public for which the said corporations have been brought into existence under the provisions of the Road Transport Corporation Act, 1951. One has to treat such dereliction of duty with certain amount of seriousness. By placing misplaced sympathies and benevolence, gravity of such misconduct and acts of indiscipline cannot be mitigated. If the public undertakings are to exist to serve its objective then it is not only the duty of the management but also of the Courts to ensure strict discipline in such Corporations or else it will certainly have detrimental effects on the public rights and conveniences. The larger interest must prevail over self-created individual hardships.

4. Before parting we find it advisable to refer to judgment of the Supreme Court in the case of *Kerala Solvent Extractions Ltd. Vs. A. Unnikrishnan and Another*, deprecating the judicial tendencies to grant unwarranted reliefs by mere basing on misplaced sympathy, generosity and private benevolence. Para 7 of this report sets out the warning and declares that at p. 890 of LLJ:

"7. The reliefs granted by the Courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability."

5. For the abovesaid reasons the appeal is allowed and the orders of the Labour Court and the learned single Judge are set aside and the Order of the disciplinary authority dismissing the respondent is restored. No costs.