

(2009) 06 KAR CK 0070

In the Karnataka High Court

Case No : Writ Petition No. 11333 of 2008

Divisional Controller, The Karnataka State Road Transport Corporation

APPELLANT

Vs

Sri M.N. Ramegowda

RESPONDENT

Date of Decision : 06-06-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (1) (c)

Citation : (2009) 06 KAR CK 0070

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : Shwetha Anand, for the Appellant; N. Devaraj, for the Respondent

Judgement

Huluvadi G. Ramesh, J.—The petitioner has sought for issuance of writ of certiorari quashing the award dated 7-3-2008 passed in Reference No. 45/2004 by the Principal Labour Court. Hubli.

2. The petitioner - Corporation contended that the respondent was working as a conductor in the establishment of petitioner - Corporation since March, 1976. He remained unauthorised absent from 1.1.1994 to 2.6.1994 without intimating the Management. He was issued with a notice directing him to join for duties within three days from the date of receipt of the notice and in spite of receiving the same he remained unauthorised absent. The unauthorised absence was reported. On the basis of the report, the disciplinary authority issued article of charges to the respondent and he submitted his reply to the same. The disciplinary authority after perusal of the relevant materials on record and assessing the evidence held that the respondent was guilty of charges and dismissed the respondent from service.

3. The respondent sought for reference u/s 10(1)(c) of the Industrial Disputes Act. for adjudication of the dispute. The Labour Court after holding enquiry, came to the conclusion that the order of dismissal was too harsh and directed the petitioner - Corporation to reinstate the respondent into service with 50%

backwages, continuity of service and all other consequential benefits. Being not satisfied with the award of the Labour Court, the petitioner - Corporation is before this Court.

4. Heard the learned Counsel for the respective parties.

5. The submission of the learned Counsel for the petitioner - Corporation that due to the unauthorised absence of the respondent, the work of the petitioner - Corporation was hampered. The order of dismissal is justified and also submitted that the ailment of the father of respondent cannot be a reason for his absence. The award of the Labour Court be quashed and the order of dismissal be confirmed.

6. Per contra, learned Counsel appearing for the workman while taking me through the impugned award. of the Labour Court submitted that in paras-13 and 14 of the award, the Labour Court has discussed about the correspondence made by the respondent, leave applied by him and the production of medical certificates at the time of enquiry. Hence, he submitted that the Labour Court has rightly ordered for reinstatement of the respondent into service with 50% backwages, continuity of service and all other consequential benefits and sought for dismissal of the petition.

7. In the light of the argument advanced by the learned Counsel appearing for the respective parties, the point that arises for consideration is whether the impugned award passed by the Labour Court is justified.

8. It is seen that the respondent during the period of his absence made correspondence by sending telegram to the Depot Manager for grant of leave. The Management neither rejected the leave application nor intimated the same to the respondent. It is not the ease of the Management that there was no leave in the account of the respondent and that the period of absence was treated as unauthorised absence. The Labour Court noted that the leave application and the medical certificates could have been considered by the Disciplinary Authority and the period of absence could have been treated as leave by accepting the explanation offered by the respondent. The Disciplinary Authority without expressing any reason or disagreeing with the opinion of the Inquiring Authority, has dismissed the respondent from service.

9. The finding of the Inquiring Authority as well as the Labour Court is concurrently supporting the defence of respondent, of course, regarding the ailment at the time of period of absence is supported by the medical certificates. In the circumstances, the Labour Court has justified in modifying the reinstatement of the respondent. So far as the backwages is concerned, the respondent is not entitled on the ground (sic). Therefore the award dated 7.3.2006 in Ref. No. 45/2004 passed by the Principal Labour Court, Hubli, w modified by reinstating the respondent into service with all consequential benefits and without backwages.

The writ petition is allowed in part.