

(2015) 02 KAR CK 0306

In the Karnataka High Court

Case No : Writ Petition No. 105449 of 2014 [L-KSRTC]

Hanamappa

APPELLANT

Vs

The Management of NWKRTC, Gadag Division

RESPONDENT

Date of Decision : 06-02-2015

Acts Referred:

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

Citation : (2015) 02 KAR CK 0306

Hon'ble Judges : Aravind Kumar, J.

Bench : Single Bench

Advocate : Ravi Hegade, for the Appellant; Sunitha P. Kalasoor, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Aravind Kumar, J.—Smt. Sunitha P. Kalasoor is directed to take notice for respondent. She is permitted to file vakalathnama within a period of four weeks from today. By consent it is taken up for final disposal.

2. Heard Shri Ravi Hegade, learned counsel appearing for petitioner and Smt. Sunitha P. Kalasoor, learned counsel appearing for respondent - Corporation. Perused the order impugned in the present writ petition namely the judgment and award passed by Labour Court, Hubli in KID No. 42/2012 dated 05.12.2012, whereunder reference came to be answered against petitioner - workman and claim petition filed by workman challenging order of dismissal came to be dismissed.

3. Petitioner came to be appointed as a Conductor by respondent - Corporation in the year 1999 and on account of unauthorized absence from duty for the period 05.02.2010 to 09.07.2010 charge sheet came to be issued. However, workman did not give any reply to said charge sheet. Disciplinary Authority appointed an Enquiry Officer to conduct domestic enquiry and notices came to be served on the workman and undisputedly he participated in the enquiry proceedings. In

fact, workman pleaded guilty in the preliminary enquiry and he also stated that he has no evidence to lead and as such, he has made a request to close the enquiry. As per his request, enquiry came to be closed and Enquiry Officer submitted a report holding that charge levelled against petitioner stands proved. Enquiry report came to be served on the workman along with show cause notice and past history sheet and he was called upon to furnish his reply. After extending sufficient opportunity and based on the report of Enquiry Officer, Disciplinary Authority on assessment of entire material available before it, imposed the punishments of dismissal from service.

4. Being aggrieved by order of dismissal dated 16.12.2011 workman raised a dispute before the Labour Court under Section 10(4)(a) of the Industrial Disputes Act, 1947 (Karnataka Amendment) Act, 1987 and in the said dispute, Labour Court after considering the pleadings of parties framed the issues and issue regarding the fairness of domestic enquiry conducted by Corporation came to be answered against the workman by holding that the enquiry conducted was fair and proper vide order dated 25.09.2012.

5. Opportunity being extended to both parties to tender evidence by labour Court first party workman got himself marked as WW1 and closed his evidence. Corporation did not lead any further evidence, but relied upon the documents already marked as Exs. M1 to M10 at the time of recording evidence on the issue of fairness of domestic enquiry and supported the order of dismissal passed against the workman. Labour Court after considering the pleadings and on evaluating the evidence tendered by the parties held that workman had remained himself absent from duty unauthorisedly and the medical certificate produced by the workman as per Ex. M4 was contrary to the medical certificate issued by the Medical Officer. Workman had past history of being regularly absenting himself was also taken into consideration by the Management and as such, claim petition came to be dismissed, which is impugned in the present writ petition.

6. Contention of Shri Ravi Hegade, learned counsel appearing for petitioner - workman is that Labour Court committed a serious error in relying upon past history sheet Ex. M8 to arrive at a conclusion that he is a habitual absentee by not noticing the fact that in Ex. M8 would indicate the fact that workman had also been exonerated by accepting the plea put forward by him for his absence from duty on previous occasions and order of dismissal passed by the Management is too harsh and disproportionate to the charge levelled. Hence, he seeks for setting aside the judgment and award passed by Labour Court and in support of his submission, he has relied upon the judgment of Hon"ble Supreme Court in the case of Airport Authority of India and Others Vs. Shambhu Nath Das @ S.N. Das, .

7. Per contra, Smt. Sunitha P. Kalasoor, learned counsel appearing for respondent - Corporation would support the award passed by the Labour Court and prays for dismissal of the writ petition.

8. Having heard the learned Advocates appearing for parties and on perusal of the judgment and award in question, it would indicate that undisputedly workman had remained absent from duty unauthorisedly namely without obtaining prior sanction of leave from the competent authority for nearly five months i.e., from 06.02.2010 to 08.07.2010. He has pleaded guilty before the Enquiry Officer and he did not even reply to the charge sheet issued to him. Thus, act of unauthorized absence was rightly held to have been proved by the Labour Court. Even before Labour Court workman did not substantiate his plea of having submitted leave application. No evidence whatsoever was placed on record. Though before the Labour Court workman raised an issue with regard to the fairness of enquiry, Labour Court after affording opportunity to both parties and on evaluating evidence tendered in that regard has rightly come to a conclusion that domestic enquiry conducted by Corporation against the workman was fair and proper vide order dated 25.09.2012. Said finding is just and proper and does not call for interference.

9. Insofar as issue relating proportionality of punishment imposed on the petitioner - workman is concerned, award would indicate that workman had remained unauthorisedly absent from 06.02.2010 to 08.07.2010. Author of Ex. M4 (Medical Certificate) was not examined namely Doctor who had issued medical certificate was not examined to prove the contents namely as to whether the alleged ailment of "Viral Arthritis Neurosis" would come in the way of discharging his duties as a conductor and said fact has not been proved by the workman before Labour Court. The continues long absence from duty for a period of nine months will have to be viewed seriously and as such, order of punishment imposed by Corporation on the workman dismissing him from service cannot be found fault with. Yet another factor which has swayed in the mind of Labour Court to affirm the order of dismissal passed by the Corporation against the workman was the fact that as per the past history Ex. M8, workman had remained unauthorisedly absent on 19 occasions. It is no doubt true that on some occasions minor punishments have been imposed or warnings have been issued and that by itself would not be a ground to take a lenient view to modify the order of punishment. As such, Labour Court has rightly found that it is not a fit case to exercise its power under Section 11A of the Act to modify the order of dismissal passed against the workman by Corporation.

10. Insofar as the judgment in the case of Airport Authority of India and Others Vs. Shambhu Nath Das @ S.N. Das, relied upon by the learned counsel for the petitioner is concerned, this Court is of the considered view that facts and circumstances of the case, prevalent in the said case is entirely different inasmuch as the employee in the said case namely Shambhu Nath Das @ S.N. Das had sought for extension of leave on medical grounds and the Medical Board had opined in its report that respondent was physically fit and there was also a direction issued by learned Single Judge of the Calcutta High Court directing the workman to be taken on duty and it is in this background, the principle of no work no pay came to be applied to the facts of said case and order of dismissal

passed against workman which had been set aside by learned Single Judge came to be affirmed by Hon"ble Apex Court. Said factual scenario is not present in the instant case. Hence, this Court is of the considered view that said judgment would not come to the rescue of petition in this case. Hence, writ petition stands rejected.