

(2016) 12 KAR CK 0031

In the Karnataka High Court

Case No : Writ Petition No. 17779 of 2015 (L-KSRTC)

H.S. Shivaswamy

APPELLANT

Vs

Divisional Controller, KSRTC

RESPONDENT

Date of Decision : 07-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10(4)(A)

Citation : (2017) 1 AirKarR 403

Hon'ble Judges : Mr. B. Veerappa, J.

Bench : Single Bench

Advocate : Sri. L. Shekhar, Advocate, for the Petitioner; Sri. Hareesh Bhandary T., Advocate, for the Respondent

Final Decision : Allowed

Judgement

B. Veerappa, J. - The petitioner workman filed the present writ petition for a writ of certiorari to quash the impugned award dated 13.03.2014 passed in I.D.No.4/2013 by the Presiding Officer, III Addl. Labour Court, Bengaluru, and to allow the dispute as prayed for.

2. It is the case of the petitioner that he was working as a conductor in the respondent Corporation since 2003 and had maintained unblemished record of service. On an allegation of unauthorized absence from duty for a period of 112 days from 20.04.2007 to 07.08.2007, the Corporation issued article of charge against the petitioner. Not satisfied with the reply offered, by the workman, the disciplinary authority appointed an enquiry officer. The enquiry officer, by his report dated 07.07.2012 held that the charges are proved. After considering the representation of the petitioner, respondent Corporation by an order dated 17.07.2012 dismissed the petitioner from service.

3. Being aggrieved by the order of dismissal from service, the petitioner/workman raised industrial dispute under Section 10(4)(A) of the Industrial Disputes Act, 1947, ("Act" for short) before the III Addl. Labour Court,

Bengaluru, in I.D.No.4/2013. After hearing both the parties, the Labour Court, by the impugned award dated 13.03.2014, dismissed the claim. Hence the present writ petition is filed.

4. I have heard the learned counsel for the parties to the lis.

5. Sri. L.Shekar, learned counsel for the petitioner vehemently contended that the Labour Court dismissed the dispute only on the basis of subsequent events which are not part of the charge, and the Labour Court cannot go beyond the charge sheet. Learned counsel invited attention of the Court to paragraph 14 of the impugned award wherein the Labour Court has relied upon the subsequent events. Therefore, he sought to allow the writ petition by setting aside the impugned award.

6. Per contra, Sri. Hareesh Bhandary T., learned counsel for the respondent Corporation sought to justify the impugned award and contended that the observation made by the Tribunal while deciding the dispute is based on the material on record and sought to dismiss the writ petition.

7. It is undisputed fact that the petitioner has been appointed as a trainee conductor in the year 2003. On account of his unauthorized absence from 20.04.2007 to 07.08.2007, for a period of 112 days, charge memo was issued which was replied by the petitioner. The enquiry officer submitted his report holding that the charges are proved. Accepting the enquiry report, the disciplinary authority proceeded to dismiss the petitioner from service, on 17.07.2012.

8. Aggrieved by the said dismissal order, petitioner raised claim under Section 10(4)(A) of the "Act", on the file of the III Addl. Labour Court, Bengaluru. The Labour Court, while considering the preliminary issue, held that the domestic enquiry is fair and proper. The petitioner workman was allowed to lead evidence with regard to the victimization and discrimination made by the management. The Labour Court, considering the entire material on record including the medical certificate, observed that the petitioner remained absent from 14.02.2008 to 11.04.2008, 26.09.2011 to 21.03.2012 and 24.06.2012 to 17.07.2012 i.e., the date of dis-missal which is not supported by any prescriptions and medical bills.

9. Admittedly, the charge was specific with regard to absence from duties for a period of 112 day from 20.04.2007 to 07.08.2007 and the subsequent events were not part of the charge memo. Therefore, the Labour Court has no jurisdiction to travel beyond the charge sheet which is not permissible under law. The charge sheet contains only charge of unauthorized absence for 112 days. No supplementary charge has been issued to the workman. The enquiry officer has held that the charges mentioned in the charge memo are proved. The disciplinary authority proceeded to pass the order of dismissal only on the basis of the charge memo. But the Labour Court considering the subsequent unauthorized absence from 14.02.2008 to 11.04.2008, 26.09.2011 to 21.03.2012 and 24.06.2012 to 17.07.2012, has proceeded to dismiss the

petitioner. It is not forthcoming from the records as to whether the charge memo is issued for the subsequent period of absence or not. In the absence of the same, the Labour Court was not justified in dismissing the industrial dispute confirming the order of dismissal of the petitioner which is unsustainable. Therefore, on that short ground alone, the impugned award cannot be sustained in law.

10. For the reasons stated above, the writ petition is allowed. The impugned award dated 13.03.2014 in I.D.No.4/2013 on the file of the Presiding Officer, III Addl. Labour Court, Bengaluru, is set-aside. The matter is remanded to the Labour Court for fresh consideration, only on the basis of charge memo dated 04.09.2007 with regard to unauthorized absence for 112 days from 20.4.2007 to 07.08.2007 and pass award in accordance with law.

11. All the contentions urged before this Court are kept open to both the parties to urge before the Labour Court. The Labour Court shall decide the dispute within a period of six months from the date of receipt of copy of this order. Parties to appear before the Labour Court on 26th December, 2016.