

(2013) 07 KAR CK 0355

In the Karnataka High Court

Case No : Writ Appeal No's. 537 and 538 of 2013 (L-KSRTC)

John D'souza

APPELLANT

Vs

The Divisional Controller, K.S.R.T.C.

RESPONDENT

Date of Decision : 09-07-2013

Acts Referred:

Citation : (2013) 139 FLR 177 : (2013) 5 KarLJ 99 : (2013) 4 KCCR 3293

Hon'ble Judges : D.H. Waghela, C.J.;B.V. Nagarathna, J

Bench : Division Bench

Advocate : B.L. Sanjeev, for the Respondent

Final Decision : Dismissed

Judgement

D.H. Waghela, C.J.—These appeals are preferred from order dated 30-7-2012 of learned Single Judge in Writ Petition Nos. 11236 and 11237 of 2012, whereby petition of the appellant herein is dismissed resulting in confirmation of the order made by Labour Court in the interim application. That original impugned order of the Labour Court is an interlocutory order answering in the affirmative issue 1 as to whether the domestic enquiry held against the appellant herein was fair and proper. Thus, in short, while the parties are before the Labour Court where the main application u/s 33(2)(b) of the Industrial Disputes Act, 1947 (for short, "the Act") is to be decided, the domestic enquiry held by the respondent herein against the appellant is declared to be fair and proper. As elaborately discussed by the Labour Court in its order dated 16-3-2012 and by learned Single Judge in the order impugned in this appeal, the appellant was charged with misconduct of remaining absent without leave and, after affording to him sufficient opportunities of being heard, a finding has been recorded that charge has been proved and the enquiry held against him was fair and proper. Questioning those findings recorded by learned Single Judge as well as the Labour Court, the appellant herein, appearing as party-in-person, submitted that, reliance upon judgment of the Apex Court in S.B.I. Vs. Hemant Kumar, was improper and the Court was required to appreciate facts in which the appellant was denied

opportunity of defending himself and producing his own evidence at the enquiry. He further submitted that the Labour Court had exceeded its jurisdiction in holding that the charges were proved at the enquiry and findings of the enquiry were based on legal evidence placed on record. He submitted that such observation deprived the appellant of his plea of perversity in the findings.

2. After condonation of delay in filing of the present appeal and giving to the parties opportunities to arrive at a full and final settlement of the dispute, the arguments were heard as the proposal submitted by the appellant for settlement could not be accepted by the respondent, for being unreasonable.

3. The indisputable facts of the case are that, the appellant was found to be absent without leave for the period from 18-8-2005 to 29-10-2005 for 72 days and, after issuance of second show-cause notice, major punishment of dismissal was imposed. On account of pendency of Reference Case No. 243 of 2006, an application u/s 33(2)(b) of the Act was filed and the preliminary issue of validity of the enquiry was resolved as aforesaid. According to the appellant, during the course of enquiry, when the hearing was fixed on 15-4-2010, the appellant remained absent on account of illness of his mother. On 13-5-2010, he could not appear as he was in his native place and had not received the notice. Then, on 4-6-2010, he was served the notice on the same day and, by the time he went to the office of the Enquiry Officer, the proceedings were concluded. However, thereafter, he had sent request for adjournment 17 days before the next date of hearing stating that, he was required to go to Delhi and was not to be in Bangalore between 6-7-2010 and 16-7-2010. Despite that, enquiry was closed on 15-7-2010 and the matter was posted for written arguments on 12-8-2010. Even on that day, he could not remain present as he was issued with warrant to appear before the Criminal Court. The Court has taken the view, in the impugned order, that inspite of several opportunities as aforesaid being granted to the appellant, he had sent intimations of his being not available and even on the date given by the final notice, he remained absent on the specious plea of being busy elsewhere. In all, 25 adjournments were granted during the course of the enquiry.

4. In the above facts, the observations made by the Apex Court in Hemant Kumar's case, were eminently applicable and the argument of the appellant in that regard was unacceptable. When an employee is facing departmental enquiry against himself, he is required to co-operate in expeditious conclusion of the enquiry and cannot be heard to say that, on each date of hearing, he had a more pressing and urgent engagement. When the employee appears to be not availing the opportunity of being heard, he cannot be heard to say that he was deprived of his right to defend himself by producing his own evidence. The requirement of observing principles of natural justice in disciplinary proceeding cannot be converted into a facility for unduly prolonging the proceeding and certainly cannot be taken as a licence by the delinquent to attend the enquiry only as per his convenience. As held by the Apex Court in Hemant Kumar's case, the

principles of natural justice cannot be stretched to a point where they would render the in-house proceedings unworkable. Therefore, there was no reason to interfere with the findings recorded and the conclusions drawn by the Labour Court as well as learned Single Judge.

5. The third and new argument of the appellant about being deprived of his plea of perversity in the findings of the enquiry is based on misreading of the order of the Labour Court insofar as it is only during the discussion of the facts in the body of the judgment, it is observed in paragraph 29 as under:

29. ...After conducting a detailed enquiry, Enquiry Officer has submitted report holding that the charges are proved and his findings are based on the legal evidence placed on record....

It may be noted that the final order of the Labour Court only reads as under:

ORDER

Issue 1 is answered in the affirmative holding that the domestic enquiry conducted against the respondent is fair and proper.

In the above facts, we have no hesitation in holding that all the legal pleas and contentions available to the appellant for opposing the application of the respondent before the Labour Court are left open by the Labour Court and the only issue concluded by the order impugned before learned Single Judge is as to whether the domestic enquiry held against him was fair and proper. Therefore, with these observations, the appeals are dismissed.