

(2017) 01 KAR CK 0145
In the Karnataka High Court
Case No : 22541 of 2009

KARNATAKA STATE ROAD

APPELLANT

Vs

B.T. KRISHNAMURTHY

RESPONDENT

Date of Decision : 02-01-2017

Acts Referred:

Constitution of India, Article 226, Article 227 - Power of High Courts to Issue certain writs - Power of superintendence over all courts by the High Court
Industrial Disput

Citation : (2017) 01 KAR CK 0145

Hon'ble Judges : B. Veerappa

Bench : SINGLE BENCH

Advocate : S. NIRMMALA

Final Decision : Dismissed

Judgement

1. The Corporation filed the present writ petition against the award dated 30.01.2009 made in I.I.D. No. 48/1999 on the file of the Labour Court, Mysuru, allowing the claim petition in part, whereby, the dismissal order passed by the petitioner management dated 04.01.1999 has set-aside entitling him for all the retirement benefits and also continuity of service, without order for reinstatement, since he had attained superannuation and further treating the absence of the workman as absence on duty.

2. It is case of the petitioner corporation that the respondent workman was working as Traffic Inspector. He remained absent to duty from 22.06.1997. Therefore, Corporation issued call notice on 08.07.1997. Despite the same, respondent did not join for duty. Therefore, Corporation was constrained to issue article of charges on 23.09.1997 and when the respondent did not reply to the same, an enquiry officer was appointed who fixed the enquiry on 27.01.1998. Since the respondent did not turn up for enquiry, final notice was issued on 31.03.1998 fixing the date of enquiry on 13.02.1998. Since the respondent failed

to appear, enquiry was conducted ex parte and the charges were held to be proved. After issuing second show cause, the disciplinary authority proceeded to pass the order of dismissal from service on 04.01.1999. Thereafter, respondent raised industrial dispute under Section 10(4)(A) of the Industrial Disputes Act, 1947 ("I.D.Act" for short). The Labour Court held that the preliminary enquiry was not fair and proper and therefore permitted the parties to adduce fresh evidence. Accordingly, workman examined himself as WW-1 and marked documents Exs.W-1 to W-49. The Management corporation examined two witnesses MW-1 and MW-2 and got marked Exs.M.1 to M.16. The Tribunal, considering the entire material on record, by the impugned award dated 30.01.2009 held that dismissal of the workman from service is erroneous. Therefore, exercising power under Section 11A of the I.D.Act, set aside the order passed by the Disciplinary Authority and held that since the workman has attained superannuation, he is not entitled to reinstatement, but is entitled for all retirement benefits and also continuity of service and treated the absence as on duty. Hence the present writ petition is filed by the Corporation.

3. Service of notice to respondent is held sufficient.

4. Smt.S.Nirmala, learned counsel for the petitioner Corporation vehemently contended that the impugned award passed by the Tribunal is erroneous and contrary to the material on record. She contended that inspite of sufficient opportunity given to the respondent workman, he neither filed any objections to the article of charge nor participated in the enquiry proceedings. After giving sufficient opportunity, Corporation proceeded to hold that the absence of the respondent was willful and therefore, he is not entitled to any benefit and the same has not been considered by the Tribunal. She further contended that all the documents produced by the respondent before the Tribunal were not genuine and medical certificates were bogus. The Tribunal without considering the material on record, proceeded to pass the impugned award and therefore, sought to set-aside the impugned award passed by the Tribunal.

5. I have heard the learned counsel for the petitioner. The only point that arises for consideration is: "Whether the impugned order passed by the Tribunal calls for any interference in the facts and circumstances of the present case?"

6. It is undisputed fact that the respondent was working as a traffic inspector in the petitioner Corporation, remained absent to duty from 22.06.1997. The Tribunal while considering the preliminary issue, has held that the domestic enquiry conducted is not fair and proper. It is also not in dispute that respondent workman was born on 20.10.1941 and joined the service on 09.06.1977. He has worked in various places as checking officer and while working, applied leave on 22.06.1997 as his daughter's marriage was fixed and he had to arrange for the same. While proceeding on leave, the Corporation requested him to attend before JMFC-II, Hassan, in a departmental enquiry and accordingly he attended Court duty and then fell ill due to jaundice and arthritis. In the meantime, his daughter's marriage was also arranged and therefore requested for leave on

different occasions by sending leave application as well as medical certificate. Exs.W-1 to 49 including service register and also appreciation letters given by the Corporation for 1983-84, 1984-85, 1986-87, 1992-93 and also June 1996 collectively discloses that the respondent has unblemished service.

7. It is also not in dispute that the workman has not appeared before the enquiry officer explaining his absence from duty. As can be seen from Ex.M.12/enquiry report discloses non cooperation of the respondent before the enquiry officer inspite of receipt of enquiry notice. But the fact remains that he sent various applications for extension of time, but the enquiry officer did not extend the time and conducted ex-parte enquiry and submitted report as per Ex.M.12. The fact remains that the respondent never appeared before the enquiry officer but sought for adjournments which is not considered by the enquiry officer. The enquiry report reveals that due to absence of workman, though he requested for time, it was not granted since he remained absent and submitted the report on 17.07.1998 without considering unblemished long service rendered by the respondent with the petitioner corporation.

8. The Tribunal considering the entire material on record, at paragraphs 13 and 14, recorded specific findings as under: "13. Now, the court has to look into, whether the act committed by the I party is a grave misconduct or not. Admittedly under C & D Regulations the absence to the duties is also a misconduct which is not disputed by either of the parties. However, the said absence has been explained to the satisfaction of the II party is a relevant factor to be considered. But, so far as the explanation given by the I party is concerned it is clear from the records that, the I party being the dutiful father of his daughter has to arrange the marriage since left with 1 year of service for him and accordingly the I party arranged the marriage of his daughter as per the invitation card marked under Ex.W-18 which is not disputed by II party. Subsequently the I party has produced the other records for having taken treatment at J.C. Hospital, Hassan, Govt. Hospital at Channarayapatna and Hireesave which shows that the I party fell ill during that period and accordingly he had requested for grant of leave with the II party. Considering the above facts in my view the I party's absence to duty is not intentional or deliberate but the II party has held that it is a grave mis-conduct and hence the punishment imposed by the II party is not proportionate and it is shocking to the conscience of the court. In this regard the decision of Hon"ble Suprme Court of India reported in 1993 I LLJ page-512, wherein it is held that upon the "material on record" the court has to look into. The Hon"ble Supreme Court at page-516 discussed that the expression "materials on record" occurring in the proviso could not be confined only to the materials which were available at the domestic enquiry. The "Materials on record" in the proviso had to be held to refer to "materials on record" before the tribunal. The expression took in:

1) The evidence taken by the management at the enquiry and the proceedings of the enquiry, or

2) The above evidence and in addition, any further evidence led before the Tribunal, or.

3) Evidence placed before the tribunal for the first time in support of the action taken by an employer as well as the evidence adduced by the workman contra"

Keeping in view of this fact, the evidence given by the I party before the Tribunal is liable to be considered to say that, whether the explanation given by the I party is a sufficient cause or not? In the enquiry report so also in the order of dismissal the II party has discussed that I party was ailing but he has not produced any documents but however from the documents produced before court and elicited from the mouth of I party it is clear that the I party had sent letters to the II party revealing his ill-health and also about his engaging in the arrangement of his daughter's marriage. In my considered view the material produced before court clearly goes to show that it is sufficient explanation given by the I party and it is not the deliberate act of the I party to be away from duties.

14. It is also necessary to note here that the I party got marked Ex.W-49 which/ list discloses the persons who completed the age of 58 years has been listed and in that I party's name finds that Sl. No. 27, wherein the date of birth of I party has been mentioned as 20.10.1941, he joined the services of the II party on 9.6.1977 and completed 58 years on 19.10.1999 but it has been extended upto the end of the month i.e., upto 31.10.1999. If there factors are taken into consideration, when the I party passed the order of dismissal after prolonged enquiry, it is clear that only few months of service was left with the I party i.e., he was dismissed on 4.1.1999 and he would have completed his superannuation after 9 months from 4.1.1999."

9. The Tribunal also recorded a finding that there are no past history against the respondent and since he was nearer to attain superannuation, being a dutiful father he has to arrange for marriage of his daughter and also because of age factor he might have fell ill during that period and this fact was brought to notice of the corporation and the same was not considered by the corporation including unblemished service rendered by him. Accordingly, the Tribunal passed the impugned award and the same is in accordance with law.

10. Though the learned counsel for the petitioner submitted that the medical certificate is bogus, it is evident from the document produced by the respondent before the Tribunal that they are all issued by the government hospital and no effort is made by the Corporation to show that the documents produced are bogus. When the medical certificate is issued by the government hospital, presumption has to be drawn that they are issued by the concerned authority during the course of their official duties as envisaged under Section 114 of the Indian Evidence Act. Therefore, the contention that the medical certificate is bogus, cannot be accepted. The Tribunal, considering the entire material on record proceeded to pass the impugned award which is in accordance with law.

The petitioner has not made out any ground to interfere with the impugned award in exercise of power under Articles 226 and 227 of the Constitution of India. Accordingly, petition is dismissed.