

(2000) 11 KAR CK 0034
In the Karnataka High Court
Case No : Writ Petition No. 32724 of 2000

Karnataka State Road Transport Corporation

APPELLANT

Vs

Ariff Hussain and Another

RESPONDENT

Date of Decision : 28-11-2000

Acts Referred:

Citation : (2002) 4 LLJ 573

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

M.F. Saldanha, J.—I have heard the learned advocates on both sides. It is one more of the cases where the corporation has dismissed the respondent-employee from service on December 2, 1998 on the ground that his unauthorised absence constitutes gross misconduct. The allegation was that he had remained absent from duties during the period October 3, 1997 to January 23, 1998 though his learned advocate has clarified that the actual absence was really upto December 11, 1997 when the charge-sheet was issued to him. The corporation's learned counsel points out to me that despite this, he still did not report for work until January 23, 1998. The defence plea was that the employee was unwell and he has produced a series of medical certificates in support of the plea that he was suffering from hepatitis. Also, he has relied on several documents in support of his plea that he had been sending applications for extension of leave. The view taken by the corporation is that leave has got to be on the basis of prior sanction to start with and that even extensions can only be availed of provided they are approved and mat on a construction of the leave regulations that the whole period must be construed as unauthorised absence. Also, the corporation has been rightly pointing out in these proceedings that unauthorised absence leads to serious dislocation of work and loss to the corporation not to mention the indiscipline it causes and secondly that the corporation is required to use the services of other employees or temporary employees in both of which cases

effectively, the corporation is subjected to double expenditure for this period of time. The view put forward therefore has always been that the Courts must uphold the position that this menace of unauthorised absence which has now reached malignant proportion is to be curtailed that the Courts will have to sanction rigorous and deterrent punishment. While I am in agreement with almost all these submissions, I need to also uphold what the respondent's learned advocate rightly points out namely that there can be no generalisations in judicial proceedings. While deterrent punishment may be justified in some cases or in many others there may still be an isolated instance where a different view is not only justified but very necessary. Having heard the learned counsel, and assessed the record to my mind, this case does come within the exception.

2. The view canvassed by the corporation in the present case does appear to be rather hyper technical and unduly harsh because the period of absence is not very long. It is not as though the employee was habitually absenting himself as in many other cases and more importantly, there appears to be some semblance of justification with regard to the plea of illness; which in most other cases is absolutely hollow or false. In view of these factors, this is one case in which the order of reinstatement would be justified because an order of dismissal or termination on this record would be grossly disproportionate to whatever indiscretion or misconduct the petitioner can be held liable for. Under the circumstances the corporation is directed to implement the order of reinstatement.

3. The corporation's learned counsel vehemently submitted on the basis of reference to several other decisions that under no circumstances should back wages be awarded. Apart from the economic loss, his submission was that punishments must be real and more importantly that punishments must be effective and that imposing any of the other minor punishments would be like flea-bite sentences which the Courts have deprecated. On the other hand, the respondent's learned counsel vehemently submitted that if the Court is satisfied that the action on the part of the corporation in dismissing the employee is bad in law that ipso facto he must be entitled to the consequential benefits. While I am prepared to concede that the respondent would be entitled to the benefit of continuity of service, I am not prepared to concede the demand for back wages because to my mind it is very necessary to impress on the employees and other like-minded employees that absence from duty is a matter of some seriousness and even if there is valid reason for it that it is equally necessary to strictly comply with the requirements of the regulation. I have however taken note of the special facts of this case and the strong plea made by the respondent's learned counsel that the deprivation of full back wages for the entire period would be an extremely heavy punishment and that therefore, the Court must consider some mitigation even under this head. Having carefully considered the submission which is not without substance to my mind a fair order would be to direct the corporation to pass an order to the effect that the respondent-employee shall be deemed to have been reinstated in service on and from the

date of the award i. e. February 22, 2000. Even if he physically joins his service, at a later point of time, the respondent would be entitled to salary and benefits etc. on and from that date. I need to however add that this does not entitle the corporation to keep the respondent out of his job for any length, of time and that consequently it should take necessary steps to ensure that he joins his duties at the earliest which is in the interest of the corporation but in any event not later than January 1, 2001.

4. The petition partially succeeds and stands disposed of. No order as to costs. It is clarified, that by virtue of the above order, the respondent would be disqualified from back wages from the date of dismissal i.e. December 2, 1998 upto the date of award i.e. February 22, 2000.