

(2017) 02 KAR CK 0118

In the Karnataka High Court

Case No : Writ Petition No. 1537 of 2013

Karnataka State Road Transport Corporation,?Kolar Vs Abu Saloha

Date of Decision : 01-02-2017

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

Citation : (2017) 02 KAR CK 0118

Hon'ble Judges : G.Narendar

Bench : SINGLE BENCH

Advocate : H.R. Renuka, L.Shekar

Judgement

1. Heard the learned counsel for the petitioner and the respondent.
2. The petitioner is the Road Transport Corporation and is before this Court being aggrieved by the Award of the Industrial Tribunal, Bengaluru, in I.D. No.104/2007 dated 10.11.2011.
3. The Government by its Order No.LD 487 IDM 2007 dated 11.05.2007 was pleased to refer the dispute between the respondent/workman and the petitioner/management under the provisions of Section 10(1)(d) of the Industrial Disputes Act for adjudication, in accordance with law.
4. The respondent/workman was charged with two incidents of unauthorized absence from 22.04.2002 to 15.07.2002 and an articles of charge dated 15.07.2002 was issued to the workman in this regard. In respect of the second period of unauthorized absence from 17.07.2004 to 23.07.2004, articles of charge dated 24.07.2004 came to be issued. The respondent/workman contested the articles of charge dated 15.07.2002 and in respect of the articles of charge dated 24.07.2004, he admitted the charge and he was imposed with a minor punishment of withholding of one increment for two years. As regards the articles of charge dated 15.07.2002, the workman was imposed with a punishment of withholding two increments with cumulative effect. Both these punishments were the subject matter of the reference before the Tribunal.

5. The Tribunal after examining the records and the evidence let in by the parties during the enquiry, was pleased to hold that the imposition of punishment in respect of the first charge i.e., passed on 15.07.2002 is not legally sustainable and was pleased to set aside the same and allow the reference in part. As regards the punishment order dated 08.09.2004, the Tribunal rejected the reference on account of the fact that the workman had fairly admitted the charge and hence, it found it otherwise.

6. Learned counsel for the petitioner would submit that reasoning of the Tribunal suffers from serious legal infirmities. She would submit that the Tribunal erred in reversing the findings of the Enquiry Officer after reappreciating the evidence on record. It is contended that there is no medical certificate and the medical certificate produced is not backed by any prescription or diagnostic records, which were necessary to corroborate the medical certificate. She would also rely upon Rule 54 of the Mysore State Road Transport Corporation Employees Leave Rules, 1964 and submits that the workman ought to have submitted a proper leave application to the official superior and only in such instance, the leave application can be considered and granted. In the absence of such a proper leave application, the absence of the workman has to be construed as unauthorized absence. She would further contend that the workman has produced only xerox copies of the postal receipts and the Tribunal ought not to have looked into the same. Per contra, learned counsel for the respondent/workman would draw the attention of this Court

to the final order passed by the authority, imposing the punishment and would submit that the same is passed in a mechanical manner, without either appreciating the facts or the report of the enquiry officer and hence, the order is vitiated by non-application of mind.

7. It is seen that the Tribunal has appreciated the fact that the telegram has been marked in the course of the enquiry i.e., cross-examination of the workman. The medical certificate and the leave application have been marked during the cross-examination of the workman.

8. A perusal of the enquiry report would demonstrate that the petitioner/management's representative has neither questioned the authenticity of the documents nor objected to marking of the same and hence, the said documents were marked as Exs.D1 to D3. Ex.D1 is styled as a request for medical leave for a period of 3 days commencing from 22.04.2002 to 25.04.2002. Thereafter, it is contended by the workman that he has intimated the authority by way of telegram dated 22.04.2002 and subsequently by registered post on two subsequent dates i.e., on 03.05.2002 and 11.06.2002. These are receipts issued by the postal department, which is a public body and the Tribunal has read these receipts in conjunction with the medical certificate issued by the Medical Officer, Mulbagal and arrived at a conclusion that the respondent/workman has probablised his defence of having intimated the authority regarding his requirement for leave and hence the Tribunal has concluded that the finding of

the Enquiry Officer is not well reasoned and is without examination of the documents produced by the workman. The Tribunal has also looked into the punishment order passed by the Disciplinary Authority and thereafter passed the impugned order and held that the order of dismissal is passed even without looking into the nature of the allegation or the evidence collected during the enquiry and without arriving at a conclusion that the same are sufficient to prove the charges and hence it is concluded that the Disciplinary Authority has passed the punishment order in a mechanical manner and without application of mind.

9. A perusal of the above material, particularly Exs.D1 to 3 and the punishment order passed by the Disciplinary Authority would substantiate the finding rendered by the

Tribunal. In view of the above material on record, this Court is of the considered opinion that the order impugned does not suffer from any perversity or illegality and being considered order, it does not call for any interference at the hands of this Court.

10. The case now canvassed by the petitioner is an attempt to improve the case of the management. The case was neither argued nor presented either during the enquiry or before the Tribunal and the same cannot be permitted at this stage in a petition filed under Articles 226 and 227 of the Constitution of India. The scope of enquiry before this Court is limited to examine if the impugned proceedings are vitiated on account of any perversity in the appreciation of evidence or if there is an infraction of law. The petitioner is unable to demonstrate either. The exhibits having been admitted in the enquiry, it is not open to the management to now turnaround and contend that they are mere copies and that no leave application is given. It was always open to the petitioner/management to summon the Postal Authorities or seek clarification regarding the said exhibits. Having failed to do so, it is not now open to the petitioner/management to contend otherwise at this late stage. Hence this writ petition being devoid of merits is accordingly rejected.