

(2010) 12 KAR CK 0031
In the Karnataka High Court
Case No : Writ Petition No. 25428 of 2005

Kennametal Widia (India) Ltd., (Formerly known as Widia
(India) Ltd.)

APPELLANT

Vs

Sri K. Nagaraj

RESPONDENT

Date of Decision : 02-12-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (4A)

Citation : (2010) 12 KAR CK 0031

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : S.N. Murthy Associates, for the Appellant; M.C. Narasimhan and Associates, for the Respondent

Judgement

A.N. Venugopala Gowda, J.—Petitioner is a company engaged in the manufacture of sophisticated cutting tools and other engineering items and has employed workmen. The Respondents were employed by the Petitioner. Based on the complaints received from K.T. Machalah & M.C. Manohara, the Petitioner issued show cause notice-cum-charge sheet dated 25.10.2002 to K. Nagaraj, to which he submitted explanation dated 28.11.2002. The Petitioner, being not satisfied with the explanation, initiated disciplinary enquiry against K Nagaraj. The enquiry officer submitted his findings dated 06.02.2003 holding K. Nagaraj guilty of misconduct stipulated at clauses 24(55) and 24(60) of certified standing orders of the company. The Petitioner issued show cause notice dated 07.02.2003 to K. Nagaraj, to which he submitted a reply dated 17.02.2003. Finding the explanation to be unacceptable, accepting the findings of the enquiry officer, K. Nagaraj was dismissed from service of the company vide order dated 18.02.2003. Said order was questioned by K. Nagaraj by raising a dispute u/s 10(4-A) of the Industrial Dispute Act (for short "the Act") 1947, which was registered as ID No. 26/2003 in the Labour Court at Bangalore. The Labour Court framed the issues. By an order dated 02.05.2005, the Labour Court held the domestic enquiry as fair and proper. However, the labour court passed an award

dated 01.06.2005 setting aside the order of dismissal dated 18.02.2003 passed against K. Nagaraj and has directed the Petitioner to reinstate K. Nagaraj with continuity of service and 75% of backwages. The said award has been questioned in W.P. No. 25428/2005.

2. Based on the complaints of K.T. Machaiah & M.C. Manohara, the Petitioner issued show cause notice dated 03.02.2003 to Rajeev Kulkarni & Cheluva Murthy, who were employed as technicians in the company. Domestic enquiry having been initiated in pursuance of the said show cause notices-cum-charge sheets, the enquiry officer submitted his findings, on the basis of which, show cause notice were issued to the employees, who submitted their reply, which was found to be unacceptable to the Petitioner and hence, accepting the enquiry officer's report, the employees were dismissed from the services of the company. The employees challenged the dismissal orders by raising industrial dispute u/s 10(4-A) of the Act, which were registered as I.D Nos. 99 & 100 of 2004 in the labour court at Bangalore. The Labour Court by its order dated 02.05.2005 held that, the domestic enquiry conducted is just and proper. Thereafter, by a common award dated 01.06.2005, the Labour Court allowed the petitions, set-aside the orders of dismissal of the employees from service and has directed the Petitioner to reinstate the workmen into service with continuity of service with all consequential benefits also entitling the workmen to 75% of the backwages from the date of dismissal till the date of reinstatement. Questioning the said common award, management has filed W.P.N 0.989/2006.

3. Sri S.N. Murthy, learned senior advocate appearing for the Petitioner, firstly contended that, the certified standing order Sub-clause (55) of Clause 24 permits the Petitioner to initiate disciplinary action against the workmen even in respect of an incident outside the premises of the company as long as the same is in connection with matter having a bearing on the discipline and working of the company. learned Counsel points out that, the charge sheets were issued to the workmen based on the complaint received from K.T. Machaiah & M.C. Manohara, The misconduct having been held to be proved in the disciplinary enquiry, the contrary finding recorded by the labour court is irrational and illegal. Secondly, the labour court has erred in the matter or consideration of the record and its findings are contrary to the materials on record. learned Counsel submits that, the evidence of the complainants being categorical & clear and without any ambiguity, the action taken by the management being in accordance with the certified standing orders, interference by the Labour Court is illegal.

Lastly, the awarding of backwages at 75%, in the absence of proof of the workmen not being gainfully employed, is arbitrary.

4. Sri M.C. Narasimhan, learned senior advocate appearing for the Respondents, on the other hand by taking me through the record of the case would submit that, the Petitioner has not established any misconduct having been committed by the workmen and the dismissal of the workmen by the Petitioner being wholly illegal, the Labour Court is justified in setting aside the order of dismissal end in

directing reinstatement with continuity of service and back wages. learned Counsel submits that, the labour court has correctly considered the materials on record and its findings and conclusions being with reference to the materials on record and the law applicable to the matters, no interference in exercise of writ jurisdiction is called for.

5. In view of the rival contentions and the record of the writ petitions, which I have perused, the point for consideration is:

Whether the impugned awards are irrational and illegal?

6. The charge levelled against K. Nagaraj vide show cause notice-cum-charge sheet dated 25.10.2002 is that, on 19.10.2002 Mr. Machaiah K.T of welfare-department and Mr. Manohara M.C of PU-4 had gone to Madikeri to attend the marriage of Mr. Dinesh Kumar B.C of PU-5 and the marriage was slated on 20.10.2002, on which day, while Machaiah & Manohara were proceeding to the marriage hall at about 11:30 a.m in Madikeri, the charge sheeted employee and three others accosted Machaiah in respect of the company issues and suddenly began abusing him in filthy language & assaulted him and tore his clothes. The charge sheeted employee and others also threatened him with dire consequences and with death, when he comes back to Bangalore and when Manohara, who was with Machaiah tried to prevent Machaiah from being assaulted, the charge sheeted employee and others assaulted Manohara and hit him. It was alleged that, the said conduct amounts to committing acts of misconduct as per certified standing orders 24(1), 24(24), 24(36), 24(55) & 24(60). The Respondent/workman denied the charge. In the domestic enquiry, K.T. Machaiah, M.C. Manohara and D.A. Jayakurnar deposed as M Ws 1 to 3 and Ex.M-1 to Ex.M-10 were marked for the management. The enquiry officer held that, the charge levelled against the workmen under certified standing orders 24(1) 24(24) & 24(36) as not proved. However, he held that, the misconduct alleged under clauses 24(55) & 24(60) as proved. The disciplinary authority by making a reference to the representation of the workman dated 17.02.2003, while concurring with the finding of the enquiry officer and also observing that, the past record of the workman does not indicate any aggravating or mitigating causes, imposed the punishment of dismissal from service. The labour court upon considering the materials on record has held that, when once Sub-clause (24) of Clause 24 is not attracted, Sub-clause (55) of Clause 24 is also not attracted and as a result, the findings of the enquiry officer accepted by the management are perverse. It has been further held that, Sub-clause (55) of Clause 24 being not attracted, the question of attracting Sub-clause (GO; of Clause 24 also does not stand to reason. It has made detailed reference-to the deposition of the witnesses and has concluded that the charge has not been proved and that, the material on record has not been considered by the enquiry officer or the management and thus, the findings are perverse Finding that, there is no proof with regard to gainful employment of the workman and the decisions on which reliance was placed by the management being not applicable

and distinguishable, has passed the award in favour of the workman.

7. The charges levelled against Rajeev Kulkarni & Cheluva Murthy are almost identical to the one levelled against K. Nagaraj. In the enquiry, for the management,

M.C. Manohar and M.N. Bhaskar Rao deposed as MW-1 and MW-2 and Ex.M-1 to Ex.M-9 were marked. The enquiry officer concluded that, the evidence shows the cause for the assault is an issue relating to the settlement between the management and the union and the issue is certainly having a bearing on the discipline and working of the company. As a result of the finding, it was held that, the workman shouted Raja to hold Manohar and not allow him to escape and Raja tightly held Manohar from the back and thereupon others beat up Manohar. It was concluded that, the workman is guilty for the charge of misconduct under clauses 24(55) and 24(60). Accepting the findings of the enquiry officer, while issuing the orders of dismissal dated 14.07.2004, the disciplinary authority has observed that, past record of services does not show that, there are any aggravating circumstances.

8. The Labour Court upon consideration of the materials on record has found that, the alleged incident being at Madikeri, which is about 280 Kms away from Bangalore, where the management has no business contract or concern whatsoever and even if the entire allegations in the charge is true, it has held that, will not amount to misconduct under Sub-clauses (55) & 60) of Clause 24 of the certified standing orders of the company. It has been found that, the enquiry officer has not considered the materials on record and the findings are perverse. It was further found that, the orders of dismissal have been imposed without there being any misconduct. Since there is no proof of gainful employment, the award noticed supra, was passed.

9. The point for consideration is, whether the misconduct as alleged in the charge sheet drawn against the Respondents, taking them for the present purpose to be true, would fall within the Sub-clauses (55) & (60) of Clause 24 of the certified standing orders of the company and whether, the construction put up on the said clauses by the labour court is reasonable?

10. The Petitioner has framed charges against the Respondents vide charge sheets referred to supra. Enquiry was held. There is a detailed reference to the findings of the enquiry officer in the impugned awards. The charges levelled against Respondents are vague. There is no material placed on record by the Petitioner that, the alleged misconduct of the Respondents/workmen had any connection with the matters having a bearing on the discipline and working of the company. There is also no evidence, which establishes the abatement or instigation of any of the acts attributable to the workmen. Indisputedly, the workmen, the complainants and others had been to Madikeri on 19.10.2002 to attend the marriage of Mr. Dinesh Kumar B.C, which was slated on 20.10.2002. The allegation is that, there was a quarrel between the workmen and the

complainants in respect of the matters pertaining to company and there was an incident of assault on Machaiah K.T. and Manohar. What are the matters which related to the company, which resulted in assault,

has not been made clear firstly in the charge sheets and secondly in the enquiry.

11. Sri S.N. Murthy, by placing reliance on the decision in the case of Mulchandani Electrical and Radio Industries Ltd. Vs. The Workmen, and Bemco Hydraulics Limited v. Deputy Labour Commissioner, Belgaum And Ors., reported in 75 F.J.R 411 contended that, it the motivation for committing an act of misconduct anywhere was to have an adverse effect in the peaceful working of the company and would have a bearing on the discipline and working of the company, it is immaterial as to where the misconduct was committed. I have perused the said decisions.

12. In MUNCHANDANI ELECTRICAL & RADIO INDUSTRIES LTD., (supra), the misconduct alleged was that, the delinquent workmen while traveling in a train between Thana and Mulund assaulted another workman, who was on his way home after the day's work and the same lead to a complaint by some of the colleagues of the victim submitting a memorandum to the management of protest against the assault of the colleague. Repelling the contention on behalf of the workmen and the clause containing the words "within the premises or precincts of the establishment" refer not only to the place where the act which is subversive of discipline or good behaviour is committed but where the consequence of such an act manifests itself, it was held, will amount to misconduct under standing order 24(1).

13. In the case of BEMCO HYDRAULICS LIMITED (supra), the charge against the workmen were of gheraoing several staff members, obstructing movement of employees, company's guest and staff, instigating the staff members to strike, assaulting of staff member at the railway crossing etc., which were established at a domestic enquiry and the employer came to the conclusion that, the workman should be dismissed and applied to the conciliation officer for approval of the dismissal, but the approval was refused mainly on the grounds that, the specific clauses of the standing orders covering the acts of misconduct had not been specified and that, certain alleged acts of misconduct took place outside the premises of the place of work. The management filed the writ petition challenging the order of refusal of the conciliation officer and it was found that, the assault committed by the workman was not purely a private matter. Assault was committed to terrorize the workmen with a view to force them not to work, which constitutes an act subversive of discipline, in which event, it is open to the employer to take disciplinary action against the delinquent workman when the act complained of is one which is not far too remote and unconnected with the employment but one which has casual connection.

14. In the instant case, the alleged incident of assault is not within the company premises, but is at a distance of about 280 Kms i.e., Madikeri, that too in a

marriage function. The alleged assault committed is purely a private matter and has no connection with the employment or having a bearing on the discipline and working of the company.

15. Sri M.C. Narasimhan, placed reliance on the decision in the case of Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others, , wherein, after referring to the decision in Munchandani Electrical & Radio Industries Ltd., (supra) and other decisions, it has been held that, even where the standing order is couched in a language which seeks to extend its operation far beyond the establishment, it would none the less be necessary to establish causal connection between the misconduct and the employment and such connection must be real and substantial, immediate and proximate and not remote or tenuous. It has been made clear that, the misconduct prescribed in a standing order which would attract a penalty should have a causal connection with the place of work as well as the time at which it is committed which would ordinarily be within the establishment, and during duty hours. It has been observed that, the normal approach in law to the construction of a standing order is that it would apply to the behaviour on the premises where the workmen discharge their duties and during working hours of their work, which clearly imports time-place content in the matter of construction and that the employer has both power and jurisdiction to regulate the behaviour of workmen within the premises of the establishment or for peacefully carrying the industrial activity in the vicinity of the establishment and that the employer has no extra territorial jurisdiction. It has been held as follows:

"In order to avoid any ambiguity being raised in future and a controversial interpretation question being raised, we must make it abundantly clear and incontrovertible that the causal connection in order to prove linkage between the alleged act of misconduct and employment must be real and substantial, immediate and proximate and not remote or tenuous. An illustration would succinctly bring out the difference. One workman severely be laboured another for a (sic) duty on the next day-Would this absence permit the employer to charge the assailant for misconduct as it (sic) had on the working in the industry. The" answer is in the negative. The employer cannot take advantage to weed out workmen for incidents that occurred far away from his establishment.

16. Having examined the record,. I find that the construction put by the labour court on the relevant clauses of the standing order with reference to which the Respondents-workmen were illegally held as guilty by the management, is reasonable. The Petitioner has failed to establish any misconduct on the part of the Respondents, which has any bearing on the discipline and working of the company nor any abatement or instigation by the Respondents or the commission of any of the misconducts contained under Clause 24 of the certified standing orders of the company. Having examined the record with regard to the contentions put forth by the learned Counsel on both sides, I find that the labour court is justified in holding that the enquiry officer and the management have

not considered the materials on record in the correct perspective and that, the orders of dismissal passed against the Respondents, are perverse and illegal.

17. The findings recorded by the labour court in the impugned awards by making a reference to the materials on record, is neither perverse nor based on no evidence muchless the evidence, which is not legally acceptable. The labour court is the final court of facts in these type of disputes. It's only where a finding of fact is perverse or if the same is not based on legal evidence, this Court can go into the question of fact decided by the labour court- Since the findings in the impugned awards are not perverse, I do not find any justification to interfere with the findings on facts recorded by the labour court. There is no material on record to take a view contrary to the one taken in the matters by the labour court.

18. The petitions/disputes filed by the workmen in the labour court does contain the plea with regard to workmen having no other source of income, hardship being caused to themselves and their family members. Keeping in view the facts and circumstances of the case, in my opinion, the interest of justice would be sub-served if the Petitioner is directed to pay 50% of back wages as against 75% directed by the trial court. Modification of the impugned awards is called for only to the said extent.

19. For the reasons aforementioned, the awards passed by the labour court setting aside the orders of dismissal issued against the Respondents and direction issued for their reinstatement does not call for interference. The Respondent are entitled to continuity of service.

20. However, the back wages payable shall be 50% from the date of dismissal till date of reinstatement. The impugned awards stand modified only to the extent of the back wages and in all other aspects, stand upheld.