
(2016) 06 KAR CK 0168
In the Karnataka High Court
Case No : W.P. No. 14427 of 2013 (L-RES)

K.R. Raghavendra Singh

APPELLANT

Vs

Management of M/s. Brinks Arya India Limited & Anr.

RESPONDENT

Date of Decision : 22-06-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2016) 150 FLR 1050 : (2016) LabLR 869

Hon'ble Judges : Mrs. S. Sujatha, J.

Bench : Single Bench

Advocate : Mr. P.N. Nanja Reddy, Advocate, for the Appellant; Mr. Vighneshwar S. Shastri, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

S. Sujatha, J.— Heard the learned counsel for the parties.

2. This writ petition is filed by the workman challenging the award passed by the labour Court, Bangalore in I.D. No. 73/2009.

3. Learned counsel appearing for the petitioner/workman assailing the impugned award would contend that the enquiry conducted by the management/respondent is perverse and vitiated. No adequate opportunity was provided to the petitioner/workman to participate in the enquiry proceedings. The ex-parte enquiry report placed by the management is accepted by the labour Court as valid enquiry report. It is contended that the charges levelled against the petitioner are trivial in nature; No charges were proved; No opportunity was provided to the workman even before the labour Court to cross-examine the witnesses of the management who were the witnesses before the enquiry officer. The labour Court based its decision on the one side enquiry report and accepting the charges said to have been proved, invoking the provisions of Section 11A of the Industrial Disputes Act, 1947 set-aside the order of dismissal and imposed the punishment of denying back-wages besides denial of two yearly increments.

This award of the labour Court is totally against the principles of natural justice and contrary to the evidence on record.

4. Per contra, learned counsel appearing for the management/respondent justifying the award would contend that the charges levelled against the petitioner were proved. Labour Court after considering the enquiry report has rightly held that the domestic enquiry is just and proper. The workman intentionally avoided to accept the postal covers dated 4.10.2008 and 21.11.2008 marked at Exs. 11 and 12 which were returned with an endorsement "not claimed?". In view of the enquiry notice not being accepted by the workman, the management proceeded to place the workman ex-parte and concluded the enquiry which is rightly upheld by the labour Court and the same does not call for any interference at this stage. It is contended that the quantum of punishment now awarded by the labour Court is much lesser punishment to the proved misconduct. The management was right in passing an order of dismissal as the proportionate punishment to the misconduct proved and that has been reduced by the labour Court by a lesser punishment. This lesser punishment itself is suffice to balance between the misconduct, and the punishment. As such, the award of the labour Court reducing the punishment does not further warrant any interference by this Court.

5. Considering the rival contentions of the parties and perusing the material on record, it emerges that the workman was working as a gunman with the respondent establishment and the following charges were levelled against the petitioner:

"S.O. No. 22(a): wilful insubordination or disobedience, whether or not in combination with another, of any lawful and reasonable order of a superior.

S.O. No. 22(k): riotous, disorderly or indecent behaviour on the premises of the establishment,

S.O. No. 22(1): commission of any act subversive of discipline or good behaviour on the premises of the establishment.

S.O. No. 22(g): wilful damage to work in process or to any property of the establishment.

S.O. No. 22(v): failure to observe safety instructions notified by the employer or interference with any safety device or equipment installed within the establishment."

6. For the reasons best known to the petitioner, petitioner has failed to participate in the enquiry proceedings. Having no other option, the management proceeded with the enquiry and the enquiry report was placed on record before the labour Court which is held to be just and proper. The same does not call for any interference at this stage by this Court. However, considering the quantum of punishment imposed by the management being reduced to that of denial of back-wages besides two annual increments, necessarily calls for interference for the

reason that the misconduct said to have been proved in the enquiry, is based on the ex-parte enquiry report. The charges levelled in the enquiry are not too serious to impose the punishment of dismissal or to deny the entire back-wages with two annual increments.

7. In my considered opinion, while exercising the powers under Section 11A of the Act, the Labour Court has not considered the effect of denial of back-wages to the workman. It is true that the misconduct having been proved, the workman has to be punished accordingly. No delinquent workman should be Scot-free after the misconduct being proved. However, the quantum of punishment should not be strictly disproportionate or it should shock the conscience of the Court. The circumstances which led to the dismissal of the workman should be considered while imposing the punishment. Apparently, the enquiry concluded is ex-parte. The labour Court has also given a finding that the management has not proved that the workman was otherwise gainfully employed to deny the benefit of back-wages.

8. Having regard to the circumstances, I am of the considered opinion that it would be appropriate to modify the punishment imposed by the labour Court to the denial of 50% back-wages with two annual increments which would be suffice to punish the workman so that such misconduct shall not repeated and would be a warning signal to the other workman as not to indulge in indiscipline which amounts to misconduct.

9. Accordingly, the following order is passed:

ORDER

(1) Writ petition is partly allowed.

(2) The impugned award of the Labour Court as far as setting aside the dismissal order dated 2-2-2009, passed by the management with a direction to the management to reinstate the workman with continuity of service and all other consequential benefits, denying two yearly increments of the years 2010 and 2011, cumulatively is confirmed.

(3) The management/respondent shall reinstate the workman/petitioner into service with 50% back-wages from the date of termination till the date on which the award becomes enforceable.