

(2012) 08 KAR CK 0144

In the Karnataka High Court

Case No : Writ Petition No. 10822 of 2012 (L-K) C/W Writ Petition No. 4726 of 2012 (L-KSRTC)

Mahadeva Setty

APPELLANT

Vs

The Divisional Controller K.S.R.T.C Mysore Rural Division
Mysore
 The Management of KSRTC Rural Division,
Mysore Vs Sri Mahadeva Shetty

RESPONDENT

Date of Decision : 13-08-2012

Acts Referred:

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

Citation : (2012) 08 KAR CK 0144

Hon'ble Judges : Subhash B. Adi, J

Bench : Single Bench

Advocate : L Shekar, in WP No. 10822/2012 and Sri. Hareesh Bhandary.T in WP No. 4726/2012, for the Appellant; Hareesh Bhandary.T in WP No. 10822/2012 and Sri. L Shekar in WP No. 4726/2012, for the Respondent

Judgement

Subhash B. Adi, J.—Both the writ petitions are directed against the award dated 25th August 2011 in I.I.D. No. 1/2007 on the file of the Labour Court, Mysore. Writ Petition No. 10822/2012 is by the workman and writ petition No. 4726/2012 is by the Corporation.

2. The Corporation initiated the enquiry against the petitioner for misconduct for remaining unauthorized absent from 24.02.2004 to 22.05.2004. The Enquiry Officer, on enquiry, submitted a report holding that the charge is proved. The disciplinary authority, considering the report of the Enquiry Officer and also the explanation, has passed the order of dismissal against the workman. Aggrieved by the order of dismissal, the workman raised a dispute u/s 10(4-A) of the Industrial Disputes Act, 1947. The Labour Court held that the enquiry is fair and proper. The Labour Court also held that the workman had remained absent. However, it held that he had submitted a medical certificate. But, he did not prove that he made an application for sanction of leave. Taking into consideration all these circumstances and also taking into consideration the fact that the

Corporation has not proved any past history of the workman, set aside the order of dismissal and directed the Corporation to reinstate the workman with 50% backwages and continuity of service. Against the grant of 50% backwages, the Corporation has filed the writ petition and against denial of 50% backwages, the workman is in writ petition before this Court.

3. No doubt, the workman has produced the medical certificate to show that during the aforesaid period, he was suffering from viral fever. However, it is not in dispute that the workman did not produce any material before the Enquiry Officer to show that he had made an application and the leave was sanctioned. Nor, he had submitted the medical certificate to the Corporation informing that he was unwell during the said period. However, he had produced such certificate before the Enquiry Officer. Though the past history of the workman has not been proved, it cannot be a ground to hold that the Corporation should pay the backwages when the workman had remained absent without any sanction of leave. Even though the workman had remained unauthorizedly absent for a valid reason, as such, he cannot claim that for remaining absent and also during the enquiry, he should be paid backwages. In my opinion, it is suffice that 50% backwages awarded by the Labour Court could be set aside and reinstatement order with continuity of service could be, confirmed.

Hence, the award of the Labour Court dated 25 08 2011 in I.I.D. No. 1/2007 is modified and it is ordered that the workman is entitled for reinstatement, continuity of service and all other benefits as ordered by the Labour Court except for backwages.

Accordingly, both the writ petitions stand disposed of.