
(2013) 06 KAR CK 0185
In the Karnataka High Court
Case No : W.A. No. 2829 of 2009 (L-TER)

Management of M/s. Vikrant Tyres Ltd.	APPELLANT
Vs	
T. Venkatesh	RESPONDENT

Date of Decision : 04-06-2013

Acts Referred:

Citation : (2014) LLR 187

Hon'ble Judges : L. Narayana Swami, J;K.L. Manjunath, J

Bench : Division Bench

Advocate : S.N. Murthy, for S.N. Murthy Associates, for the Appellant; G.S. Naveen Kumar, Advocate for S.B. Mukkannappa Associates, for the Respondent

Judgement

K.L. Manjunath, J.—The appellant is challenging the legality and correctness of the order passed by the learned Single Judge dated 10.7.2009 in W.P. No. 13031/2008. Heard Sri S.N. Murthy, learned Sr. Counsel appearing for the appellant and Sri. G.S. Naveen Kumar, advocate for the respondent. The brief facts leading to this appeal are as hereunder:

2. The respondent was appointed as a trainee workman-B by the appellant company on 17.6.1980. The training period of him was extended upto 7.9.1981 considering his poor attendance. However, his services were regularized as serviceman on 7.9.1981 and confirmed in the said post on 7.3.1982.

3. The respondent was a habitual absentee. Several punishments were imposed on the respondent for his unauthorized absence as detailed below:

- (i) Advisory memos dated 18.9.1982 and 28.12.1982.
- (ii) Warning letters dated 23.1.1983, 27.9.1983 and 23.11.1983.
- (iii) Further three advisory letters dated 16.8.1984, 2.3.1985 and 11.6.1985.
- (iv) Suspended for two days as punishment by letter dated 12.11.1985.
- (v) Suspended for four days as punishment by letter dated 10.9.1986.

- (vi) Suspended again for four days vide letter dated 30.8.1987.
- (vii) Two advisory letters dated 23.4.1988 and 30.9.1989.
- (viii) Two warning letters dated 24.12.1989 and 9.8.1990.
- (ix) One annual increment was stopped from 1.4.1991.
- (x) Demoted to a lower stage in the existing pay scale with effect from 1.11.1992 as a specific punishment for unauthorized absence by letter dated 7.11.1992.

4. In spite of aforesaid imposition of penalties, warnings and advisory notes, there was no improvement in the conduct of the respondent. Again he remained absent for 13 days in November 1991. Again in the month of December 1991 from 23.12.1991 to 3.1.1992 he remained unauthorisedly absent. Therefore a show cause notice was issued to him on 9.3.1992. Since his explanation/reply dated 10.6.1992 was not satisfactory, a charge memo was issued on 7.4.1993 and based on the same an enquiry was held.

5. The enquiry officer submitted a report stating that charges levelled against him were proved and thereafter the disciplinary authority in accordance with the rules beard the respondent and dismissed him from the service by its order dated 15.06.1993. For over a period of 4 years, he did not raise any dispute. Belatedly a dispute was raised in the year June 1997. The same was referred for adjudication in Ref. No. 43/1998 before the Labour Court, Mysore.

6. On the question of preliminary issue in regard to validity of domestic enquiry, Labour Court held that enquiry was fair and proper and thereafter considering the witness let in by the management and the workmen considering the past record of the respondent and the report of the enquiry officer and finding of the disciplinary authority upheld the order of dismissal by its award dated 16.5.2008. Challenging the confirmation of the order of dismissal by the Labour Court, the respondent filed the writ petition before the learned Single Judge.

7. The learned single Judge without considering the order of the Labour Court in detail, only on the ground that the respondent was absent for duty unauthorisedly for a period of 13 days, set aside the order of dismissal and the order of the Labour Court and directed the appellant to reinstate the respondent-workman into service with current wages and ordered to give benefit of continuity of service from the date of dismissal till the date of reinstatement for the purpose of terminal benefits excluding back-wages and other consequential benefits. This order is questioned by the management in this appeal.

8. The learned senior counsel appearing for the appellant submits that learned single Judge has committed a serious error in not considering the judgment and Award of the Labour Court wherein the Labour Court in detail has considered the past conduct of the respondent in paragraph No. 10 of its award and considering Exs. M12, M15, M16, M17 and M18, Exs. M13 order of suspension dated

10.9.1986 and order of punishment as per Exs. M19 and M20 and so also Exs. M25 and M27. The learned single Judge has allowed the writ petition taking into consideration that the respondent has absented himself only for 13 days without considering the past conduct and punishment awarded by the management. Therefore, he contends that a serious error is committed by the learned Single Judge because when the charge-sheet was issued, the respondent had absented for only 13 days. In order to punish him the past conduct of the respondent could not have been considered by the disciplinary authority and that the Labour Court had exceeded its jurisdiction, in the circumstances, he requests this court to dismiss this appeal.

9. Having heard the counsel for the parties, the only point that arises for consideration in this appeal is:

Whether the learned single Judge has committed an error in setting aside the order of dismissal passed by the disciplinary authority and confirmed by the Labour Court?

10. On plain reading of the order of the learned single Judge, it is clear to us that he has proceeded with the case of the respondent as if there was no unauthorized absence of the respondent on the earlier occasions. He has not considered the past conduct of the respondent. As stated supra, the respondent is not disputing the punishment awarded by the appellant, warnings and advisory notes and his demotion to the lower cadre for his unauthorized absence on earlier occasions. By looking into the nature of punishment awarded earlier for the past conduct of the respondent, we are of the opinion that a lenient view had been taken by the management on the earlier occasions right from the date of confirmation till he is dismissed from the service. He is a habitual absentee for the duty without any reasons and it was also brought to the notice of the single Judge as to his involvement in political activities and that he had even contested for the assembly elections. When he can contest for the assembly elections, there were no reasons for himself to absent for the duty with the appellant management. When the respondent is not disputing his past conduct and punishment imposed by the appellant, we are of the view that learned single Judge has committed a serious error in not considering the past record of the respondent. In addition to that, the reference was rejected by the labour court on the ground of delay. Though the respondent was dismissed from services by order dated 15.6.1993, he did not challenge the order of dismissal for a period of four years. This shows further conduct of the respondent. Labour Court considering the materials placed by both the parties, has refused to interfere with the order of dismissal. The learned single Judge without assigning any reasons for reversing the order and award of the Labour Court, solely on the ground that he was unauthorizedly absent for 13 days, without considering the case of the parties, in entirety, has granted relief to the respondent, which according to us a serious error committed by the learned single Judge. On considering the entire matter we are unable to subscribe to the view of the

learned single Judge, in the result, the appeal is allowed. The order passed by the learned Single Judge dated 10.7.2009 in W.P. No. 13031/2008 is hereby set aside.

Consequently the writ petition filed by the respondent is rejected confirming the order and Award of the Labour Court, Mysore under Reference No. 43/1998 dated 3.1.2007.