

(2015) 06 KAR CK 0218

In the Karnataka High Court

Case No : Writ Petition No. 80784/2013 (L-KSRTC)

Mohammad Rafiq Imamsab Dharwad

APPELLANT

Vs

The Management of NWKRTC

RESPONDENT

Date of Decision : 02-06-2015

Acts Referred:

Citation : (2015) 06 KAR CK 0218

Hon'ble Judges : B. Veerappa, J

Bench : Single Bench

Advocate : Anant P. Savadi, for the Appellant; Shivakumar S. Badavawadagi, Advocates for the Respondent

Final Decision : Disposed off

Judgement

B. Veerappa, J.

1. The petitioner filed the above writ petition against the Award dated 12.09.2011 made in KID No. 23/2010 on the file of the Presiding Officer, Labour Court, Hubli, dismissing his petition filed under Section 10(4-A) of the Industrial Disputes (Karnataka Amendment) Act, 1987.

2. It is the case of the petitioner that he was appointed as Conductor in the respondent-Corporation and his service deserved high appreciation, but on account of bad-luck the petitioner had to undergo major heart surgery after consulting different doctors and visiting major hospitals. The petitioner met the depot manager and divisional controller regarding his health with opinion of the doctors. After perusing the opinion of the doctors, the petitioner underwent heart surgery after availing financial assistance and he had applied for leave and the respondent-authorities had permitted him to go on leave. All the medical certificates and bills were produced to the authorities. Despite the same, respondent issued a vague articles of charges to the petitioner and the charge sheet issued is neither in accordance with law nor is in accordance with the Conduct and Disciplinary regulations of the respondent. The imputation of

misconduct which is mandatory was not served and details of earlier history seat was not furnished and though respondent knew the health condition and observed that the petitioner is guilty and dismissed the petitioner from service on 7.1.2010. The petitioner further contended that incriminating circumstances were not brought to the notice of the petitioner by the Enquiry Officer and the respondent has not applied his mind before passing the order. It is further stated that since the charter of demand was pending on the file of Industrial Tribunal, Bangalore, in I.D. No. 148/2015, legally the respondent was expected to take approval from the said Tribunal and without doing it the petitioner was dismissed from service by order dated 7.1.2010. Being aggrieved by the said order the petitioner filed KID. 23/2010 before the Presiding Officer, Labour Court, Hubli, who by the impugned order dated 12.9.2011 dismissed the case of the petitioner. Hence, the present writ petition is filed.

3. I have heard the learned counsel for the parties to the lis.

4. Sri. Anant P. Savadi, learned Counsel for the petitioner has specifically contended that the impugned award passed by the Labour Court dismissing the petition is untenable and is liable to be quashed. He further contended that though the charter of demand was pending on the file of Industrial Tribunal in I.A. No. 148/2005, the respondent ought to have obtained permission under the provisions of Section 33(2)(b) of the ID. Act and the same has not been obtained before passing the dismissal order. Therefore, the original dismissal order passed by the respondent and upheld by the Labour Court are liable to be quashed and cannot be sustained in law. Therefore, he sought for setting aside the impugned orders of the management as well as the Labour Court.

5. Per contra Sri. Shivakumar S. Badawadgi, learned Counsel for respondent sought to justify the impugned order.

6. I have given my thoughtful consideration to the arguments advanced by the learned Counsel for the parties.

7. It is not in dispute that before passing the dismissal order, the respondent-management has not followed the procedure as contemplated under the provisions of Section 33(2)(b) of the Industrial Disputes Act and unfortunately the Labour Court has also lost sight of the said fact and dismissed the same by passing the impugned order. This Court while considering the provisions of Section 33(2)(b) of the Industrial Disputes Act in the case of Sri Anand v. The Management of NWKRTC, Hubli, in W.P. 70916/2013 disposed of on 5.11.2012 has held that the Management has to follow the procedure as contemplated under the provisions of Section 33(2)(b) of the Industrial Disputes Act and since the same having not been done, the very order of dismissal passed by the Management cannot be sustained in law, in view of the dictum of this Court in W.P. 65466/2011 dated 07.08.2012. In the present case, the respondent-Management has not followed the prescribed procedure as contemplated under the provisions of Section 33(2)(b) of the Industrial Disputes Act before

dismissing the petitioner from service. Therefore, the very dismissal order passed by the Management cannot be sustained in law. Therefore, the impugned order passed by the Labour Court confirming the dismissal order of the respondent are liable to be set aside.

8. At this stage, learned Counsel for the petitioner Sri. Anant P. Savadi, has fairly stated that he will forego the backwages. The said statement is placed on record.

9. In view of the aforesaid facts and circumstances of the case, the writ petition is allowed and the impugned order of dismissal passed by the respondent/ Management dated 7.1.2010 and the impugned order passed by the Labour Court, Hubli, in K.I.D. No. 23/2010 are set aside. Respondent is directed to reinstate the petitioner into service within two weeks from today and further it is made clear that the petitioner is not entitled to any backwages and consequential benefits in monetary terms. However, for the purpose of fixing the wages the consequential benefits shall be taken into consideration notionally and wages shall be fixed and paid from the date of reinstatement in accordance with law.

Accordingly, the writ petition is disposed of.