

(2013) 04 KAR CK 0056
In the Karnataka High Court
Case No : Writ Appeal No. 1079 of 2012

Muniyamma

APPELLANT

Vs

Divisional Controller, K.S.R.T.C.

RESPONDENT

Date of Decision : 19-04-2013

Acts Referred:

Citation : (2013) 138 FLR 499 : (2013) 4 LLJ 397

Hon'ble Judges : Ravi Malimath, J;K.L. Manjunath, J

Bench : Division Bench

Advocate : M.C. Basavaraju, for the Appellant; H.R. Renuka, for the Respondent

Final Decision : Allowed

Judgement

K.L. Manjunath, J.—The legality and the correctness of the order passed by the learned Single Judge in W.P. No. 35382/2011 dated 19.9.2011 is called in question in this appeal

Appellant is widow of one H. Venkatesh Murthy. He was working as Assistant Artisan under the respondent. He remained absent for duty unauthorisedly from 4.4.2003 to 3.5.2003 in all 53 days. An enquiry; was held, after issuance of articles of charges. He was dismissed from the service by order dated 13.9.2013 (sic 13.9.2012). After the death of Venkatesh Murthy, appellant raised a dispute before the Labour Court. Labour Court held that the domestic enquiry conducted by the respondent was fair and proper and on appreciation of the evidence available on record, the reference was rejected and the order of dismissal was confirmed. Aggrieved by the same, the appellant filed the writ petition and the writ petition has been dismissed by the learned Single Judge.

We have heard the Counsels for the parties.

2. The appellant Counsel submits that the order of dismissal is unfair and is nothing but victimization and has to be considered as unfair labour practices. For unauthorized absence of one month, appellant's husband could not have been

dismissed from the service. He submits that the appellant is having four minor children to maintain. He further contends, since the appellant's husband died, atleast the appellant be granted the retirement benefit by setting aside the order of dismissal.

3. Smt. H.R. Renuka, learned Counsel for the respondent supporting the order of the learned Single Judge contends that both the Courts have concurrently held that the enquiry was fair and proper, since the appellant's husband did not let in any evidence. Therefore, she requests the Court to dismiss the appeal.

4. Having heard the Counsel for the parties and considering that the period of unauthorized absence was only one month from 4.4.2003 to 3.5.2003, we are of the opinion, the order of dismissal has to be considered as disproportionate to the charge and it shocks the conscious of this Court.

5. In the circumstances, only on the short ground the writ appeal has to be allowed because the Labour Court or learned Single Judge while passing the order have not considered this point. It is also in our mind that workman died immediately after the dismissal and as a result of which his widow has to maintain four minor children. In the circumstances, as an extraordinary case as the period of unauthorised absence is only one month, the order of dismissal has to be, set aside by directing the respondent to settle the retirement benefits of the deceased calculating the same upto the date of his death in accordance with the rules of the Corporation.

6. At this stage, learned Counsel for the/appellant submits that one of the appellant's child may be given appointment on compassionate grounds. So far as this point is concerned, it is always open for the appellant and his "children to make application seeking employment. If such an application is filed, it is for the Corporation to consider the same in accordance with law. In the above circumstances writ appeal is allowed. Order of the learned Single Judge passed in W.P. No. 35382/2011 dated 19.9.2011 and the order of the Labour Court, Bangalore in Reference No. 104/2006 dated 22.7.2010 in Reference No. 104/2006 are hereby set-aside.