

(2016) 11 KAR CK 0005
In the Karnataka High Court
Case No : Writ Petition No. 2807 of 2015 (L-TER)

M.V. Gururaj

APPELLANT

Vs

General Manager (P), Bharath Earth Movers Ltd.

RESPONDENT

Date of Decision : 03-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10(1), Section 11-A

Citation : (2017) 1 CLR 582 : (2017) 153 FLR 594 : (2017) LabLR 666

Hon'ble Judges : Mr. A.N. Venugopala Gowda, J.

Bench : Single Bench

Advocate : Sri S.B. Mulkannappa, Advocate, for the Petitioner; Sri N.S. Narasimha Swamy for M/s. Swamy and Singh, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J. - The petitioner, while working as Deputy Supervisor (Wage Group-S1) with the respondent and having remained unauthorisedly absent from duty i.e., without availing leave or permission for a period of 167 days between the period January, 2005 to December, 2005 a charge-sheet dated 6.3.2006 was issued alleging commission of a misconduct, under Clause 21.20 of Certified Standing Orders of BEML. An Enquiry Officer was appointed and disciplinary enquiry was conducted. A report dated 4.10.2006 having been submitted holding the petitioner guilty of the charge, an order dated 2.4.2007 was passed by the Disciplinary Authority removing the petitioner from service. An appeal vide Annexure-B having been preferred and Appellate Authority having found the appeal to be devoid of merit has passed an order of rejection vide Annexure-C on 12.10.2007. At the behest of the petitioner, Central Government having made a reference to the Central Government Industrial Tribunal-cum-Labour Court, the case was registered in CR No. 49/2008. The petitioner having filed the claim statement, the respondent filed the counter statement. A preliminary issue with regard to fairness of the enquiry held by the Management was raised. Evidence having been adduced by the parties, upon appreciation of

the record and the rival contentions, an Award dated 7.11.2014 vide Annexure-E was passed and the reference was rejected. Assailing the said Award as at Annexure-E, this writ petition was filed.

2. Sri S.B. Mukkannappa, learned advocate for the petitioner submitted that there being no dispute with regard to the unauthorised absence of the petitioner from duty for 167 days as was alleged in the charge-sheet dated 6.3.2006 and the petitioner having attained the age of superannuation on 31.7.2015, the consideration of the case of the petitioner is limited to the disproportionate punishment imposed by the respondent and the failure of the Tribunal to exercise the power conferred under Section 11-A of the Industrial Disputes Act, 1947 (for short, "the Act"). Learned counsel submitted that the finding recorded by the Tribunal with regard to the quantum of punishment is erroneous and arbitrary. He further submitted that great injustice has occasioned to the petitioner on account of the failure of the Tribunal to exercise the power under Section 11-A of the Act and hence, the impugned Award of the Tribunal and the order of punishment issued by the respondent are liable to be quashed. Learned counsel placed reliance on the decision in *Chairman-cum-Managing Director, Coal India Ltd. & Anr. v. Mukul Kumar Choudhuri & Ors.* reported in 2009 (III) CLR 645 (S.C.) : (2009) 15 SCC 620.

3. Sri N.S. Narasimha Swamy, learned advocate for the respondent on the other hand, made submissions in support of the punishment imposed on the petitioner for the proved misconduct and its upholding by the Labour Court. Learned counsel submitted that the petitioner has the history of past misconduct and the punishment of stoppage of increment and reduction to a lower stage having not brought in any improvement in the conduct of the petitioner, the order imposing punishment of removal from service which does not disqualify for future employment" as provided under Clause 22.2(iii) of the Standing Orders was passed. Learned counsel submitted that even the Labour Court in exercise of the power under Section 11-A of the Act having considered the case of the petitioner has upheld the punishment imposed by the respondent. Learned counsel submitted that there being no justification of whatsoever nature to interfere with the Award as at Annexure-E, the petition is liable to be dismissed.

4. Perused the petition and considered the rival submissions. Consideration of the case of the petitioner having been limited to the proportionality of the punishment imposed by the respondent, point for consideration is, whether a case exists for interference with the impugned Award of the Tribunal and the Order of the punishment imposed by the respondent?

5. Absence from duty without any application or prior permission amounts to unauthorised absence. In the appeal filed vide Annexure-B, the petitioner has stated that being married and having no issues, he often felt depressed and was driven to addiction of alcohol, on account of which he was frequently abstaining and staying away from work without knowing the serious repercussions of his future. Thus, the absence from duty is undisputed. The Tribunal having

appreciated the evidence brought before it has held that the finding of the Enquiry Officer with regard to unauthorized absence from duty is justified. The Tribunal has further held that there is no reason to interfere either in the finding of the Enquiry Officer or the punishment imposed by the Disciplinary Authority and affirmed by the Appellate Authority.

6. The case of Mukul Kumar Choudhuri (*supra*) pertains to unauthorized absence which he admitted and explained the reasons for his absence. Regard being had to the factual matrix, Apex Court interfered with the punishment on the ground of proportionality.

7. The facts of the present case are quite different. The petitioner was unauthorisedly absent for 37 days during March to December, 1988 and he was warned. He having remained unauthorisedly absent for 40 days" period from January to September, 1989 was again warned, He having remained unauthorisedly absent for 101 days for the period from May, 2003 to June, 2004 was imposed with the punishment of reduction of salary by one stage for one year. For the unauthorized absence of 167 days, the punishment of removal from service was imposed in terms of Clause 22.2(iii) of the Standing Orders.

8. From the above it becomes clear that the petitioner had remained absent even earlier and the punishments imposed did not bring any improvement in his conduct. The period of absence is also long and no satisfactory explanation is forthcoming for such unauthorized long absence which shows indiscipline and lack of devotion to duty. The Tribunal having regard to the facts and circumstances of the case has held that the respondent is justified in passing the order of removal from service. Thus, it is not a case of failure on the part of the Tribunal to exercise its power under Section 11-A of the Act.

9. Having regard to the past history of unauthorized absence of the petitioner and the punishments imposed, the punishment of removal imposed by the respondent for the long unauthorized absence is not shockingly disproportionate that too in respect of the person working as Deputy Supervisor. Regard being had to his official position, it was expected of him by the respondent to maintain discipline, act with responsibility to perform his duty with sincerity and serve the institution with honesty. Being a supervisory official, if there is frequent unauthorized absence from duty, there would be indiscipline in the Organisation and it cannot be expected by the Management that the employees below the cadre of the petitioner would be diligent and perform their duty with devotion and honesty.

10. Having regard to the facts and circumstances of the case, there is no scope for interference in exercise of the jurisdiction under Articles 226/227 of the Constitution, to substitute the punishment of removal from service with a lesser or different punishment.

11. In the result, the writ petition is dismissed with no order as to costs.