
(2016) 06 KAR CK 0096
In the Karnataka High Court
Case No : W.P. No. 13753 of 2013 (L-RES)

N.M. Narayana

APPELLANT

Vs

Management of M/s. Hikal

RESPONDENT

Date of Decision : 10-06-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 11(A)

Citation : (2016) LabLR 892

Hon'ble Judges : Mrs. S.S. Sujatha, J.

Bench : Single Bench

Advocate : Mr. Raghupathi M.J. for Mr. T. Narayana Swamy, Advocate. in W.P. No. 13753 of 2013, Mr. B.C. Prabhakar, Advocate. in W.P. No. 44970/2012 (L-RES), for the Appellant; Mr. B.C. Prabhakar, Advocate. in W.P. No. 13753 of 2013, Mr. Raghupathi M.J. for Mr. T. Nar

Final Decision : Disposed Off

Judgement

1. The workman as well as the employer are before this Court challenging the award passed by the II Additional Labour Court, Bengaluru dated 30.07.2012 in I.D. No.81/2009 whereby the Labour Court has set aside the order of termination of the workman by the Management. The employer is directed to re-instate the workman into service within 30 days from the date of publication of the award and give the benefit of the continuity of service. However, the back wages are denied.

2. Being aggrieved by this award passed by the Labour Court, the workman is before this Court contending that the Labour Court erred in not awarding the back wages. Though the Labour Court gave the finding that the quantum of punishment of termination awarded by the Management for unauthorized absence of 70 days is disproportionate, as it is satisfactorily explained by the workman i.e. for the reasons of his ill health which was beyond his control, the Labour Court ought to have awarded the back wages.

3. On the other hand, Management is before this Court contending that the

Labour Court having found that the misconduct is proved, held that the quantum of punishment is not proportionate to the alleged misconduct; exercised the powers under Section 11 (A) of the Industrial Disputes Act, 1947 (the 'Act' for short) modified the punishment by setting aside the order of dismissal contrary to the well established principles of law enunciated by the Hon'ble Supreme Court. The learned counsel appearing for the Management reiterating these aspects would contend that the Labour Court would have exercised the power under Section 11 (A) of the Act only under two circumstances i.e.,

1. When the punishment awarded was shockingly disproportionate.
2. Where it shocks the conscience of the Court and the power would have been exercised judiciously.

No such circumstances is made out to invoke the provisions of Section 11 (A) of the Act. Thus, the order of the Labour Court is perverse.

4. I have heard the learned counsel appearing for the parties and perused the materials on record.

5. The undisputed facts are that the workman was appointed by the earlier Management M/s BPRL Fine Chemicals Pvt. Limited prior to its closure with effect from 15.11.2004. The service of 17 workmen including the workman in the present petition came to be terminated and they have enforced closure benefit under terminal benefits. On their refusal to receive, the conciliation proceedings were initiated and on settlement, the present Management appointed the workman as technician as per the order dated 7.02.2005 and alleged unauthorized absence for a period of 70 days from 6.1.2007 to 16.03.2007. The Management issued show cause notice calling upon the workman to report to the work. It is alleged by the Management that the workman did not turn lo work despite service of show cause notice, without any alternative, the Management was compelled to terminate the service of the workman. It is the case of the workman that he was the regular employee governed by the provisions of the Act. The Management without holding any enquiry passed an order of dismissal against the provisions of the Act, contrary to the well established principles of law.

6. Challenging the order of termination passed by the Management, the claim petition was filed by the workman under Section 10 (4) (A) of the Act. The Labour Court after analysing the evidence on record held that the order of termination of the workman from the service is not proportionate to the alleged misconduct. The ill health of the workman was not properly considered by the employer. Accordingly, set aside the impugned order of termination and directed the employer-Management to reinstate the workman into service with continuity of service. However, denied the back wages. This order is impugned in these writ petitions.

7. It is noticed that the employer-Management did not hold any domestic enquiry

though the Enquiry Officer was appointed. It is clear that no enquiry report was submitted. Thus, noticing the said flaw, the Labour Court held that the order of dismissal by the employer is not in accordance with law. Though the unauthorized absence is accepted to be the misconduct, the order of dismissal of the employee was held to be disproportionate to the alleged misconduct. The employee-workman had satisfactorily explained the reasons for his unauthorized absence which was beyond his control. It is very well established that the workman abstained from work due to his ill health which requires to be sympathetically viewed from the employer with whom he was serving for several years. This humane value has not been applied in the right perspective. Dismissing the workman for unauthorized absence of 70 days is shockingly disproportionate which is properly held by the Labour Court and the same cannot be found fault with. Though the workman is directed to be reinstated, back wages are denied by the Labour Court, this itself would be the major punishment for the workman coupled with the ordeal he has undergone during the dismissal period fighting for justice in the Court of law. Given the circumstances, I do not see any irregularity or infirmity in the order passed by the Labour Court Accordingly, both the writ petitions are dismissed.