

(2013) 02 KAR CK 0044
In the Karnataka High Court
Case No : Writ Petition No. 23624 of 2005

North West Karnataka Road Transport Corporation	APPELLANT
Vs	
S.D. Nadavinkeri	RESPONDENT

Date of Decision : 08-02-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10(4-A), 11-A

Citation : (2013) 137 FLR 619 : (2013) 3 LLJ 259 : (2013) 4 LLN 280 : (2013) LLR 970

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

Bench : Single Bench

Advocate : Shivakumar S. Badawadagi, for the Appellant; Ravi Hegde, for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopala Gowda, J,

1. Respondent was working as a Helper-A in the petitioner-Corporation. He remained unauthorisedly absent from duty with effect from 3.3.1998. Based on the report of concerned Depot Manager, reporting unauthorised absence of the petitioner, a call notice dated 28.3.1998 was issued to the workman to report to duty. Respondent having continued to remain absent, an Articles of Charge dated 08.06.1998 was issued alleging commission of misconduct of unauthorised absence with effect from 3.3.1998. Respondent filed his reply dated 1.7.1998. A Departmental Enquiry was initiated. Departmental enquiry having been conducted and a report having been submitted to the effect that the charge of unauthorised absence of the workman is proved, a show cause notice No 871 (98) 7722, dated 28.11.1998 along with a copy of the enquiry report was served on the respondent. Another show cause notice No. 871 (98) 7723, dated 28.11.1998, showing the past history of unauthorised absence was also served on the respondent. To the said notices, there was no reply by the workman.

Disciplinary Authority, considering the report of the enquiry and the absence of the workman on several occasions, passed a detailed order of dismissal from service, on 22.12.1998.

Respondent filed a claim petition in KID No. 7/1999, u/s 10(4-A) of I.D. Act, 1947 (for short, "the Act"), in the Additional Labour Court at Hubli. Petitioner filed written "statement and contested the claim petition. Based on the pleadings, Labour Court raised three issues. By an order dated 11.9.2001, issue No. 1 relating to the fairness of the domestic enquiry conducted by the Management was answered in the affirmative. Neither of the parties adduced further evidence. The documents produced by the Management was marked by consent as Exs. M1 to M16. Labour Court, finding from the reply to the Articles of Charge (Ex.M-4), that the workman has admitted his absence from the duty and it was not his case that either leave or permission has been granted to him, held that the materials on record are sufficient to prove the charge of unauthorised absence. It recorded a finding that the charged misconduct against the workman is proved. However, considering the question about the proportionality of the punishment-order of dismissal from service, it held as follows--

15. While considering the justification or otherwise of the dismissal order the Court has also to take into consideration of the socio-economic condition of the petitioner. The petitioner in the petition has stated that after his dismissal he is not at all re-employed anywhere, he has no other source of income and he has got big family to be maintained by him and this fact has also to be taken into consideration, but the disciplinary authority has not considered this aspect. Therefore, the facts and circumstances of this case justifies the Court to exercise the powers vested under it u/s 11-A of the Industrial Disputes Act as the dismissal of the petitioner is disproportionate to the gravity of the misconduct. For these reasons issue No. 2 requires to be answered in the negative. Accordingly the same is answered.

Consequently, the order of dismissal was set aside. Five annual increments was directed to be withheld. Back-wages was denied and the Management was directed to reinstate the workman. Assailing the said award, the Management has filed this writ petition.

2. Shri Shivakumar S. Badawadagi, learned advocate for the petitioner contended that the Labour Court has committed illegality in passing the award, in so far as, the direction for reinstatement is concerned, by modifying the punishment from order of dismissal to that of withholding of increments. He submitted that the Labour Court has failed to take into consideration the effect of its order on issue No. 1, passed on 11.9.2001 and also its finding on issue No. 2 to the effect that the charge of, unauthorised absence is proved. He further contended that the Labour Court has not taken into consideration the past history of the workman, showing unauthorised absence for long durations and on a number of occasions and the case being, one of chronic absenteeism, it ought not to have interfered with the punishment of dismissal from service. Reliance

was placed on the decision in the case of North Eastern Karnataka R.T. Corpn. Vs. Ashappa, Learned Counsel submitted that it is a case of misplaced sympathy and private benevolence by the Labour Court and hence, interference is warranted.

3. Shri Ravi Hegde, learned advocate for the respondent, on the other hand made submissions in support of the finding recorded by the Labour Court at paras 13 to 16 of the award and submitted that the power of the Labour Court u/s 11A of the Act being wide, the impugned award does not warrant interference, in exercise of jurisdiction under Articles 226 and 227 of the Constitution of India.

4. In view of the rival contentions and the record of the case, the point for consideration is:--

Whether the Labour Court is justified in interfering with the order of punishment passed by the Management i.e., order of dismissal from service?

5. By an order dated 11.9.2001, Labour Court decided issue No. 1 as a preliminary issue and held that the domestic enquiry conducted by the Management is fair and proper. Though opportunity was granted, workman did not adduce any evidence with regard to victimisation, if any, by the Management and also on the question of quantum of punishment. However, documents produced by the Management was marked by consent, as Exs. M1 to M16.

6. The charge against the workman related/to unauthorised absence to duty with effect from 3.3.1998. Enquiry Officer, in his report has concluded that the charge levelled against the workman as per Articles of charge dated 8.6.1998 as established. Copy of the enquiry report was furnished to the workman, along with a show cause notice dated 28.11.1998. Another show cause notice dated 28.11.1988 (sic 28.11.1998), was issued, with past absence history sheet. The workman did not reply to both the said show cause notices. Record shows that the workman was in the habit of remaining absent to the duty. The absence was for long durations and the same is clear from the following:--

7. Sri Ravi Hegde, did not dispute the absence of the workman as shown above. The workman has absented to duty for long durations, almost every year.

8. Disciplinary Authority imposed the punishment of dismissal on account of the gravity of the proved misconduct and the past history. Labour Court, upon appreciation of the evidence has found that there is sufficient material in proof of unauthorised absence of the workman and has concurred with the finding recorded by the Enquiry Officer, with which, Disciplinary Authority agreed that the charge levelled against the workman is proved. The finding of guilt recorded against the workman by the Labour Court has not been questioned by the workman.

9. Labour Court without taking into consideration, absence report of the workman, noticed supra and also the pleading of the Management that the workman is a habitual absentee, in that, he had remained absent unauthorisedly,

for long durations, every year from 1.1.1989, has set aside the order of dismissal and substituted the punishment to one of withholding of five annual increments with cumulative effect and denial of back wages. It has directed reinstatement of the workman, which being arbitrary, cannot be sustained,

10. In the case of Ashappa (supra), Apex Court has held as follows:--

8. Remaining absent for a long time, in our opinion, cannot be said to be a minor misconduct. The Appellant runs a fleet of buses. It is a statutory organization. It has to provide public utility services. For running the buses, the service of the conductor is imperative. No employer running a fleet of buses can allow an employee to remain absent for a long time. The Respondent had been given opportunities to resume his duties. Despite such notices, he remained absent. He was found not only to have remained absent for a period of more than three years, his leave records were seen and it was found that he remained unauthorisedly absent on several occasions. In this view of the matter, it cannot be said that the misconduct committed by the Respondent herein has to be treated lightly.

11. Remaining absent from duty is not only an act of indiscipline, but also subversive of the work culture in the Organization. In the case of Delhi Transport Corporation Vs. Sardar Singh, it has been held as follows:--

11. Conclusions regarding negligence and lack of interest can be arrived at by looking into the period of absence, more particularly, when same is unauthorised. Burden is on the employee who claims that there was no negligence and/or lack of interest to establish it by placing relevant materials. Clause (ii) of para 4 of the Standing Orders shows the seriousness attached to habitual absence. In clause (i) thereof, there is requirement of prior permission. Only exception made is in case of sudden illness. There also conditions are stipulated, non-observance of which renders the absence unauthorised.

The ratio of law enunciated by the Apex Court, in the decisions noticed supra, squarely applies to the instant case. There is a misdirection adopted by the Labour Court. The exercise of power u/s 11-A of the Act to modify the punishment is unjustified. The arguments addressed by Shri Shivakumar S. Badawadagi is well founded. The view taken by the Labour Court in the impugned order being contrary to the declaration of law by the Apex Court, in the decisions noticed supra, the impugned award warrants interference.

In the result, writ petition is allowed and the impugned award to the extent of substituting the punishment is quashed. Consequently, the order of dismissal passed against the workman by the Management on 22.12.1998 stands restored.

Parties to bear their respective costs.