

(2011) 08 KAR CK 0019

In the Karnataka High Court

Case No : Writ Petition No. 41179 OF 2010 (L-TER) c/w Writ Petition No. 17095 of 2010 (L-RES)

R. Suresh Kumar

APPELLANT

Vs

Mysore Paper Mills Ltd.
 Mysore Paper Mills Ltd. Vs R.
Suresh Kumar

RESPONDENT

Date of Decision : 11-08-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (4-A), 11 A

Citation : (2011) 08 KAR CK 0019

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : V.N. Jagadeesh, for the Appellant; M.R.C. Ravi, for the Respondent

Final Decision : Allowed

Judgement

Ram Mohan Reddy

1. The 1st petition is filed by the workman, calling in question the award dt. 3/2/2010 in IDA No. 45/2000 of the Labour Court, Mangalore, in so far as it. Relates to denying 50% backwages, continuity of service and consequential benefits while directing reinstatement. The connected petition is filed by the Management, calling in question the very same award, directing reinstatement with 50% backwages.

2. Learned Counsel for the Management contends that the workman, when appointed as a Weigh Bridge Assistant, was entrusted with the duties and responsibilities of recording the correct cane net weight, by taking the gross weight and tare weight of the cane loaded vehicle, after observing the vehicle, its numbers, enter the permit/trip Sheets details into the computer, take out 3 weighment slips duly signed by him and forward one copy of the weighment slip to the concerned vehicle driver, while retaining a. copy in the Weigh Bridge, to be forwarded to the sugar accounts/ finance division, in addition, Petitioner was

required to make entries in the gate pass, over the gross weight of cane and sign the same as also assist the Weigh Bridge Supervisor in the day-to-day work, to prevent any type of malpractice in the Weigh Bridge, as also close the permit, if excess tonnage is supplied by the riot, than the allotted tonnage in the permit.

3. According to the learned Counsel, Respondent, on 29/1/1998, while in the 3rd shift, issued a cane weigh merit slip in respect of vehicle No. A 14-0613-14 in the name of H. Raju, a riot, certifying 9.230 tens of sugarcane transported in the vehicle. That weighment slip, when checked, was found to be fabricated resulting in the company suffering losses, since that quantity of sugarcane was not brought into the factory. Disciplinary proceeding, by issuing articles of charge, was followed by holding a domestic enquiry, extending reasonable opportunity of hearing to the workman and a report, holding the charges proved. Where afterwards the disciplinary authority, on an independent assessment of the facts, circumstances and evidence on record, held the workman guilty of the charges and dismissed him from service, by order dt. 7/2/2000.

4. Learned Counsel further submits that the order when subject-matter of challenge in a petition u/s 10(4-A) of the Industrial Disputes Act, 1947, for short "ID Act", before the Labour Court, Mangalore, registered as IDA No. 45/2000, issues were framed and the finding on the 1st issue over the validity of the domestic enquiry, was recorded in the affirmative, by order dt. 2/3/2006, holding the enquiry as fair and proper. There afterwards it is submitted, an award was passed, directing reinstatement of the workman without backwages, which when called in question in W.P. Nos. 14783/08 and 11977/07, this Court quashed the award and remitted the proceeding with a direction to summon one Hanumanthappa, when registered owner of the vehicle bearing certificate of registration No. KA-14/T-613-14, Learned Counsel further submits that the said Haminianthappa, when examined as MW-2 was cross-examined.

5. Learned Counsel submits that the workman failed to comply with the duties and responsibilities entrusted to him, since he had not recorded the correct vehicle number in the cane weighment slip, coupled with the testimony of Hanumanthappa, the registered owner of the vehicle bearing registration No. KA-14/T-613-14, in cross-examination, denying the suggestion that the vehicle was entrusted "to H. Raju, for transportation of sugarcane on the date in question, the Labour Court was not justified in recording an inferential finding that there was a possibility of a mistake on the part of the computer in not printing the letters "K" or "T". Learned Counsel next contends that the Labour Court, merely extracted paragraphs 8, 13, 17 and 18 of the claim petition to conclude that the management had not made out a case and directed reinstatement with 50% backwages.

6. Per contra, learned Counsel for the workman seeks to sustain the award impugned as being well-merited, fully justified and not calling for interference, except to the extent of denying 50% backwages, continuity of service and consequential benefits.

7. According to the learned Counsel, the alphabets "K" and "T" were not recorded in the weighment slip, because the computer refused to record the same and that Hanumanthappa, the registered vehicle owner, having admitted that brie Huuraju, is the son of his wife's sister by name Lakshmamma, it Was reasonable to infer that Huiraju was none other than H. Raju and that H. Raju had in fact supplied the sugarcane on the date in question, in the tractor/trailor belonging to Hanumanthappa.

8. Having heard the learned Counsel for the parties, perused the pleadings and examined the award impugned, following two questions arise for decision making:

(1) Whether in the facts and. circumstances of the case, the Labour Court was not. justified in directing reinstatement with 50% backwages, as contended by the learned Counsel for the Management

(2) Whether in the facts and circumstances of the case, the Labour Court was not justified in denying 50% backwages, continuity of service and consequential benefits, as contended by the workman

9. There is force in the submission of (he learned Counsel for the Management, that the Labour Court, by merely extracting the averments set out in the claim petition at paragraphs 8, 13, 17 and 18, misdirected itself to conclude that the workman had not created or fabricated documents, much less, the weighment slip indicating supply of 9.230 metric tonnes of sugarcane by one H. Raju, on the date in question in the vehicle bearing registration No. KA-14-T/613/614. The finding, in my opinion, is perverse. The fact that the weighment slip did not record the alphabets "K" and "T"" while recording the registration certificate number of the vehicle, is admitted. The explanation by the workman who supposedly punched into the computer, the information relating to the registration particulars of the vehicle in which the sugarcane was transported whence the computer did not record the alphabets "K" and "T" against the column showing the said particulars is a fact in issue, which was required to be proved by the workman, and not by the management. Strangely, in the weighment slip, Petitioner admits to have handwritten the name of the supplier as H. Raju. If that is so, there is no explanation forthcoming as to why the workman did riot, by hand, record the alphabets "K" and "T" against the column.particulars of the vehicle. This aspect of the matter is not considered by the Labour Court. Instead of so doing, the Labour Court appears to have misdirected itself to record an inferential finding that the computer did not record the alphabets "K" and "T" to conclude that the workman was free of guilt and entitling him to reinstatement with 50% backwages. The Labour Court adopted a perverse procedure in recording its findings. Exfacie the award impugned suffers from an error apparent on the face of the record. In that view of the matter, without recording findings on the contentions advanced by the learned Counsel for the parties, touching upon the merits of the matter and since it is for the Labour Court to appreciate the evidence and record conclusions as also invoke Section 11-A of the ID Act, if circumstances exists, the proceeding deserves to

be. remitted for consideration afresh.

In the result, these petitions filed by the management and the workman, are allowed. The award impugned is quashed and the proceeding remitted for consideration afresh, by recording reasons, findings and conclusions and pass an award strictly in accordance with law, after extending reasonable opportunity of hearing to the parties concerned.