

(2013) 05 KAR CK 0021

In the Karnataka High Court

Case No : Writ Petition No. 25199 of 2012 C/W and Writ Petition No. 17466 of 2012 (L-KSRTC)

Rangaswamy T.S.

APPELLANT

Vs

The Divisional Controller, KSRTC
 Karnataka State
Road Transport Corporation Vs T.S. Rangaswamy

RESPONDENT

Date of Decision : 27-05-2013

Acts Referred:

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

Citation : (2013) 4 KarLJ 388 : (2013) 4 LLJ 386 : (2013) 4 LLN 656

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

Bench : Single Bench

Advocate : L. Shekar and Smt. H.R. Renuka, for the Appellant; H.R. Renuka and Sri L. Shekar, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J.—These writ petitions are directed against an award dated 25.07.2011 passed in Reference No. 61/2005 by the Labour Court at Mysore, allowing the reference in part and setting aside and modifying the punishment of dismissal from service imposed by the KSRTC-Management withholding two increments and directing the management to pay 50% of back wages to the workman from the date of removal from service i.e., from 21.04.2004 till the date of reinstatement. W.P. No. 17466/2012 has been filed by the management to quash the award passed by the Labour Court. W.P. No. 25199/2012 has been filed by the workman to quash the award passed by the Labour Court to the extent of denying 50% back wages and also modifying the punishment of withholding two increments and denial of consequential benefits. The workman has also sought for issue of a direction to the management to reinstate him with continuity of service, extend all consequential benefits including full back wages from the date of dismissal till the date of his reinstatement. For the purpose of convenience the petitioner in W.P. No.

25199/2012 will be referred as the "workman" and the petitioner in W.P. No. 17466/2012 will be referred as the "management". Material facts of the case are that the workman remained absent from duty with effect from 14.01.2003 without obtaining prior sanction. A call letter along with articles of charge dated 24.02.2003 was issued by the management to the workman alleging unauthorized absence with effect from 14.01.2003 till that date. The workman did not submit any reply. The disciplinary authority ordered for a disciplinary enquiry and the workman was subjected to disciplinary proceeding. The enquiry officer submitted a report dated 13.02.2004, in which it was concluded that the workman is guilty of the charge leveled against him. The workman was furnished with a copy of enquiry report along with a show-cause notice dated 23.04.2004. The workman had remained unauthorizedly absent to duty earlier also. No reply having been submitted by the workman, the disciplinary authority accepting the findings of the enquiry officer, passed an order dated 21.04.2004 and dismissed the workman from service with immediate effect.

2. A dispute having arisen, the Government of Karnataka made a reference under S. 10(1)(c) of I.D. Act, 1947 to the Labour Court at Mysore for adjudication. The points referred for adjudication are the following:

1. Whether the 1st party is a workman within the meaning of I.D. Act, 1947?
2. Whether the undertaking wherein the 1st party was working is an industry?
3. Whether the 1st party is entitled to any relief under S. 19 of Central Administrative Tribunal Act (or) under Article 226 of Constitution of India?
4. Whether the 2nd party is justified in removing 1st party from service w.e.f. 21.4.2004?
5. If not, to what relief 1st party is entitled to?

3. The workman filed claim statement and stated that he is a diabetic patient, he was undergoing treatment at Diacon Hospital, Bangalore and also took treatment in Bowring Hospital, Bangalore and he could not attend to duty from 14.01.2003 to 24.02.2003. He stated that a leave application along with medical certificate was sent and he did not hear anything from the management and was under the impression that the leave was granted and only after receiving the charge sheet, he came to know that leave was not granted. According to him, call notice was not received and he only received the charge sheet, for which he submitted an explanation with medical certificates. He alleged that the articles of charge was not accompanied with imputations of misconduct and copies of documents were also not furnished. According to him, the enquiry was farce and he did not get reasonable opportunity of hearing. He further maintained that no notice was given to him regarding the alleged past misconduct and even otherwise the order of punishment is highly disproportionate to the alleged misconduct.

4. The management filed a counter, wherein it was stated that the workman was a driver and the Depot Manager, Maddur had submitted a report dated

26.01.2003 regarding unauthorized absence of the workman from 14.01.2003 and then a call notice was issued and in view of failure of the workman to report to duty, the articles of charge was issued, for which no reply was submitted and a disciplinary enquiry was initiated and an enquiry officer was appointed, who after issuing a notice and affording reasonable opportunity of hearing to the workman, by observing the principles of natural justice, having conducted the enquiry, finding/report was submitted and when a copy of the same was furnished along with a show-cause notice to the workman, he failed to submit any reply. The workman had past history of remaining unauthorizedly absent to the duty and the disciplinary authority considering the enquiry record, passed an order of dismissal from service. It was maintained that the punishment imposed is proportionate to the gravity of misconduct committed by the workman and rejection of the reference was sought.

5. Based on the pleadings, the following issues were raised:

1. Whether 2nd party proves that the Domestic Enquiry conducted against the 1st party was legal and valid?.
2. Whether 2nd party justified the dismissal of 1st party for his last proved misconduct and past history?
3. Whether 1st party is entitled to the reliefs claimed?
4. What award?

6. Issue No. 1 was tried as preliminary issue. The management got examined one witness and marked 17 documents. The workman got himself examined as a witness and marked 3 documents. Considering the record and rival contentions, by an order dated 02.05.2011, issue No. 1 was answered in the affirmative. The case was posted for further evidence. The workman got himself examined further and marked documents. Considering the record of the case and the rival contentions, it was held as follows:

Thus in the circumstances of the case, the findings of the Enquiry Officer that 1st Party is guilty of unauthorized absence for the period from 14.01.2003 to 24.02.2003 is well founded and does not suffer from perversity.

7. Considering the issue with regard to proportionality of the punishment and finding that the absence of the workman from the duty was on account of his illness, Labour Court held that the punishment of dismissal from service is highly disproportionate and harsh to the misconduct of absenteeism for the period from 14.01.2003 to 24.02.2003. As a result, the reference was allowed in part and impugned punishment of dismissal from service was set aside and substituted punishment, as above was awarded.

8. Smt. Renuka, learned advocate for the management contended that the absence from the duty was from 14.01.2003 till the date of dismissal from the service i.e., on 21.04.2004 and thus, the workman had not joined to duty for a

period of 1 year 4 months and that the workman also had previous history of unauthorized absence and that the punishment imposed is not disproportionate to the misconduct of absenteeism for a period from 14.01.2003 to 21.04.2004. She submitted that the Labour Court has failed to decide the case in correct perspective by taking note of the fact that the workman did not report to duty even after the articles of charge dated 22.02.2003 was issued and served. She further submitted that the Labour Court has failed to take note of the fact that the fitness certificate produced by the workman was issued on 26.12.2003, which means, unauthorized absence was for the period from 14.01.2003 till 21.04.2004 and hence, the finding recorded by the Labour Court on the issue relating to disproportionality of the punishment warrants interference.

9. Sri L. Shekar, learned advocate for the workman, on the other hand contended that the workman had submitted a leave application accompanied by the medical records/certificates and on account of illness he could not join duty and in the circumstances, the finding recorded by the Labour Court that the absence of the workman from the duty was only on account of his illness is justified. He contended that denial of 50% of backwages and continuity of service is arbitrary. He submitted that the workman has been reinstated into service and hence, the management is not justified in seeking quashing of the impugned award.

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

Whether the Labour Court is justified in modifying the punishment imposed by the management and directing the withholding of two increments and payment of 50% backwages from 21.04.2004 till the date of reinstatement of the workman into service?

11. In para 3 of the claim statement filed by the workman, he has admitted that he could not report to duty from 14th January 2003 to 24th February 2003, on the ground that he was not keeping well. The articles of charge was issued on 24.02.2003 alleging that with effect from 14.01.2003 till the date of issuance of the articles of charge, the workman had remained unauthorizedly absent for duty. A domestic enquiry was conducted and a report dated 13.02.2004 was submitted, in which it was held that the management established the charge of misconduct of the workman. Since the workman contended before the Labour Court that the enquiry conducted against him was not legal and valid, issue No. 1 was raised with regard to the validity of the domestic enquiry conducted. Both the parties having adduced the evidence, upon consideration, issue No. 1 was answered in the affirmative vide order dated 02.05.2011. The workman has not taken any exception to the said order in W.P. No. 25199/2012. The Labour Court upon appreciation of the record has held that the finding of the enquiry officer that the workman is guilty of unauthorized absence from service from 14.01.2003 to 24.02.2003 is well founded and does not suffer from perversity. I do not find the said finding to be perverse or illegal, since the Labour Court upon appreciation of the evidence brought before it, has answered issue No. 2 to the

aforesaid effect.

12. The fitness certificate was allegedly issued to the workman on 26.12.2003, which means, he had not reported to duty even after the date of issuance of articles of charge dated 24.02.2003. Whether the workman reported to duty on 21.04.2003 or immediately thereafter, is a fact which ought to have been enquired into by the Labour Court itself. The Labour Court has recorded the finding that the dismissal of workman from service is highly disproportionate and harsh to the misconduct of absenteeism for duty for the period from 14.01.2003 to 24.02.2003, which makes clear, that the Labour Court has not found out whether the workman had absented for duty even after articles of charge dated 24.02.2003 was issued to him.

13. In the case of The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, the Apex Court has held as follows:-

32(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

Since there is no dispute that the workman had remained absent even after issuance of articles of charge on 24.02.2003, in spite of which, no enquiry was conducted before service of the workman was terminated, the onus to prove that the termination was justified, because of misconduct committed by the employee in remaining absent unauthorizedly even after issuance of articles of charge till 21.04.2004, the date of dismissal, is on the management. The Management should be permitted to adduce evidence that the workman is guilty of misconduct of remaining unauthorizedly absent for the period subsequent to the date of issuance of articles of charge dated 24.02.2003 and that action taken by it, i.e., dismissal of the workman from the service is proper, since the service of the workman was terminated on the ground of misconduct of remaining absent, even for the period subsequent to 24.02.2003, regarding which domestic enquiry was not held. Hence, it would be for the management to adduce evidence before the Labour Court to justify its action. It will be open to the workman also to adduce evidence in rebuttal. Therefore, the order/award passed by the Labour Court modifying the punishment warrants interference.

For the foregoing reasons, W.P. No. 17466/2012 filed by the management is allowed and W.P. No. 25199/2012 filed by the workman is dismissed.

The impugned order is quashed and the Labour Court is directed to permit the management to adduce evidence in proof of misconduct, if any of the workman for the period subsequent to 24.02.2003 and justify its action of dismissal of the workman from the service. The Labour Court shall grant opportunity to the workman to adduce rebuttal evidence on the said issue.

The finding of the Labour Court on preliminary issue No. 1 vide an order dated 02.05.2011 and the findings of the enquiry officer that the 1st party is guilty of the unauthorized absence for the period from 14.01.2003 to 24.02.2003 being well founded, does not suffer from perversity and hence, stands upheld.

The workman having been reinstated to duty pursuant to an interim order dated 13.07.2012 passed in W.P. No. 17466/2012 shall be continued till the date of passing of further order by the Labour Court.

The parties are directed to appear before the Labour Court on 17.06.2013 and receive further orders. The Labour Court is directed to decide the reference expeditiously and within a period of six months from the date of appearance of the parties.

No costs.