

(2015) 03 KAR CK 0067

In the Karnataka High Court

Case No : Writ Appeal No. 17172 of 2011 (L-KSRTC)

S. Basavaraju

APPELLANT

Vs

Bangalore Metropolitan Transport Corporation

RESPONDENT

Date of Decision : 06-03-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)(c), 11A

Citation : (2015) 03 KAR CK 0067

Hon'ble Judges : P.B. Bajanthri, J.;K.L. Manjunath, J.

Bench : Division Bench

Advocate : K. Srinivasa, for the Appellant; H.R. Renuka, Advocates for the Respondent

Final Decision : Dismissed

Judgement

P.B. Bajanthri, J.—This writ appeal is preferred by the appellant -workman as he is aggrieved of the order of the learned Single Judge dated 06.09.2011 passed in WP No. 20079/2010 (L-KSRTC), wherein the learned Single Judge has allowed the writ petition of the respondent -corporation, after quashing the impugned award dated: 26.02.2010 in reference No. 39/2006 of the III Additional Labour Court, Bangalore. Therefore, he prays to set-aside the order of the learned Single Judge and restore the relief granted under reference No. 39/2006 dated 26.02.2010 with consequential back benefits.

2. Heard learned counsel for the appellant Sri. K. Srinivasa as well as learned counsel Smt. H.R. Renuka for the respondent and perused the entire case status and considered the legal contentions with reference to the findings of the learned Single Judge and Presiding Officer of the Labour Court in the award in passing the following judgment.

3. Learned counsel for the appellant submitted that the Labour Court in exercise of its original jurisdiction under Section 11A of the Industrial Dispute Act (hereinafter referred to as "ID Act" for short) has come to the conclusion that

modifying the penalty of dismissal from service to that of reducing three increments with cumulative effect and further, it was ordered that the appellant is not entitled for back wages and consequential benefits. Aggrieved by the order of the Labour Court dated 26.02.2010, the respondent preferred writ petition No. 20079/2010, wherein the learned Single Judge allowed the petition while quashing the modification of penalty order and so also rejected the reference. The appellant aggrieved by the order of the learned Single Judge dated 06.09.2011 passed in writ petition No. 20079/2010 filed the present appeal.

4. The appellant joined service on 01.01.1990 as a conductor in the respondent organization. From 13.02.2002, the appellant remained absent. This was noticed by the Supervisor and submitted a report to the Depot Manager. In turn the Depot Manager has sent a call letter on 28.02.2002. Thereafter, on 02.04.2002, the Depot Manager submitted a report. Based on the said report, on 17.04.2002 article of charge was framed on the charge of unauthorized absence from 13.02.2002 onwards. The appellant failed to submit his reply to the article of charge. Thereafter, the Enquiry Officer was appointed to enquire into the article of charge of unauthorized absence against the appellant herein. The appellant failed to attend the enquiry. Thus, he has not cooperated in the enquiry. The enquiry proceedings were conducted after giving ample opportunity to the appellant. The Enquiry Officer held that the charge of unauthorized absence is proved. In pursuance of the Enquiry Officer's report, show cause notice was issued to the appellant on 16.02.2004 by forwarding the copy of the enquiry report. Even at this stage, the appellant failed to submit his reply both on the show cause notice as well as on Enquiry Officer's finding. The Disciplinary Authority proceeded to impose the penalty of dismissal from service and further it was ordered that the absent period from 13.02.2002 to 22.11.2002 as not on duty. The matter was referred under Section 10(1)(c) of the ID Act by the Government of Karnataka for adjudication before the III Additional Labour Court at Bangalore. The Labour Court examined the appellant and two witnesses from the Management, so also 17 documents which have been marked on behalf of the appellant -workman and 41 documents marked on behalf of the respondent. On 26.02.2010, Labour Court issued award, while modifying the order of dismissal to that of reducing three increments with cumulative effect and it was further ordered that the appellant is not entitled for back wages and consequential benefits.

5. The respondent aggrieved by the award of the Labour Court dated 26.02.2010, presented the writ petition No. 20079/2010 (S-K). On 06.09.2011 the aforesaid writ petition was allowed while rejecting the reference and also modification of dismissal to impose lesser punishment. The appellant aggrieved by the order of learned Single Judge contended that the learned Single Judge has failed to appreciate the documents and evidence that were placed before the Labour Court and so also in the writ petition filed by the appellant-workman in WP No. 22410/2010. It was further contended that finding of the Labour Court that the charge is proved against the appellant is totally contrary to the material

evidence. The learned Single Judge has not looked into material evidence made available in two writ petitions and the learned Single Judge has discussed only about the Labour Court exercising the powers conferred under Section 11A of the ID Act. The learned Single Judge referred to various judgments which are not applicable to the facts and circumstances of the case on hand. It was also contended that both the writ petitions should have been heard together.

6. Per contra, the learned counsel for the respondent submitted that there is no infirmity in the order of the learned Single Judge since the learned Single Judge has taken note of the unauthorized absence from 13.02.2002 to 23.11.2002 which was established in the enquiry, conduct of the appellant like remaining absent without prior permission or sanction of leave and that the appellant remained absent on 14 occasions in the past and was punished with minor punishment on all the occasions, as recorded in the past history sheet, did not reform the appellant. It was also taken note of that the appellant further remained absent. Therefore, the learned counsel for the respondent submitted that there is no error committed by the learned Single Judge in dismissing the writ petition of the appellant.

7. The appellant counsel in support of the appeal relied on number of decisions which are as follows:

"1. Order passed in WA No. 2979/2005 dated 16.12.2008

2. Order passed in WA No. 7075/2008 dated 07.07.2009

3. Order passed in WA No. 1273/2009 dated 19.11.2009

4. Order passed in WA No. 3293/2009 dated 16.12.2009

5. 2008 AIR SCW 3460 Nantic Lakum v. Central Bank of India

6. 2012 AIR SCW 1623, Krishnakanth B. Parmar v. UOI and Another

7. Civil Appeal No. 412/2015 D.D. On 14.01.2015"

8. Insofar as WA No. 2979/2005 is concerned matter relates to misappropriation of funds of the Corporation, WA No. 7075/2008 charge is relating to non issuance of tickets and collecting fare amounts, WA No. 1273/2009 relates to production of false transfer certificate by the workman, WA No. 3293/2009 relates to non issuance of tickets while collecting fare amount, reported decision 2008 AIR SCW 3460 relates to interpretation of Section 11A of the ID Act, reported decision 2012 AIR SCW 1623 relating to willful absence and Civil Appeal No. 412/2015 relates to production of fake transfer certificate. Hence, cited decisions are not relevant to the present case.

9. At the out set, it is to be noted that the appellant is an habitual absentee. As is evident from Annexure-B to the writ petition that for the period between 09.12.1994 to 13.01.2002, he remained unauthorized absence on 14 occasions which were examined and the appellant was punished with minor penalties like

withholding of annual increment which is an history sheet of unauthorized absence prior to 13.02.2002. From 13.02.2002, the appellant remained unauthorized absent and the same was reported and he was subjected to disciplinary proceedings which was ended in imposing the penalty of dismissal from service. It is to be noted that conduct of the appellant insofar as remaining absent from 13.02.2002 matter is concerned, he has failed to furnish his explanation and further he has failed to appear in the enquiry, failed to furnish his reply to the show cause notice. In other words, the appellant has not defended his absence from duty from 13.02.2002 and therefore, the petitioner has been rightly dismissed from the service. Even though earlier absence has taken note of which was not part of the article of charge. Still the charge relates to 11 months absence which is not short duration so as to condone the same.

10. Before the Labour Court, the appellant relied on copy of the leave letter, representation to extend the leave, death certificate and some orders relating to some other employees wherein minor punishment has been imposed. On the other hand, the respondent has relied on absent report, call letter, report of Depot Manager, history sheet and other documents. The Labour Court failed to appreciate the unauthorized absence for a period more than nine months is a serious misconduct. There were no genuine reasons for remaining absent. Therefore, the findings of the Labour Court in modifying the penalty of dismissal to that of withholding of three increments with cumulative effect by invoking Section 11A of the ID Act is incorrect. At this juncture, it is to be noted that due to the long absence of the appellant to the work resulted inconvenience to the respondent -organization and so also to the general public, since he was conductor to the public transport. Consequently, the order of the learned Single Judge is in order and there is no infirmity or error.

11. The decisions relied upon by the appellant are relating to misappropriation of fund, not issuing tickets by the workman, production of false transfer certificate, not issuing tickets and no enquiry has been held, invoking Section 11A of the ID Act, willful absence and production of fake transfer certificate. In all these cases, the charges are relating to misconduct committed by the workman which have been examined in an enquiry and resulted in imposition of penalty that has been taken into consideration. Whereas in the present case, the appellant has failed to prove that his unauthorized absence was not a willful absence. Moreover, the appellant is an habitual absentee as is evident from Annexure-B-history sheet of unauthorized absence of the appellant on 14 occasions prior to the present matter relating to absence from 13.02.2002 to 22.11.2002. Therefore, the decisions which are relied upon by the appellant are not relevant to the present case. Each case is required to be examined with reference to the alleged charge, since, the charge of unauthorized absence was a willful in the present matter as the appellant has failed to establish that his absence was not willful. That apart, the appellant on each and every occasion failed to give his explanation for his unauthorized absence. He had sufficient opportunity from the beginning when the recall letter was issued, show cause notice was issued, second show cause

notice was issued along with the Enquiry Officer's report. On all these occasions the appellant had opportunity to establish that his absence was not willful. Thus, in any view of the matter, the appellant has been dismissed from service is in order and the decision of the Labour Court is contrary to the evidence adduced in the enquiry. We find nothing wrong with the Judgment of the learned Single Judge. We fully endorse the reasons and conclusions in the judgment under appeal.

12. The appellant and the respondent are aggrieved by the award dated 26.02.2010 in Ref. No. 39/2006 of III Additional Labour Court, Bangalore in WP No. 20079/2010 (L-KSRTC) and WP No. 22410/2010 respectively. WP No. 20079/2010 of the appellant was allowed and WP No. 22410/2010 is still pending consideration. The present order in this writ appeal and finding and reasoning would not come in the way of deciding pending WP No. 22410/2010 on merits.

In the result the writ appeal fails and it is dismissed.