
(2015) 10 KAR CK 0096
In the Karnataka High Court
Case No : Writ Petition No. 100041/2015

Siddayya

APPELLANT

Vs

The Management of NWKRTC

RESPONDENT

Date of Decision : 28-10-2015

Acts Referred:

Citation : (2016) 1 AKR 37 : (2016) LabIC 685

Hon'ble Judges : R.S. Chauhan, J.

Bench : Single Bench

Advocate : M.H. Bhat and Ravi Hegde, Advocates, for the Appellant

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—Aggrieved by the award dated 18.12.2013 passed by the Labour Court, Hubli, whereby the learned Labour Court has dismissed the labour dispute under Section 10 (4-A) of the Industrial Disputes (Karnataka Amendment) Act, 1987 (for short "the Act") and has upheld the punishment of dismissal of petitioner, Mr. Siddayya Gurayya Hadagali, from service the petitioner has approached this court.

2. Briefly, the facts of the case are that, on 17.11.2003, the petitioner was appointed as a Conductor under the Management of North Western Karnataka Road Transport Corporation (for short "NWKRTC"). Subsequently, he was confirmed on the said post. However, he was unauthorisedly absent from duty from 10.10.2007 till 15.11.2007. Therefore, a charge sheet was served upon the petitioner. Despite being served with the charge sheet, he chose not to reply to the charge sheet. But he did participated in the enquiry.

3. According to the petitioner, he could not attend to his duties as he was suffering from backache and he took treatment in the District Hospital at Gadag. Furthermore, according to him, despite the fact that he had submitted his leave application along with the medical certificate issued by the Doctor, the same was not considered by the Management. After completing the departmental enquiry,

by order dated 16.11.2012, the petitioner was dismissed from service.

4. The petitioner raised a labour dispute under Section 10 (4-A) of the Act. He challenged the dismissal order dated 16.11.2012. However, by award dated 18.12.2013, the learned Labour Court has dismissed the labour dispute. Hence, this petition before this court.

5. Mr. M.H. Bhat, the learned counsel for petitioner, has vehemently contended that the punishment of dismissal from service is disproportionate to the absence of hardly 35 days. Secondly, since the petitioner had given cogent reasons for his absence, the punishment order is clearly unjustified. Thirdly, the learned Labour Court has considered the past conduct of the petitioner which was not part of the charges framed against the petitioner. Therefore, the impugned award deserves to be interfered with.

6. Heard the learned counsel for petitioner and perused the impugned award.

7. A bare perusal of the impugned award clearly reveals that the learned Labour Court has noticed the fact that the petitioner claimed that even during his absence he had applied for leave, and had also submitted a medical certificate clearly indicating the fact that he was admitted in the Hospital. However, neither the leave application, nor the medical certificate, so submitted by him, was ever produced before the Labour Court. It is only the medical certificate showing the fact that he is now fit to rejoin the duties which was submitted. Moreover, although the petitioner claims that he was hospitalised, he has failed to produce any medical prescription, or medical bill for having taken any treatment at a Hospital. Therefore, the learned Labour Court was of the opinion that the defense with regard to suffering from backache is merely an afterthought and does not deserve to be accepted. Thus, the learned counsel for petitioner is unjustified in claiming that the petitioner had given "cogent reasons" for his absence.

8. The learned Labour Court has also noticed the fact that in his cross-examination, the petitioner had admitted that during his tenure of service from 2003 till 2012 i.e., within a period of nine years, the petitioner had been absent unauthorisedly for twenty-five times. For each time, he had been inflicted with minor punishment by the respondent. Thus, the Labour Court was of the opinion that mere conduct of the petitioner clearly shows the sense of indiscipline.

9. The learned counsel for petitioner has vehemently contended that for a mere absence of thirty-five days, the punishment of dismissal should not have been imposed especially when the petitioner has given cogent reasons for his absence. However, as stated above, the petitioner had not established cogent reasons claimed by him through convincing and valid evidence.

10. Regulation 25 of the Karnataka State Road Transport Corporation Servants (Conduct & Discipline) Regulations, 1971 (for short "the Regulations 1971) is as under:

"25. Circumstances to be taken into consideration for imposition of penalties -

Without prejudice to the provisions of any law for the time being in force any Corporation Servant who is found guilty of any act or misconduct or misbehavior shall be liable to one or more of the penalties specified in Regulation 18 according to the gravity of the misconduct or misbehavior and also on his past record."

Therefore, under the said Regulation, the Corporation is entitled to look into the past record of an employee while deciding the penalty to be imposed upon him/her.

11. In the present case, the petitioner had been absent unauthorisedly for twenty-five times during his tenure of nine years of service. For all these absence, he had been imposed with minor penalties. Thus, under Regulation 25 of the Regulations, 1971, his past conduct could be considered while imposing a penalty upon him. Therefore, the learned counsel for petitioner is unjustified in claiming that the past conduct of the employee could not be considered. Seen from the point of view of the entire career of the petitioner, the punishment of dismissal is certainly not disproportionate to his repeated misconduct committed by him during the tenure of his service. Therefore, the contention raised by the learned counsel for petitioner that the punishment is shockingly disproportionate is unacceptable.

12. Moreover, employees cannot be permitted to be indisciplined in their behavior. If this case were seen in isolation, the contention of the learned counsel would sound impressive. But, the fact that the petitioner is in the habit of absenteeism, that too for twenty-five times within a short period of nine years, clearly shows his grave misconduct. The NWKRTC cannot be expected to work with an employee who abdicates his responsibility as a worker, and thereby causes hardship to the public at large. If such misconduct were to be condoned, it would play havoc with the functioning of the Corporation, and with the lives of the people at large. Considering the conduct of the petitioner, considering the fact that he has repeatedly broken the discipline of the service, the punishment order of dismissal cannot be said to be disproportionate by any stretch of imagination.

13. For the reasons stated above, this court does not find any illegality or perversity in the award dated 18.12.2013. Hence, this petition is devoid of merits. It is, hereby, dismissed.