

(2011) 06 KAR CK 0121

In the Karnataka High Court

Case No : Write Petition No's. 37323 to 37325 of 2010 and Write Petition No. 23423 of 2010

Smt. Padma and Others

APPELLANT

Vs

The Chief Traffic Manager, BMTC Central Office, Bangalore

RESPONDENT

Date of Decision : 10-06-2011

Acts Referred:

Constitution of India, 1950 — Article 14

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

Citation : (2011) 5 KarLJ 626

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : K. Srinivasa, M/s. STM Associates and Smt. H.R. Renuka, for the Appellant;

Final Decision : Allowed

Judgement

Ram Mohan Reddy, J.—W.P. Nos. 37323 to 37325 of 2010 is filed by the legal representatives of deceased Seenappachari, a driver in the respondent-Public Road Transport Corporation, calling in question the award dated 9-11-2009 of the III Additional Labor Court, Bangalore, in I.D. No. 47 of 2006 insofar as it relates to the substitution of the dismissal from service to withholding two annual increments with cumulative effect as a measure of punishment, without back wages and consequential benefits except continuity of service for pensionary/retirement benefits and not for other benefits like increments, promotion, etc. W.P. No. 23423 of 2010 is filed by the Road Transport Corporation aggrieved by the very same award.

2. With the consent of the learned Counsel for the parties, petitions are clubbed together, finally heard and are disposed of by this common order.

3. Material facts in a nutshell are:

Seenappachari, hereinafter referred to as workman, in the respondent-Road

Transport Corporation remained unauthorisedly absent from 20-1-2005 to 25-10-2005, whence disciplinary proceeding was initiated by issuing articles of charge, domestic enquiry held, after extending reasonable opportunity of hearing, followed by an enquiry report holding the charges proved. The Disciplinary Authority, on an independent assessment of the facts circumstances and evidence on record held the workman guilty of the charge of unauthorized absence and having regard to the past record whence he had remained unauthorisedly absent for 38 days, imposed the punishment of dismissal from service by order dated 21-6-2006.

4. The workman aggrieved by the said order filed a petition u/s 10(4-A) of the Industrial Disputes Act, 1947 (for short, "ID Act"), registered as I.D. No. 47 of 2006 before the Presiding Officer, III Additional Labor Court, Bangalore. Parties having placed their respective pleadings, the Labor Court framed issues, and the issue relating to the validity of the enquiry was treated as preliminary. The Road Transport Corporation examined one witness as M.W. 1 and marked 27 documents as Exs. M. 1 to M. 27, while the workman was examined as W.W. 1 and did not produce documents. The Labor Court by order dated 4-8-2008 answered the preliminary issue in the negative holding the domestic enquiry as not fair and proper. There afterwards, the Road Transport Corporation, examined two witnesses as M.Ws. 2 and 3. During the pendency of the proceeding the workman was reported to have died and his legal representatives permitted to come on record and pursue the proceedings as right to sue survived, whence the widow examined as W.W. 2, did not produce documents. Labor Court by the award impugned in great elaboration considered the material on record, declined to accept as credible evidence Exs. M. 8, M. 9, M. 10, M. 11 and M. 13 being the representations and the medical certificates submitted by the workman for sanction of leave on medical grounds, in the absence of prescriptions, medical bills and the evidence of the doctor, who treated the workman. The Labor Court having recorded a finding that the misconduct of unauthorized absence was proved, nevertheless observed that the punishment of dismissal was too harsh since this Court in several cases where in similar circumstances minor punishments were imposed for similar acts of misconduct, and therefore, concluded that the dismissal was shockingly disproportionate to the proved misconduct and accordingly, modifying the same to one of reinstatement by withholding two annual increments with cumulative effect, as a measure of punishment.

5. Learned Counsel for the legal representatives of the workman-petitioner points out to Exs. M. 8, M. 9, M. 10, M. 11 and M. 13 being the representations enclosing the certificates issued by the Primary Health Centre (PHC), Hiresave and K.C. General Hospital, Bangalore certifying that the deceased suffered from enteric fever and the period of absence from 31-1-2005 to 23-2-2005; 31-1-2005 to 21-3-2005; 24-3-2005 to 26-5-2005; 25-5-2005 to 20-7-2005 and 7-12-2005 to 15-12-2005 was absolutely necessary to restore his health to contend that there was justification for the absence of the workman from duty.

The workman, it is contended died at age 45, during the pendency of the proceeding before the Labor Court, coupled with the fact that in similar circumstances this Court having held that unauthorized absence was not a grave misconduct the Labor Courts finding that the dismissal was shockingly disproportionate and therefore modified the same, cannot be found fault with. According to the learned Counsel, Labor Court was not justified in denying back wages, continuity of service and consequential benefits, since the workman having died, the legal representatives would, in the least, be entitled to those monetary benefits.

6. Learned Counsel for the Road Transport Corporation-petitioner in the connected petition, contends that there being no dispute over absence from duty, burden was on the workman to establish justification for the absence and having not done so, Labor Court was correct in concluding that the absence was unauthorized. It is next contended that the workman having remained absent for 35 days from 11-11-2003 to 15-12-2004, in the past and thereafter for 332 days in the instant case, burden lay heavily upon the workman to place relevant material constituting substantial legal evidence that there was neither negligence nor lack of interest in discharge of duties. It is next contended that in the absence of circumstances for exercise of extraordinary jurisdiction u/s 11-A of the ID Act, the fact that similar such misconduct when treated leniently by this Court, did not call for interference with the order of punishment. Learned Counsel submits that equality is a positive concept and cannot be enforced in a negative manner. Benefits extended to some persons in an irregular manner cannot be claimed by others on a plea of equity. Wrong order or judgment passed in favour of one person would not entitle others to claim benefit. Even otherwise the facts in those cases are not forthcoming.

7. It is lastly contended that modifying the punishment of dismissal to withholding two increments and denying back wage and consequential benefits but continuity of service for pensionary/ retirement benefits is illegal and unsustainable.

8. Having heard the learned Counsel for the parties, perused the pleadings and examined the order impugned, the questions for decision making are:

(i) Whether in the facts and circumstances Labor Court was justified in recording a finding that the workman failed to establish absence due to medical treatment?

(ii) Whether the Labor Court was not justified in substituting the punishment by withholding two annual increments and denying monetary benefits as contended by the petitioner?

(iii) Whether the Labor Court was not justified in invoking the extraordinary jurisdiction u/s 11-A of the Act modifying the order of dismissal as indicated in the operative portion of the award as contended by the Road Transport Corporation?

Re: Point No. (i):

In the factual matrix the workman's absence from 20-1-2005 to 25-12-2005, was sought to be explained by producing medical certificates-Exs. M. 8 and M. 9 annexed to the letter-Ex. M. 7 and while Medical Certificate-Ex. M. 11 was annexed to the letter-Ex. M. 10 and two copies of medical certificates enclosed to the letter-Ex. M. 13:

(a) A bare perusal of Ex. M. 7-letter dated 21-3-2005 discloses that the deceased workman claimed to have been under medical treatment from the doctor at PHC, Hiresave for the period from 20-1-2005 to 30-1-2005 and 31-1-2005 to 23-2-2005 and thereafter upto 21-3-2005. Ex. M. 8 is the medical certificate dated 21-3-2005 discloses that the PHC centre at Hiresave certified that the deceased was under treatment for enteric fever from 20-1-2005 to 30-1-2005 and advised bed rest from 31-1-2005 to 21-3-2005 and fit to resume duty on 22-3-2005.

(b) Ex. M. 9-Medical Certificate is identical to Ex. M. 8, nevertheless was issued on 1-2-2005 certifying treatment for enteric fever from 20-1-2005 to 30-1-2005 and was advised rest from 31-1-2005 to 23-2-2005 and fit to resume duty from 24-2-2005.

(c) Ex. M. 10 is the letter dated 10-5-2005 of the workman stating that inspite receipt of the call notice on 23-3-2005 to report to duty, he could not do so due to the untimely death of his nephew who committed suicide and thereafter, fell ill due to viral fever/APD as certified by the doctor at K.C. General Hospital, in the certificate dated 25-4-2005 Ex. M. 11. In that certificate, it is stated that the workman was under treatment from 24-3-2005 to 26-4-2005 and was fit for duty on 27-4-2005.

(d) To Ex. M. 13 dated 15-12-2005 is enclosed two, copies of medical certificates, both dated nil, certifying that the workman was suffering from viral fever and his absence from duty for the period from 20-5-2005 to 20-7-2005 was necessary and was fit to resume duty from 21-7-2005. The other certificate discloses that the absence from duty from 7-12-2005 to 15-12-2005 was necessary to restore his health and was fit for duty from 16-12-2005.

9. Having perused the contents of the documents, there is overlapping of the period of absence in Exs. M. 8 and M. 9 whence the workman is said to be under treatment. In one certificate, it is stated that the workman was fit to resume duty on 24-2-2005, while in the other it is stated that he is fit to resume duty on 23-3-2005. From Ex. M. 9s what can be ascertained is that the workman was fit for duty on 24-3-2005 while the other two medical records disclose that he was fit for duty on 21-7-2005 and 16-12-2005. These medical certificates are not supported by prescriptions, bills or medical records maintained by the hospitals, much less the testimony of the doctors who treated the workman during the said period. In the backdrop of these the Labor Court having recorded a finding that the medical certificates were not credible evidence to establish absence due to

medical treatment cannot be found fault with.

10. Even otherwise the workman failed to establish a special knowledge that was known to him in the matter of alleged medical treatment at the PHC centers and the K.C. General Hospital. Mere production of certificates of the PHC Centre, and Photostat copies of certificates said to be issued by K.C. General Hospital, by them and nothing more do not constitute substantial legal evidence. Therefore, the Labor Court justifiably concluded that the certificates did not have evidentiary value.

The first point is answered in the affirmative.

Re: Point Nos. (ii) and (iii):

11. (a) A Division Bench of this Court, in the case of Divisional Controller NWKRTC Vs. Raghavendra Madhava Katti, , followed the observations of the Supreme Court in the case of M/s. Burn and Company Limited v Their Workmen and Others AIR 1959 SC 529 : 1959 I LLJ 450 (SC), holding that unauthorized absence is a grave misconduct and grave violation of discipline, greatly jeopardized the functioning of the establishment, more appropriately on employees of a Road Transport Corporation remaining absent. Having serious repercussions on the functioning of the Corporation and hindering of service to public for which the Corporation had been brought into existence under the Road Transport Corporation Act, 1951, required a treatment of such dereliction of duty with certain amount of seriousness. Their Lordships of the Division Bench further followed the observation of the Apex Court in the case of Kerala Solvent Extractions Ltd. Vs. A. Unnikrishnan and Another, deprecated the judicial tendencies to grant unwarranted reliefs by merely basing on misplaced sympathy, generosity and private benevolence.

(b) In Delhi Transport Corporation Vs. Sardar Singh, , the Apex Court having regard to absence from duties of employees, observed that the conduct of remaining absent, without obtaining leave in advance, is nothing but irresponsible in extreme and can hardly be justified. In addition it was observed that it is the burden of the workman that there was no negligence or lack of interest to establish it by placing relevant material.

(c) In L and T Komatsu Ltd. Vs. N. Udayakumar, , the Apex Court held long period of absence of 105 days and the past record of unauthorized absenteeism for 15 times, was habitual absenteeism amounting to gross violation of discipline.

(d) In Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc., (at page 141, para 20), the Apex Court held that discretion which can be exercised u/s 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the Court; the existence of any mitigating circumstances which requires reduction of sentence or past conduct of the workman which may persuade the Labor Court to reduce the punishment.

12. In the instant case, the Labor Court at paragraph 17 of the award, though holds that the past record of service of the workman disclosed 35 days of unauthorized absence, when he was visited with an order of censure, and that the misconduct of remaining unauthorisedly absent for 11 months and 4 days, which act of misconduct is proved, nevertheless, holds that the order of dismissal is shockingly disproportionate to the proved misconduct since this Court in W.P. No. 9157 of 2008, W.P. No. 16738 of 2004; W.A. No. 1104 of 2008 and W.P. No. 3475 of 2007, for similar acts of misconduct of unauthorized absence, held that extreme punishment was too harsh.

13. At para 18 of the award, it is held that unauthorized absence for 11 months and 4 days caused inconvenience to the Road Transport Corporation and therefore, withholding of two annual increments with cumulative effect as a measure of punishment would meet the ends of justice. In addition, it was observed that since the workman died during the pendency of the proceeding his legal representatives would be entitled to pensionary/retirement benefits.

14. The reasoning of the Labor Court supra is perverse for the following reasons.--

(a) that certain factors were not in existence so as to it does not fall within the parameters for exercise of discretion u/s 11-A as observed by the Apex Court in Mahindra and Mahindra and L and T Komatsu's cases;

(b) that remaining absent for a continuous period of eleven months and four days, which misconduct when proved coupled with the past record of unauthorized absence of 35 days visited with the punishment of censure, cannot but be grave indiscipline;

(c) That the Road Transport Corporation constituted for rendering public service to travelling public cannot put its administration in jeopardy due to the absence of its employees particularly drivers of the fleet of buses, disentitling the workman to any equitable relief as observed in the decisions supra;

(d) that the equity clause guaranteed under Article 14 of the Constitution of India is a positive concept and cannot be enforced in a negative manner. Benefits extended to some persons in an irregular manner cannot be claimed by another on a plea of equity, so also wrong order or judgment passed in favour of one person would not entitle others to claim benefit, as held by the Supreme Court in State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, and State of Uttaranchal Vs. Alok Sharma and Others, .

(e) Even otherwise the facts and circumstances of the cases in W.P. No. 9157 of 2008; W.P. No. 16736 of 2004; W.A. No. 1104 of 2008 and W.P. No. 3475 of 2007 are not forthcoming from the award impugned.

15. In the circumstances, the exercise of discretion u/s 11-A of ID Act by the Labor Court cannot but be held to be perverse.

Points (ii) and (iii) are answered accordingly.

In the result, W.P. Nos. 37323 to 37325 of 2010 of the workman rejected. W.P. No. 23423 of 2010 of the Road Transport Corporation is allowed. The award impugned insofar as it relates to exercise of discretion u/s 11-A of the Act by the Labor Court and modifying the punishment of dismissal are quashed and in all other respects remains unaltered.