
(2011) 10 KAR CK 0015
In the Karnataka High Court
Case No : Writ Petition 18969 of 2006 (S Ter)

S.N. Shekar

APPELLANT

Vs

Karnataka State Electronics Development Corporation Ltd.
(KEONICS) and Appellate Authority, 29/1, R C Road
Bangalore, Chairman and Managing Director Karnataka State
Electronics Development Corporation Ltd. (KEONICS) 29/1, R
C Road, Bangalore and Director (Operations) Karnataka State
Electronics Development Corporation Ltd. (KEONICS) and
Appellate Authority, 29/1, R C Road Bangalore

RESPONDENT

Date of Decision : 12-10-2011

Acts Referred:

Citation : (2011) 10 KAR CK 0015

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : Sri. V.S. Naik, for the Appellant; Sri. H.M. Muralidhar, for the Respondent

Final Decision : Allowed

Judgement

The Hon''ble Mr. Justice Huluvadi G. Ramesh

1. Petitioner has sought for quashing the order of dismissal dated 22.6.1998 - annexure J and also the order at annexure Y dated 18.8.2005 passed by the 1st respondent and also the order dated 21.9.2005 -annexure AI and for a direction to reinstate him to the original post with continuity of service and back wages.

2. Petitioner was appointed as an Engineer in the 1st respondent Corporation during 1984. Later, he was designated as Assistant Manager and was serving under the respondent in different departments. Alleging some in-discipline, i.e., shortage of items amounting to theft, fraud and dishonesty in discharging duties; negligence and dereliction of duties; financial loss to the Corporation due to willful negligence and, misconduct on the part of the petitioner, charge sheet cum show cause notice was issued on 4.8.1995 - annexure A, to which petitioner

gave a reply on 18.8.1995 requesting for furnishing certain documents. Once again he was called upon to give his explanation on or before 13.11.1995. Petitioner requested for reasonable time for giving explanation as he was in need of the documents for submitting his reply. Stating that no such documents were supplied to him, on 27.11.1995 he once again requested for furnishing of the documents. However, stating that there is delaying tactics, the Managing Director issued a notice on 30.12.1995 informing that inquiry would be held against him on 8.1.1996. Further, the order of dismissal at annexure J dated 22.6.1998 was served on him on 27.6.1998. As against the order of dismissal, he submitted a representation to the Board of Directors and the Appellate Authority on 17.8.1998 - annexure K. Petitioner was asked to furnish the details. Later, on his request to appear before the Board of Directors to put forth his case, he was served with the letter dated 21.8.1999 to appear before the Chairman on 24.8.1999. On that day, petitioner appeared. According to him, he apprised that he was not guilty of the charges with regard to the allegation of shortage of stock i.e., I TV set and also submitted there is no shortage in the stock of TV. But the same has been rejected. However, during November 1999, he suffered a heart ailment and took treatment. He also requested for the disposal of the appeal. It appears, he submitted a letter once again on 7.8.2000 and also sought for the Board's Sub-Committee finding which the Board itself has referred to in its order. The 3rd respondent passed an order on 30.10.2000 - annexure S. It appears it must be pursuant to the Sub-Committees recommendation to reinstate the petitioner in to service subject to certain conditions and penalties imposed therein. The said order was served on him on 8.11.2000. According to the petitioner, without prejudice to his liberty to question the Board's decision, he submitted duty report on 17.11.2000, and petitioner was directed to report for duty at Mysore as per the direction contained in annexure S. It is stated, on 22.11.2000, he met one Senior Manager there and when he submitted the duty report, the same was refused stating that there is no communication from the head office. As such, petitioner sent the duty report to Mysore Office as well as to the head office at Bangalore. As there was no response from the 1st respondent or from the Mysore office, he challenged annexure S by filing WP 29429/2000 which came to be disposed of on 8.6.2005 with an observation that the appeal preferred by the petitioner is yet to be decided by the appellate authority and also that the Technical Director has chosen to issue a corrigendum offer to the petitioner and with a direction to the appellate authority to consider the appeal on merits and pass orders. Thereafter, the appellate authority passed the order based on the proceedings of the Board on 18.8.2005 wherein once again, it was resolved to modify the order of dismissal and to reinstate the petitioner without payment of wages and without continuity of service. It is also stated, reinstatement was ordered on humanitarian grounds. The Board's decision was communicated to the petitioner. Petitioner submitted a letter on 2.9.2005 to the effect, except to the extent he is reinstated, he is not ready to accept the terms and conditions incorporated and ordered by the Board i.e., the Appellate authority and he be permitted to join duty. According to the petitioner, since the

appellate authority order was not acceptable to him and also since it was a conditional order, the dismissal of the petitioner by the 2nd respondent remain unaltered. According to the petitioner, he submitted the duty report under protest on 2.9.2005. It is stated, at the first instance he was asked to report for duty at Mysore and on 3.9.2005 when he went there, the Unit was closed as such, the order dated 21.9.2005 holding that the order of dismissal passed by the Company remain unaltered and denying the allegation that he did not report for duty, he also submitted a representation on 10.10.2005 stating that he is ready and willing to report for duty at Mysore. Despite receiving the letter sent by the petitioner, there was no response from the respondent. As such petitioner has moved this Court on various grounds, for the above relief. In support of his contentions, petitioner's counsel has relied upon the decision in the case of J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another, .

3. In the statement of objections filed on behalf of the respondent, the averments made in the petition are denied and it is stated, petitioner was dismissed from the service of the company by the Director on the proved charge of misconduct. The appellate authority considered the appeal and modified the order of the disciplinary authority and called upon the petitioner to report for duty. The said order was received by the petitioner on 23.8.2005. But, he did not report for duty. The order of dismissal passed by the disciplinary authority was restored and communicated to the petitioner on 10.10.2005. The conduct of the petitioner shows that he was not interested to work in the company. The charges were proved against him. Solely with an intention to afford him an opportunity to correct himself, he was offered reinstatement however, by imposing conditions with punishment and in the alternative of dismissal. It is also stated, petitioner did not report for duty either at Mysore and rather, he tried to avoid reporting at Mysore. As such, it is clear that there is no desire to work. In stead, he has chosen to prolong the matter. In the Board meeting on 18.8.2005, it was resolved to modify the order of dismissal by directing reinstatement of the petitioner without back wages and without continuity of service and all other applicable allowances. Despite petitioner was given liberty to communicate his acceptance or else, the order of the disciplinary authority would be in force, he submitted a letter dated 2.9.2005 stating, except the relief of reinstatement, he does not accept the other terms and conditions incorporated in the order of the appellate authority. Further it is stated, neither the petitioner reported for duty nor approached the Corporation but, he chose to file writ petition before this Court even though he was advised to report for duty without further delay. Petitioner himself has invited the situation in not reporting for duty. It is also stated, in the meeting held on 22.1.2000 by the Board of Directors of the Company it was noted that there was shortage of one TV set as such, petitioner is guilty and having found the petitioner guilty, the Corporation took action to reinstate the petitioner as Assistant Manager without payment of back wages and without continuity of service and, it was also resolved not to sanction one yearly increment and also to recover the value of one TV set which fell short. Thus,

according to the respondents, based on the resolution in the meeting held on 17.8.2005, once again as per the decision of the appellate authority, the order of dismissal was modified to provide an opportunity to the petitioner to report for duty without continuity of service and without back wages and asking him to pay the value of one TV set. That he has refused, as such, the order of dismissal dated 25.9.1997 has been confirmed by the disciplinary authority as per the decision of the appellate authority on 21.9.2005. Accordingly, it is submitted there is no illegality in the order.

4. Heard the counsel representing the parties.

5. It is seen, after inquiry being held based on the charges levelled against him i.e., four charges, based on the charge sheet, the inquiry authority has held the petitioner guilty of the offence as against which, petitioner has appealed to the Board. On the request of the petitioner, matter was referred to the Sub-Committee. Sub-Committee has given a report. In that, it is noticed, charges were not proved. However, the appellate authority - Board considered the order of punishment imposed by the Director viz., Director of Operations/3rd respondent and reviewed the decision based on the decision taken in the Board meeting held by the respondent wherein petitioner was asked to report for duty by way of reinstatement at Mysore Unit at the first instance and thereafter to report for duty with certain punishments. Petitioner was not agreeable to report conditionally, in the context, according to the petitioner he is entitled for reinstatement with full back wages and with continuity of service and that there is no fault on his part and even it is the decision of the Sub-Committee appointed, however, order of dismissal is enforced on him. According to the respondent, opportunity was given to the petitioner for reinstatement. Sub-Committee is only entitled to review the order of the inquiry authority. In that process, it has made recommendation and its recommendation is not final. Ultimately the Board, in its meeting held, has taken a decision and has come to the conclusion that there is shortage of one TV set. Even in the letter advanced on 14.3.2002, petitioner has agreed that he will not claim annual increment and undertook to be reinstated with continuity of service and also submitted he was agreeable to remit the value of the TV i.e., Rs. 10,900/- In that fact situation, when an order has been passed by the disciplinary authority by the appellate Board after reviewing the order passed by the Director/3rd respondent, petitioner has refused to report for duty with conditions, though he agreed for recovery of amount towards shortage of one TV set and there is no illegality in the decision taken by the Board.

6. What is being noticed is, petitioner at the first, instance, was found guilty by the inquiry authority and thereafter, at the request of the petitioner when the matter was referred to the Sub-Committee, the Sub-Committee has observed that there are some anomalies and it may need fresh inquiry. However, the Sub-Committee's decision appears to be only in the form of recommendation to the Board and it is not a decision making authority. What is being pointed out is,

there is shortage of one TV set for which the petitioner is responsible. When the petitioner was asked to report for duty even as per his own request on 14.3.2002, he has not obliged as such, the order of dismissal came to be passed.

7. In view of the finding of the Sub-Committee that the petitioner was not found to be guilty of most of the charges except for missing of one TV set towards the cost of which the petitioner himself has agreed to reimburse, petitioner is guilty to that extent. Might be the opinion of the Sub-Committee is only in reviewing the order of the Inquiry Authority. In that fact situation, though the petitioner is entitled for reinstatement, having regard to the nature of the misconduct alleged - shortage at one TV set, what is to be noted is, he by his own conduct, remained un attended to duty. He could have very well reported for duty and there was no impediment for him to challenge the very order. In the circumstances, on the principle of no pay for no work, though petitioner would not be entitled for full back wages however, from the date of dismissal till he is reinstated he is entitled for 25% back wages, without consequential benefits.

8. In modification of the order of the appellate authority i.e., Board's decision setting, it is hereby ordered that the order of dismissal is set aside. Petitioner be reinstated to his original post with continuity of service. The order of the Board imposing penalty of withholding one increment is affirmed and so also the order to recover the value of one TV set. Petitioner is entitled for 25% back wages from the date of dismissal till reinstatement. Petition is allowed in part.