

(2008) 09 KAR CK 0007
In the Karnataka High Court
Case No : Writ Appeal No. 857 of 2008

Sri. A.S. Anandrayan Samuel

APPELLANT

Vs

Deena Bank

RESPONDENT

Date of Decision : 05-09-2008

Acts Referred:

Citation : (2009) 121 FLR 693 : (2009) 3 KarLJ 601 : (2009) 1 KCCR 545

Hon'ble Judges : P.D. Dinakaran, C.J.; Mohan Shantanagoudar, J

Bench : Division Bench

Advocate : A.T. Srinivas, for the Appellant;

Final Decision : Dismissed

Judgement

P.D. Dinakaran, C.J.—This is an appeal preferred by the workman-respondent in the writ petition, challenging the order passed by the learned Single Judge dated 11.02.2008 passed in W.P. No. 17962/2005 (L-TER)).

2. The brief facts of the case giving rise to the present appeal are that:

2.1) Based on the proved charge of unauthorised absence from service for 32 days in 1980, 84 days in 1990-91, 608 days in 1992-93 and 601 days in 1994-96, the workman-appellant herein was dismissed from duty with effect from 15.05.1996 treating it as "Voluntarily retired". At the request of the employee, the Government of India, referred the dispute to the Central Government Industrial Tribunal-cum Labour Court (hereinafter referred to as Tribunal" for short) for adjudication through reference No. L-12012/ 11/98/ 1R(B-II) dated 03.11.1998. During the trial, both the workman and the management have adduced oral and documentary evidence before the Tribunal.

2.2) The Tribunal, after appreciating the oral and documentary adduced by the parties, treated the period of unauthorised absence of the workman from 31.12.1994 as "not on duty" and directed the management-respondent herein to reinstate the appellant-workman into service with 50% back wages from

01.11.1998 till the date of reinstatement. Challenging the said award, the management-bank preferred writ petition.

2.3) The learned Single Judge, by the impugned order, allowed the writ petition and thereby set aside the award passed by the Tribunal and confirmed the order of dismissal of the workman passed by the Disciplinary Authority. Challenging the said order, present writ appeal is preferred by the appellant-workman.

3. We have heard the learned Counsel on both sides and perused the records.

4. On careful scrutiny of the records it is seen that the appellant-workman has remained absent from service for a long duration viz., 32 days in 1980, 84 days in 1990-91, 608 days in 1992-93 and 601 days in 1994-96 (more than three years) without making any application for leave on medical ground or on any other ground. Added to this, as admitted by the appellant himself, his transfer to Delhi was as per his request. When his transfer was a request transfer, there was no reason for the workman-appellant herein to remain absent from duty and nothing prevented him from making leave application along with medical certificate, if really he had fallen ill. On the contrary, the workman has neither made any attempt to seek leave nor has submitted an application seeking leave along with medical certificate. The Apex Court, in the matter of un-authorized absenteeism, time and again has held that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court., in the sense that it was in defiance of logic or moral standards. The scope of judicial review is limited to the deficiency in the decision-making process and not the decision. To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed, as held by the Apex Court in the case of Union of India (UOI) and Another Vs. K.G. Soni, .

5. In the instant case, as noted supra, the appellant workman has remained absent unauthorisedly from duty for a long period of 1325 days (more than three years) without any valid reasons and without submitting leave application along with medical certificate. In view of the above discussion, we are of the considered view that the Tribunal is not justified in modifying the punishment imposed on the workman-appellant herein for the proved charges of misconduct. Taking into consideration all these factors into account, the learned Single Judge has passed the well-reasoned order and rightly set aside the award passed by the Tribunal. On reappraisal of the material on record, we do not find any good reason to interfere with such well reasoned order and consequently, the writ appeal is liable to be dismissed.

6. Accordingly, writ appeal is dismissed.