
(2016) 02 KAR CK 0170

In the Karnataka High Court

Case No : Writ Petition No. 13142/2012 (L-TER)

Sri Jayachamarajendra Art Gallery Trust

APPELLANT

Vs

H. Hanumantha and Others

RESPONDENT

Date of Decision : 15-02-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 11-A

Citation : (2016) 02 KAR CK 0170

Hon'ble Judges : A.S. Bopanna, J.

Bench : Single Bench

**Advocate : Somashekar, Advocate for S.N. Murthy Assts., for the Appellant;
M.C. Pyati, Advocate, for the Respondent**

Final Decision : Disposed off

Judgement

A.S. Bopanna, J.—1. The petitioner is before this Court assailing the award dated 08.11.2010 passed in Ref. No. 193/1998. By the said award, the Labour Court has modified the dismissal order of punishment imposed by the petitioner-management and granted reinstatement. During the pendency of the petition, the respondent-workman has expired and his L.Rs. are on record.

2. The deceased workman was employed in the petitioner-management as Attender. The petitioner had dismissed the workman from the services by its memo dated 03.04.1995 on the ground that the workman had remained unauthorisedly absent for a period of 60 days. The workman claiming to be aggrieved by the same had raised a dispute and the matter had been referred to the Labour Court, Mysuru in Ref. No. 193/1998. The parties had tendered their evidence. Based on the evidence that was available, the Labour Court, though accepted the contention that the charge alleged against the workman of having remained unauthorisedly absent for 60 days was proved, was of the opinion that the punishment of dismissal was not justified and in that light, on directing reinstatement, modified the order of punishment to withholding of three annual increments with cumulative effect. While granting reinstatement, 40% of the

backwages was also ordered.

3. Learned counsel for the petitioner while assailing the award would point out that the Labour Court was not justified in its conclusion inasmuch as the workman had indulged in similar misconducts wherein the lighter punishment which had been imposed at the earlier instance had not reformed him and had continued to remain unauthorisedly absent. In the present instance the absence was for 60 days and the Labour Court ought to have kept in view the gravity of the present misconduct and should have upheld the punishment. Learned counsel while seeking to contend that the past record cannot be ignored and the nature of the misconduct is required to be kept in view, has relied on the decision of two Division Benches of this Court in the case of Karnataka State Road Transport Corporation v. A. Ramanna (, 2001-II-LLJ 1212) and in the case of The Management of M/s. Vikrant Tyres Ltd. v. Sri T. Venkatesh in W.A. No. 2829/2009 dated 04.06.2013. The decision of the Hon"ble Supreme Court in the case of Delhi Transport Corporation v. Sardar Singh (, 2004-III-LLJ-543) was also relied upon.

4. Learned counsel for the respondent-workman would however seek to sustain the award passed by the Labour Court. It is contended that the Labour Court has also referred to the decisions which had been cited before it and in that light, taking note of the nature of misconduct that had been alleged has thereafter arrived at the conclusion that the punishment as imposed was not justified. Even with regard to the manner in which the relief has been moulded, the learned counsel would point out that the Labour Court has taken note of the legal position and has arrived at such conclusion. Therefore, the award does not call for interference is the contention.

5. In the light of the same, insofar as the charge that had been alleged against the workman of remaining unauthorisedly absent for 60 days, after referring to the evidence that was available on record, the Labour Court has also taken into consideration the number of days the workman had remained absent and as such insofar as the charge, the Labour Court has held that he had remained unauthorisedly absent. Though the charge had been proved, the Labour Court while moulding the relief has taken into consideration that the punishment of dismissal would be harsh and will not be justified. No doubt, the Labour Court while arriving at its conclusion has brushed aside the earlier punishment and to that extent, the decision as relied on by the learned counsel for the petitioner would indicate that such consideration of the Labour Court would not be justified.

6. Even if that the position, the issue for consideration herein is as to whether the discretion available to the Labour Court under Section 11-A of the I.D. Act has been exercised appropriately. Therefore, in a case of unauthorized absence, even if on the earlier occasions some lighter punishment had been imposed, it is not as if in the present circumstance the dismissal alone was the appropriate punishment to be imposed. Therefore, insofar as the Labour Court arriving at the conclusion that the dismissal is to be set aside and the reinstatement is to be

granted, I see no error committed by the Labour Court. I am of the said opinion, more so in a circumstance that the Labour Court while taking into consideration this aspect of the matter had also thought it fit to impose the modified punishment of withholding of three annual increments.

7. Even if that be the position, the issue is as to whether the grant of 40% backwages would be justified. As noticed, the charge of unauthorized absence has been proved. Further the fact that the workman had also committed the similar misconducts earlier cannot be in dispute. If that be the position, the grant of backwages also in a circumstance of the present nature would be of providing premium on the misconduct. Therefore, to the extent of grant of backwages, the Labour Court was not justified.

8. Further one another aspect which also to be taken into consideration while arriving at such conclusion is that during the pendency of this petition, the workman has expired, though he had been reinstated pending disposal of this petition with effect from 01.09.2012. Since he has subsequently expired on 12.09.2013, the reinstatement in actual terms as a final relief would not be available at this juncture. Further since I have arrived at the conclusion that the grant of backwages would not be justified in a circumstance of the present nature, the implementation of the alternative punishment of withholding of three annual increments would also not be appropriate since the respondents who are the L.Rs. of the deceased workman would only be entitled to the monetary benefits due to the death of the employee.

9. Therefore, keeping these aspects in view and taking an overall view of the matter, the award of the Labour Court is modified. The relief of reinstatement is upheld, but without backwages. However, the continuity of service shall be granted and the wage of the workman shall be fixed by taking the increments in notional terms and the amount payable in terms of the work rendered from the date of reinstatement shall be paid. Further on taking note of the continuity of service and the manner of fixation as ordered, the terminal benefits shall also be calculated and paid to the respondents herein. The amount shall be paid as expeditiously as possible, but not later than eight weeks from the date of receipt of a copy of this order.

With the said directions, the petition stands disposed of.