
(2013) 01 KAR CK 0197

In the Karnataka High Court

Case No : Writ Petition No. 9804 of 2007 (L-KSRTC) and W.P. No. 18671 of 2006 (L-KSRTC)

T. Bhagwan

APPELLANT

Vs

Managing Director

RESPONDENT

Date of Decision : 29-01-2013

Acts Referred:

Industrial Disputes Act, 1947 — Section 10-4A

Citation : (2013) 137 FLR 873 : (2013) LLR 593

Hon'ble Judges : Ravi Malimath, J

Bench : Single Bench

Advocate : Lakshman Rao, for the Appellant; H.R. Renuka, for the Respondent

Judgement

Ravi Malimath, J.—The case of the workman is that he was a badli driver appointed in the year 1982. He was subsequently made a permanent employee. He has rendered 20 years of service. He applied for leave on 19.11.1999. Thereafter he was issued with a call letter dated 29.11.1998. No response was forthcoming. The articles of charges were issued on 1.1.2000. There was no reply to the same. He was subjected to a domestic enquiry and the charges levelled against him are said to be proved. During the course of the enquiry he submitted a defence statement stating that he has remained absent from 19.11.1999 to 29.1.2002 due to illness. The Corporation issued him a show cause notice calling upon him to show cause as to why the past misconduct should not be taken into consideration. The disciplinary authority having considered the long absence of the workman dismissed him from service. Consequently he raised an industrial dispute before the Labour Court u/s 10-4A of the Industrial Disputes Act. The Labour Court by the impugned order set aside the order of termination and directed reinstatement into service with continuity of service but without back-wages. Aggrieved by the denial of back-wages, the workman has filed WP 9804/2007 and the Corporation has filed WP 18671 of 2006 questioning the order of the Labour Court directing reinstatement. Heard learned counsels and examined the records.

2. The contention of the workman is that the charge-sheet was dated 1.1.2000. The unauthorized absence is from 19.11.1999 onwards. Therefore there could not be any enquiry so far as period beyond 1.1.2000 is concerned. However, the learned (sic counsel) appearing for the Corporation relies on the statement made by the workman before the enquiry officer wherein the workman has stated that he was unauthorisedly absent from 19.11.1999 to 29.1.2002. It is his statement. It is his case. It is his plea. Therefore to now contend that the proceedings could not be initiated beyond the date on which the article of charges was issued is unacceptable. Even otherwise if the case of the workman is to be accepted he would still have to satisfy with regard to the unauthorised absence at least from 19.11.1999 to 1.1.2000. The entire case of the workman is based on Ex. 12, the certificate is dated 20th May, 2000. It is the medical certificate which has been produced along with Ex. M-12, namely, the medical certificate issued by one Dr. N.S. Anandappa who certifies that the workman was suffering from Lumbago Sciatica with Kochi Abdomen Chronic Recurrent Gastritis. He states that the period of absence from duty from 19.11.1999 to 20.5.2000 is absolutely necessary for the restoration of his health. He further states that "he was under treatment on OPD basis and at other Institutions also. "It is therefore contended by the workman that it is a document that should satisfy with regard to the unauthorized absence that he was suffering from the illness as stated therein, I have considered the document in detail. Firstly what has been stated therein is that he was suffering from Lumbago Sciatica.

3. Even though he sought for leave the Corporation did not grant him the same. A report was sent stating that he has remained unauthorisedly absent from 19.11.1999. Thereafter he reported for duty along with the medical certificate. He was not allowed to work. The learned counsel appearing for the workman is not in a position to state as to what is the nature of disability that prevented him from attending to his duties. Secondly, the dates on which the absence is noted is between 19.11.1999 to 20.5.2000. It is also been stated that he was under OPD treatment and he has taken treatment at other Institutions also. He has not produced the documents of other institutions nor any other document in order to substantiate the medical certificate. Therefore, merely placing reliance on this one certificate is doubtful. It cannot be of any assistance to the workman. No Doctor would issue a certificate to the extent that he has been disabled from a particular day to a particular date. There is no reference as to when the workman was examined by the Doctor. There is no material to show what is the medication given to the workman. There is no material to show how he was treated. There is no material as to on what basis he was treated. Under these circumstances merely relying on the said certificate, specially for the period it is claimed, between 19.11.1999 and 20.5.2000 cannot be accepted. It is a document that has been got up. Hence, the case of the workman based on this document cannot be accepted. Yet another certificate has been relied on for the very same purpose by the very same doctor under the very same material by changing the dates. He has stated that he was absent from duty from 19.11.1999 to

20.5.2000, 21.5.2000 to 22.11.2000 and the next document from 23.11.2000 to 22.2.2001 and 23.5.2001 to 22.11.2001. All these documents are identical documents. Except these documents there is no other material. What is the disability he has sustained, what medicine he has taken is not forthcoming. Under these circumstances the Labour Court fell in error in wrongly appreciating the material on record. Under these circumstances, the finding of the Labour Court is perverse and liable to be interfered with. Even otherwise the plea of the workman himself was that he was unauthorisedly absent from 19.11.1999 to 29.1.2002 namely, for a period of almost 2 years 2 months.

During the pendency of these proceedings it was contended that the conduct of the workman has been less than satisfactory. That he has absented himself on a number of dates. An affidavit has been filed on 11.4.2001 along with the copy of the attendance Register which shows the attendance particulars of the workman. He remained unauthorisedly absent from 29.6.2009 to 16.3.2009. There is no reply to the said affidavit or to the copy of the attendance particulars, even though the same was filed as far as back as in April, 2011. However, today also a memo along with the letter 29.1.2013 has been filed in the court stating that he has remained unauthorisedly absent from 29.6.2009 till date. The petitioner has been noted as absent from 29.6.2009 till the date in the copy of the attendance which was filed along with the affidavit in April, 2011, itself. Even now no submissions are forthcoming.

Under these circumstances, Tarn of the considered view that the order of the Labour Court is perverse. It has totally misread the evidence on record. It has failed to consider the case in its proper perspective. The order of the Tribunal therefore requires to be set aside. Under these circumstances, reinstating him or granting any relief would be miscarriage of justice. Hence, I pass the following order.

Writ Petition No. 9804/2007 is dismissed as being bereft of any merit. W.P. No. 18671/2006 is allowed. The order dated 26.5.2006 passed in I.D. No. 58/2002 by the III Additional Labour Court, Bangalore, is set aside. The order of dismissal dated 20.4.2002 stands restored. Ordered accordingly.