

(2016) 03 KAR CK 0313

In the Karnataka High Court

Case No : Writ Petition No. 42691 OF 2012 (L-KSRTC)

The Chief Traffic Manager BMTC

APPELLANT

Vs

Mohanlal Rathod

RESPONDENT

Date of Decision : 23-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 227
Industrial Disputes Act, 1947 — Section 10, Section 10(4A), Section 31, Section 31(1), Section 31(1), Section 33, Section 33(2)(b), Section 33(C)(2), Section 33A, Section 33-A, Section 33

Citation : (2016) 03 KAR CK 0313

Hon'ble Judges : B. Veerappa, J.

Bench : Single Bench

Advocate : B.L. Sanjeev, Advocate, for the Appellant;

Final Decision : Dismissed

Judgement

B. Veerappa, J.—1. The management filed the above writ petition against the order dated 01.03.2012 made in I.D. No. 26/2010 on the file of the Presiding Officer, III Additional Labour Court, Bangalore setting aside the dismissal order dated 12.04.2010 passed by the management and directed the management to reinstate the workman into service within one month from the date on which the award becomes enforceable and relief sought in respect of backwages, continuity of service and all other consequential benefits stands rejected.

2. It is the case of the respondent before the Labour Court that he was working as trainee driver cum conductor in the establishment of petitioner-Corporation. When the respondent on 26.04.2008 was conducting the bus bearing No. 1475, playing on the route No. 373M/4, from Athibele to Banashankari, the Checking Officials intercept the bus at Banashankari and during the course of the check it was found that the respondent had excess cash of Rs. 400/- in his bag. The checking officials made remarks in the way bill and issued offence to the respondent. Thereafter, the checking officials submitted the detailed report to the

Disciplinary Authority.

3. On the basis of the report submitted by the checking officials, the Disciplinary Authority issued articles of charges to the respondent. The respondent submitted reply and denied the charges. Thereafter, Enquiry Officer was appointed and the enquiry officer after giving notice and opportunity to the respondent submitted report to the Disciplinary Authority. The Disciplinary Authority issued second show-cause notice and after hearing, by an order dated 12.04.2010 dismissed the respondent from service vide Annexure-C.

4. Being aggrieved by the said dismissal order passed by the Disciplinary Authority, the respondent raised industrial dispute under Section 10(4A) of the Industrial Dispute Act before the Labour Court. The Labour Court considering the entire material on record passed the impugned order dated 01.03.2012 setting aside the dismissal order directing the petitioner - Corporation to reinstate the respondent into service within one month from the date on which the award becomes enforceable. Relief of backwages, continuity of service and all other consequential benefits stand rejected. Hence, present petition is filed by the Corporation.

5. The respondent has not challenged the impugned order passed by the Labour Court with regard to rejecting the relief of backwages, continuity of service and all other consequential benefits.

6. Respondent served and unrepresented.

7. I have heard the learned counsel for the petitioner.

8. Sri B.L. Sanjeev, learned counsel for the petitioner contended that the Labour Court erred in passing the impugned order. After taking into consideration the report of the Enquiry Officer, the disciplinary authority had come to the conclusion that the charges leveled against the respondent has been proved in the domestic enquiry and therefore Labour Court ought not to have interfered in the impugned order passed by the Disciplinary Authority. He also contended that the Labour Court erred in negating the punishment imposed by the Disciplinary Authority despite holding that the enquiry is fair and proper. He further contended that the Labour Court set aside the dismissal order passed by the petitioner - Corporation only on the ground that the dismissal order passed by the authority is in violation of Section 33(2)(b) of the I.D. Act. The dispute raised by the federation pertains to wage revision, for providing facilities such as canteen, education fund, LTC and other benefits. The same is not applicable to the facts and circumstances of the present case. Therefore, he sought to set aside the order passed by the Labour Court.

9. I have given my anxious consideration to the arguments advanced by the learned counsel for the petitioner and perused the entire materials on record.

10. It is not in dispute that the respondent is working as trainee driver cum conductor in the establishment of petitioner - Corporation and on 26.04.2008,

when he was conducting the bus bearing No. 1475, playing on the route No. 373M/4 from Athibele to Banashankari, the checking officials intercepted the bus at Banashankari and found that respondent has excess cash of Rs. 400/- in his bag. Thereafter, enquiry was conducted and the Disciplinary Authority dismissed the respondent from service. It is also not in dispute that the Disciplinary Authority passed the order dated 12.04.2010, when I.D. No. 148/2005 was pending adjudication on the file of Industrial Tribunal, Bangalore involving KSRTC Staff and Workers Federation and its allied workers union on the one hand and the management of KSRTC on the other hand and admittedly the management has not obtained any approval as contemplated under the provisions of Section 33(2)(b) of Industrial Disputes Act, 1947.

11. While, considering the said provision, the Hon''ble Supreme Court in the case of JAIPUR ZILLA SAHAKARI BHOOMI VIKAS BANK LTD., AND RAM GOPAL SHARMA AND OTHERS - , (2002) ILLJ 834 held that the management dismissed the workman from service without following the procedure prescribed under Section 33(2)(b) is non est, which reads as under:

"12. The facts of the said case are the workman was dismissed from service holding him guilty after inquiry by an order dated December 23, 1974. Since an industrial dispute was pending at that time, in view of the provisions contained in Section 33(2)(b), the employer approached the Industrial Tribunal at Chandigarh before which the industrial dispute was pending for approval of the action taken. However, that application was dismissed as withdrawn on September 4, 1976. Then the workman demanded full wages from the employer from the date of his suspension till the date of demand contending that the action of the employer dismissing him from service was not approved by the Tribunal; he continued to be in service and was entitled to all the emoluments. Since the employer did not respond, he made an application to the labour Court under Section 33-C(2) for determination and payment of the amount of wages due to him. The employer resisted the said application inter alia on the ground that the application under Section 33(2)(b) having been withdrawn, the effect of which was as if no application had been made at all; even though there was contravention of Section 33(2)(b) in not making an application seeking approval, it did not render the order of dismissal void ab initio and it was merely illegal and unless it is set aside in an appropriate proceeding taken by the employee under Section 33-A or in a reference under Section 10, the Labour Court had no jurisdiction under Section 33-C(2) to direct payment of wages to the first respondent on the basis as if he continued in service. The Labour Court rejected this contention and allowed the application of the workman filed under section 33-C(2). This Court, allowing the appeals by special leave, held that the employer contravened Section 33(2)(b) in dismissing the workman but such contravention did not have he effect of rendering the order of dismissal void or inoperative and hence the workman was not entitled to maintain the application under Section 33-C(2). However, the amounts ordered to be paid by the Labour Court were treated as compensation instead of wages to meet the demands of social justice. The

reasons recorded in taking such a view are; (i) Section 33 in both its limbs undoubtedly uses mandatory language and Section 31(1) makes it penal for the employer to commit a breach of the provisions of Section 33 and therefore, if Section 33 stood alone, it might lend itself to the construction that any action by way of discharge or dismissal taken against workman would be void if it is in contravention of Section 33. But Section 33 cannot be read in isolation, for the intention of the Legislature has to be gathered not from the one provision but from the whole of the statute. If Sections 33 and 33-A are read together, it is clear that legislative intent shall not invalidate an order of discharge or dismissal passed in contravention of Section 33 despite the mandatory language implied in the section and the penal provision enacted in Section 31(1). (ii) The mere contravention of Section 33 by the employer will not entitle the workman to an order of reinstatement because inquiry under Section 33-A is not confined only to the determination as to the contravention of Section 33, but even if such contravention is proved, the Tribunal has to go further and deal also with the merits of the order of discharge or dismissal. (iii) If the contravention of Section 33 were construed as having invalidating effect of the order of discharge or dismissal, Section 33A would be rendered meaningless and futile, because in that event the workman would invariably prefer to make an application straightaway under Section 33(C)(2) even before adjudication whether the order of discharge or dismissal is void and inoperative. (iv) The contention of the workman that in the absence of approval for action taken under Section 33(2)(b), the order of dismissal was inoperative, was rejected on the ground that withdrawal of the application made for approval stood on the same footing as if no application under Section 33(2)(b) has been made at all; since there was no application made under Section 33(2)(b), the Tribunal had no occasion to apply its mind to consider whether the dismissal of workman amounted to victimization or unfair labour practice. Hence, it was difficult to say that the approval has been refused by the Tribunal.

14. Where an application is made under Section 33(2)(b) proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine whether the order of dismissal or discharge is bona fide; whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were complied with or not, etc. If the authority refuses to grant approval obviously it follows that the employee continues to be in service as if order of discharge or dismissal never had been passed. The order of dismissal or discharge passed invoking Section 33(2)(b) dismissing or discharging an employee brings an end of relationship of employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end *de jure* only when the authority grants approval. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is

that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need of a separate or specific order for his reinstatement. But on the other hand, if approval is given by the authority and if the employee is aggrieved by such an approval, he is entitled to make a complaint under Section 33A challenging the order granting approval on any of the grounds available to him. Section 33A is available only to an employee and is intended to save his time and trouble inasmuch as he can straightaway make a complaint before the very authority where the industrial dispute is already pending between the parties challenging the order of approval instead of making efforts to raise an industrial dispute, get a reference and thereafter adjudication. In this view, it is not correct to say that even though where the order of discharge or dismissal is inoperative for contravention of the mandatory conditions contained in the proviso or where the approval is refused, a workman should still make a complaint under Section 33A and that the order of dismissal or discharge becomes invalid or void only when it is set aside under Section 33A and that till such time he should suffer misery of unemployment in spite of statutory protection given to him by the proviso to Section 33(2)(b). It is not correct to say that where the order of discharge or dismissal becomes inoperative because of contravention of proviso to Section 33(2)(b), Section 33A would be meaningless and futile. The said Section has definite purpose to serve, as already stated above, enabling an employee to make a complaint, if aggrieved by the order of the approval granted.

15. The view that when no application is made or the one made is withdrawn, there is no order of refusal of such application on merit and as such the order of dismissal or discharge does not become void or inoperative unless such an order is set aside under Section 33A, cannot be accepted. In our view, not making an application under Section 33(2)(b) seeking approval or withdrawing an application once made before any order is made thereon, is a clear case of contravention of the proviso to Section 33(2)(b). An employer who does not make an application under Section 33(2)(b) or withdraws the one made, cannot be rewarded by relieving him of the statutory obligation created on him to make such an application. If it is so done, he will be happier or more comfortable than an employer who obeys the command of law and makes an application inviting scrutiny of the authority in the matter of granting approval of the action taken by him. Adherence to and obedience of law should be obvious and necessary in a system governed by rule of law. An employer by design can avoid to make an application after dismissing or discharging an employee or file it and withdraw before any order is passed on it, on its merits, to take a position that such order is not inoperative or void till it is set aside under Section 33A notwithstanding the contravention of Section 33(2)(b) proviso, driving the employee to have recourse to one or more proceeding by making a complaint under Section 33A or to raise another industrial dispute or to make a complaint under Section 31 (1). Such an approach destroys the protection specifically and expressly given to an employee under the said proviso as against possible victimization, unfair labour practice or

harassment because of pendency of industrial dispute so that an employee can be saved from hardship of unemployment. Section 31 speaks of penalty in respect of the offences stated therein. This provision is not intended to give any remedy to an aggrieved employee. It is only to punish the offender. The argument that Section 31 provides a remedy to an employee for contravention of Section 33 is unacceptable. Merely because penal provision is available or a workman has a further remedy under Section 33A to challenge the approval granted, it cannot be said that the order of discharge or dismissal does not become inoperative or invalid unless set aside under Section 33A. There is nothing in Sections 31, 33 and 33A to suggest otherwise even reading them together in the context. These Sections are intended to serve different purposes."

12. It is also not in dispute that the respondent was a trainee driver cum conductor and the excess amount of Rs. 400/- which was involved in the offence and the pendency of I.D. No. 145/2008 is taken into consideration by the Labour Court and it held that the dismissal order passed by the management is in violation of Section 33(2)(b) of the I.D. Act and accordingly set aside the dismissal order dated 12.04.2010 directing the management to reinstate the respondent into service to trainee driver cum conductor within one month from the date on which the award becomes enforceable.

13. It is stated by the learned counsel for the petitioner that in pursuance of the order passed by the Labour Court, the respondent has been reinstated into service. It is also not in dispute that the Labour Court has not awarded backwages, continuity of service and all other consequential benefits. In view of the same, no prejudice will be caused to the petitioner-management to reinstate the respondent into service as ordered by the Labour Court.

14. In view of the aforesaid reasons the petitioner-Corporation has not made out a prima facie ground to interfere with the impugned order passed by the Labour Court under Articles 226 and 227 of the Constitution of India.

Accordingly, petition is dismissed.