

(2013) 03 KAR CK 0133

In the Karnataka High Court

Case No : Writ Appeal No. 5738 of 2012 (L-KSRTC)

The Chief Traffic Manager BMTC

APPELLANT

Vs

Sri. M. Narayana Reddy

RESPONDENT

Date of Decision : 12-03-2013

Acts Referred:

Industrial Disputes Act, 1947 — Section 31, 31(1), 33(2)(b), 33A

Citation : (2013) 3 LLJ 80 : (2013) LLR 642

Hon'ble Judges : Ravi Malimath, J;K.L. Manjunath, J

Bench : Division Bench

Advocate : S.N. Murthy, for Sri. B.L. Sanjeev, for the Appellant; L. Shekar, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Sri. S.N. Murthy, learned Sr. Counsel for Sri. B.L. Sanjeev, for the appellant, and the counsel for the respondent. The legality and correctness of the order passed in W.P. 6060/2012 passed by the learned Single Judge on 13/7/2012 is called in question in this appeal. Facts leading to this appeal are as hereunder:

Respondent--Narayana Reddy was working as driver under the appellant. He remained absent unauthorisedly for his duties from 6/5/2006 onwards. Therefore articles of charges were served upon the respondent and after holding a detailed enquiry, the Enquiry (Officer submitted his finding holding that the charges leveled against the respondent are true. Thereafter the disciplinary authority, following the regulations of the BMTC, dismissed the respondent from service by its order dt. 18/3/2008. Aggrieved by the same, an industrial dispute was raised in Ref. No. 36/2009 before the III Addl. Labour Court, Bangalore. The Labour Court by its order dt. 24/10/2011 set aside the order of dismissal and directed the appellant to reinstate the respondent with continuity of service with full back wages and to provide all monetary consequential benefits.

2. Aggrieved by the order of the Labour Court, the appellant filed the writ petition, which has been dismissed by the learned Single Judge. Challenging the concurrent findings of the Labour Court and the learned Single Judge, the present appeal is filed.

3. Before advertng to the arguments advanced by Sri. S.N. Murthy, learned Sr. Counsel appearing for the appellant, certain facts are to be narrated by us in this appeal.

4. There is a dispute referred to the Industrial Tribunal in I.D. No. 148/05, which dispute was raised by the KSRTC staff and Workers" Federation and the Management of KSRTC regarding Charter of Demands. The Charter of Demands to be adjudicated in I.D. No. 148/05 are as hereunder:

1. Pay and Dearness Allowance;

The existing Basic Wages be enhanced by 30% at all stages and new pay scales be constructed.

2. Weightage:

For each year of completed service as on 31/12/2003 a sum of Rs. 20/- is given as Service Weightage.

3. The fitment in the new scale is made as in the past.

4. Dearness Allowance:

The Dearness Allowance is enhanced as and when the Government of Karnataka increases Dearness Allowance to its employees. The entire amount of increase in DA be paid in cash.

5. Allowances and Bata:

All the allowances and Bata payable shall be increased by 2 1/2 times.

6. Festival Advance:

Festival Advance be paid at Rs. 5,000/-. This shall be recoverable by 10 equal monthly installments.

7. Stitching Charges:

8. Medical Facilities:

a) In case of Hospitalization of an employee or his dependents in any hospital of his or their choice the entire hospitalization costs shall be met by the Corporation.

b) For Domiciliary treatment a sum of Rs. 500/- be paid every moth.

9. Pensionary Benefits:

A better Pension Scheme be formulated by mutual discussion.

10. Canteens:

Subsidized Industrial Canteens be provided in all the Depots, Workshops and Offices.

11. Education Fund:

In order to provide better Educational Facilities, to the existing Educational Fund the contribution be made by Workman and Corporation in the ratio of 1:3.

12. Death Cum Retirement Benefit Fund:

The present contribution from every Worker be increased to Rs. 100/- per month, in case of Death of a Workman while in service, his nominee/legal heir be paid a lump sum of Rs. 2 lakh.

13. Compensation to the Family in Case of Accidental Death:

If any Worker dies due to accident while on duty or out of duty, his spouse be paid 100 times the salary of the Workmen.

14. LTC:

Leave travel concession shall be increased to 3000 kilometers. This shall be paid every two years once.

15. Legal Aid:

In case of accidents involving Death Rs. 5,000/- and other cases Rs. 2,500/- be paid as Aid to the Drivers.

16. Implementation Committee:

The negotiating committees of Management and Federation shall form the implementation Committee. The Committee will jointly look into the implementation of the Bipartite Settlement.

17. Kimco Workers:

The service conditions applicable to KSRTC employees shall be applicable to Workmen transferred from KIMCO, Bangalore.

18. Period of Settlement:

This settlement will be effective w.e.f. 01/01/2004 for a period of 4 years.

19. Savings:

All the benefits flowing on account of earlier settlements/ Notifications shall continue.

20. The Federation shall reserve the right to alter/ amend the Charter of Demands at any time including during the course of Negotiations.

5. When the said dispute was pending before the Industrial Tribunal the appellant

dismissed the respondent from service without complying with the provisions of Sec. 33(2)(b) of the Industrial Disputes Act, 1947, for short "ID Act".

6. The Labour Court as well as learned Single Judge, placing reliance on the constitutional Bench judgment of the Hon''ble Supreme Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, came to the conclusion that when the matter was pending in I.D. No. 148/05, when the order of dismissal was in connection with the dispute which was pending before the Labour Court or otherwise, the appellant-Corporation was required to take approval of the court under Sec. 33(2)(b) of the ID Act. Solely on legal point, the order of dismissal passed by the appellant has been set aside both by the Labour court and the learned Single Judge.

7. The main contentions of Sri. S.N. Murthy, learned counsel appearing for the appellant, before us are as hereunder:

According to him, the judgment of the Apex Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd., cannot be applied as a straight jacket formula to the facts and circumstances of this case. According to him, Sec. 33(2)(b) cannot be made applicable to this case because the respondent had remained unauthorisedly absent and on account of the same, after holding a detailed enquiry, he was dismissed from service since the charges leveled against him have been proved in the enquiry. According to him, I.D. 148/05 is nothing to do with the charges leveled against the respondent and if really the appellant had dismissed the respondent in respect of the Charter of Demands made by the Employee's Association in violation of Sec. 33(1), the Labour Court or the learned Single Judge could have set aside the order of dismissal. According to him, in view of specific provisions of Sec. 31 and Sec. 33A, the dispute raised by the respondent was not maintainable. In the circumstances, he request the court to set aside the order passed by the Labour Court as well as by the learned Single Judge.

8. The learned counsel appearing for the respondent submits that the provisions of Sec. 31 and Sec. 33A have been considered by the Hon''ble Apex Court in the aforesaid judgment in detail and therefore this court cannot sit in judgment over the decision of the Hon''ble Supreme Court, therefore he request's the court to dismiss the appeal.

9. The admitted facts are that there is no connection between charter of demands which are to be adjudicated in I.D. No. 148/05 before the Industrial Tribunal and the reasons for dismissal of the respondent from service. But the question is, whether the appellant was required to invoke Sec. 33(2)(b) seeking approval of the Industrial Tribunal, dismissing the respondent from service on account of his misconduct and whether the respondent was required to make an application invoking Sec. 33A of the ID Act or the appellant has to be in imprisonment for a period which may extent to 6 months or with fine which may extend to Rs. 1,000/- or both, as contemplated under Sec. 31 of the ID Act.

10. Sec. 31 of the ID Act reads as hereunder:

31. Penalty for other offences

(1) Any employer who contravenes the provisions of section 33 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) Whoever contravenes any of the provisions of this Act or any rule made thereunder shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with fine which may extend to one hundred rupees.

11. From reading of the aforesaid provision, it is clear that if there is a contravention by any employer of provisions of Sec. 33, such employer can be punished with imprisonment for a term which may extend to 6 months or with fine which may extend to Rs. 1,000/- or with both. It is for the enforcing authorities under the ID Act to set the law in motion to punish the employer for the offence committed by him for having contravened the provisions of Sec. 33. Similarly there is also an enabling provision under Sec. 33A of the ID Act enabling the employee to make an application under this provision of law if there is a contravention of Sec. 33(2)(b). Sec. 33A reads as hereunder:

33A. Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceedings

Where an employer contravenes the provisions of section 33 during the pendency of proceedings before a conciliation officer, Board, an arbitrator, Labour Court, Tribunal or National Tribunal any employee aggrieved by such contravention, may make a complaint in writing in the prescribed manner,-

(a) to such conciliation officer or Board, and the conciliation officer or Board shall take such complaint into account in mediating in, and promoting the settlement of, such industrial dispute; and

(b) to such arbitrator, Labour Court, Tribunal or National Tribunal and on receipt of such complaint, the arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate government and the provisions of this Act shall apply accordingly.

12. On perusal of Sec. 33(2)(b), it is clear that even if an employer has dismissed his employee not connected with the dispute pending adjudication, still Section 83(2)(b) shall be followed before dismissing him from the service. On perusal of this provision, there is no bar for an employer to conduct an enquiry, but he cannot punish an employee without making an application seeking approval of the action already taken.

13. The points canvassed by the learned Sr. Counsel has been considered by the Hon"ble Apex Court in the aforesaid judgment in detail. Para 13 of the judgment

reads as hereunder, which answers the questions raised by the learned Sr. Counsel in regard to the approval required to be sought by an employer under Sec. 33(2)(b):

13. The proviso to Sec. 33(2)(b), as can be seen from its very unambiguous and clear language, is mandatory. This apart, from the object of Sec. 33 and in the context of the proviso to Sec. 33(2)(b), it is obvious that the conditions contained in the said proviso are to be essentially complied with. Further any employer who contravenes the provisions of Sec. 33 invites a punishment under Sec. 31(1) with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 1,000/- or with both. This penal provision is again a pointer of the mandatory nature of proviso to comply with the conditions stated therein. To put it in other way, the said conditions being mandatory, are to be satisfied if an order of discharge or dismissal passed under Sec. 33(2)(b) is to be operative. If an employer desires to take benefit of the said provision for passing an order of discharge or dismissal of an employee, he has also to take the burden of discharging the statutory obligation placed on him in the said proviso. Taking a contrary view that an order of discharge or dismissal passed by an employer in contravention of the mandatory conditions contained in the proviso does not render such an order inoperative or void, defeats the very purpose of the proviso and it becomes meaningless. It is well-settled rule of interpretation that no part of statute shall be construed as unnecessary or superfluous. The proviso cannot be diluted or disobeyed by an employer. He cannot disobey the mandatory provision and then say that the order of discharge or dismissal made in contravention of Sec. 33(2)(b) is not void or inoperative. He cannot be permitted to take advantage of his own wrong. The interpretation of statute must be such that it should advance the legislative intent and serve the purpose for which it is made rather than to frustrate it. The proviso to Sec. 33(2)(b) affords protection to a workman to safeguard his interest and it is a shield against victimization and unfair labour practice by the employer during the pendency of industrial dispute when the relationship between them are already strained. An employer cannot be permitted to use the provision of Sec. 33(2)(b) to ease out a workman without complying with the conditions contained in the said proviso for any alleged misconduct said to be unconnected with the already pending industrial dispute. The protection afforded to a workman under the said provision cannot be taken away. If it is to be held that an order of discharge or dismissal passed by the employer without complying with the requirements of the said proviso is not void or inoperative, the employer may without impunity discharge or dismiss a workman.

Similarly in regard to the points canvassed by the learned Sr. Counsel on the question of making an application by an employee under Sec. 33A has also been considered in paragraph 15 of the judgment which reads as hereunder:

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 u/s 33-A, cannot be accepted. In our view, not making an application u/s 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 employee who does not make an application u/s 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 u/s 33-A notwithstanding the contravention of Section 33(2)(b) proviso, driving the employee to have recourse to one or more proceedings by making a complaint u/s 33-A or to raise another industrial dispute or to make a complaint u/s 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.

In view of the judgment of the Hon'ble Apex Court, we are of the view that no error is committed by the learned Single Judge in dismissing the writ petition by confirming the order of the Labour Court. In the result, the appeal is dismissed.