

(2015) 12 KAR CK 0001

In the Karnataka High Court

Case No : Writ Petition No. 19330/2013 (L-KSRTC)

The Divisional Controller

APPELLANT

Vs

Jayaramu

RESPONDENT

Date of Decision : 02-12-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(4-A), 33(2)(b)

Citation : (2015) 12 KAR CK 0001

Hon'ble Judges : B. Veerappa, J.

Bench : Single Bench

Advocate : L. Govindraj, Advocate, for the Appellant

Final Decision : Allowed

Judgement

B. Veerappa, J.—Being aggrieved by the award dated 25th September, 2012 made in I.I.D. No. 12/2011 on the file of the Presiding Officer, Labour Court, Mysore, allowing the claim petition under the provisions of Section 10(4-A) of the Industrial Disputes Act, and directing to the Corporation to reinstate the respondent/workman with full backwages, the present petition is filed by the Management.

2. The respondent, who was working as driver in the petitioner/Corporation has remained absent unauthorisedly from duty with effect from 3.4.2008 onwards, on the basis of which, the Corporation has issued articles of charges to the workman on 15.7.2008. The workman did not file any reply. Thereafter, the Corporation appointed an enquiry officer, who enquired about the unauthorized absenteeism of the respondent. The respondent participated in the enquiry proceedings denying the charge. After holding due enquiry, the enquiry officer has filed the enquiry report holding that the charge against the respondent was proved. After following the procedure, the Corporation has dismissed the respondent/workman from service on 28.12.2010, taking into consideration the unauthorized absence of the respondent from 3.4.2008 to 23.8.2009 and also the past records/7 cases in which he was involved.

3. The respondent/workman being aggrieved by the dismissal order has raised the industrial dispute under the provisions of Section 10(4-A) of the Industrial Disputes Act before the Labour Court, Mysore. The Labour Court considering the entire material on record while upholding the validity of the enquiry has set aside the dismissal order only on the ground that the provisions of Section 33(2)(b) of the Industrial Disputes Act was not complied with and directed the Corporation to reinstate the workman into service with full backwages. Hence, the present writ petition is filed.

4. The respondent is served and unrepresented.

5. I have heard the learned Counsel for the petitioner.

6. Sri L. Govindaraj, learned Counsel for the petitioner strenuously contended that the Labour Court erred in not considering the entire material on record thereby set aside the order of dismissal which has resulted injustice to the Corporation. He also contended that the finding of the Labour Court with regard to violation of the provisions of Section 33(2)(b) of the Act is wholly unsustainable. The Labour Court failed to notice that the pendency of general dispute had no bearing on the individual misconduct when the dismissal order followed a fair and just enquiry. The provisions of Section 33(2)(b) of the Act has no application to the case of this nature. He further contended that while deciding the industrial dispute, the Labour Court records a finding on all the issues framed but admittedly in the present case, the Labour Court though raised three issues, no finding is recorded on the third issue where the Corporation was justified in dismissing the respondent/workman from service in accordance with law and no finding is recorded on the said specific issue and hence, in the absence of the same, the impugned award passed by the Labour Court cannot be sustained. In support of his contention, he relied upon the dictum of this Court in the case of KSRTC -vs Kulla Venkatakashetty in W.P. No. 16812/2013 dated 30th September, 2013.

7. The learned Counsel also brought to the notice of this Court that in pursuance of the impugned award passed by the Labour Court, the workman has been reinstated and subsequent to reinstatement, he has remained absent unauthorisedly from 14.9.2014 to 29.11.2015 and thereafter, a regular enquiry was held after following the procedure and charges are proved. Accordingly, the Corporation has dismissed the workman from service on 30.11.2015 for the second time. The said submission made by the learned Counsel for the petitioner is placed on record.

8. I have given my anxious consideration to the arguments advanced by the learned Counsel for the petitioner and perused the entire material on record.

9. It is not in dispute that the respondent/workman was unauthorisely absent from 3.4.2008 onwards and there after articles of charge was issued and regular enquiry was held for which the respondent has participated in the proceedings. Thereafter, the Corporation after following the procedure dismissed the workman

from service on 28.12.2012. When the respondent filed a claim petition under the provisions of Section 10(4-A) of the Industrial Disputes Act, the Labour Court considering the entire pleadings of both the parties, framed the following issues:

10. While considering the first issue, the Labour Court has held that the domestic enquiry held is fair and proper as per the order dated 9.7.2012. It also recorded a finding with regard to the second issue that the workman has proved that he has been removed from service without following the due procedure which is contrary to law. With regard to the third issued, it has held the same in the affirmative without any finding as could be seen from para-19 of the award and no specific finding or reasons are assigned by the Labour Court, in the absence of reasons and specific finding on each of the issues raised as to whether the Corporation is justified in dismissing the workman from service. The very award passed by the Labour Court is not in consonance with the dictum of the judgment of this Court in the case of KSRTC -vs- Kulla Venkateshetti Dated 3rd December, 2013 in W.P. No. 16812/2013 wherein at para-7 it is held as under:

"It is in these circumstances the Labour Court having failed to assign reasons, findings and conclusions over the justification of petitioner in terminating the services of the respondent, there is a need to direct the Labour Court to pass an award by recording reasons, findings and conclusions over the point of reference. In the absence of the same, in my considered opinion, the award is neither just nor legal, hence calls for interference."

11. In view of the undisputed fact that the Labour Court has not recorded any finding on the 3rd issue before setting aside the dismissal order passed by the Reference, it is impermissible for the Labour Court to set aside the dismissal order without assigning any reasons or finding on each of the issues. (The Labour Court is not justified in setting aside the order of dismissal without assigning any reasons or finding on each of the issues). Therefore, the impugned award passed by the Tribunal is set aside since the dismissal order is neither just nor legal which calls for interference.

12. In view of the aforesaid reasons, writ petition is allowed. The impugned award passed by the Labour Court is quashed. The matter is remanded to the Labour Court for fresh consideration to record the reasons and findings and conclude on the points raised about justification of the dismissal of the respondent from service after affording reasonable opportunity to both the parties and pass award strictly in accordance with law.