
(2016) 02 KAR CK 0299

In the Karnataka High Court

Case No : Writ Petition No. 9341 of 2013 (L-KSRTC).

The Divisional Controller, KSRTC

APPELLANT

Vs

Sri. N.S. Malleshetty

RESPONDENT

Date of Decision : 23-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11A

Citation : (2016) 2 AirKarR 397 : (2016) 3 KCCR 213

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

Bench : Single Bench

Advocate : Shwetha Anand, Advocate, for the Appellant; H.C. Sundares, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J. - The petitioner corporation is before this Court assailing the award dated 15.09.2012 passed in Reference No. 27/2010. The respondent was working as a Conductor in the petitioner-Corporation. On the allegation that he had remained unauthorisedly absent from 01.06.1998 to 10.01.2000, he was dismissed from service by the order dated 06.02.2001.

2. The Labour Court, after taking note of the rival contentions has by its award directed reinstatement, however without any monetary benefits for the period while he was out of employment, but, had granted the continuity of service and the consequential benefits in notional terms for the purpose of calculating the retirement benefits. The petitioner therefore claiming to be aggrieved has assailed the said award dated 15.09.2012.

3. The learned counsel for the petitioner would contend that the Tribunal was not justified in condoning the long delay in raising the dispute and further, the Labour Court has also committed an error in exercising the power under Section 11(A) of the Industrial Disputes Act in a case of the present nature where, the charge of unauthorized absence for such a long period had been proved before the

Labour Court. It is contended that exercise of discretion under Section 11(A) of the Industrial Disputes Act was not warranted in a circumstance of the present nature and as such, the award is liable to be set aside.

4. The learned counsel for the respondent would however seek to sustain the award passed by the Court below. In the light of the contention, firstly with regard to the delay the Labour Court has taken note of the said contention and while arriving at its conclusion to entertain the proceedings has taken note of the appeal that had been filed by the respondent to the Appellate Authority and in that light has arrived at the conclusion that the dispute raised after the dismissal of the appeal could be taken into consideration.

5. The learned counsel for the petitioner would point out that the Labour Court has not taken into consideration the fact that the appeal itself was filed after a period of five years on 25.05.2006 and if this aspect of the matter is kept in view, no consideration of the matter on merits is required.

6. Even though such contention is put forth, what is necessary to be noticed is that the Labour Court has referred to the document at Ex-W4 and has also taken into consideration that the Appellate Authority had kept the appeal pending for a period of three years. It is no doubt true that there is delay in the respondent herein filing the appeal. But, the fact that the appeal was kept pending cannot be lost sight since, the length of delay would arise for consideration in that background. Even though, as contended by the learned counsel for the petitioner, the appeal was initially filed with a delay of five years, if the appeal had been rejected at that point itself, there would have been an occasion for the respondent to raise the dispute immediately thereafter and would not have lost the period that had been spent when the appeal was pending which now cumulatively makes the period of delay and makes it appear inordinate.

7. Be that as it may, the delay in any event is a matter to be considered in the facts and circumstances of each case and the fact as to whether the dispute was live is a matter which is to be taken note in the individual facts. In the instant case, it was a case of dismissal and in that light, the respondent who had lost the job was agitating the matter. Be that as it may, ultimately when the moulding of the relief is permissible, that aspect of the matter is also to be taken into consideration after taking note of the consideration made by the Labour Court on the other aspects of the matter. To the said extent, it is to be noticed that at the first instance, the Labour Court has held the domestic enquiry to be not fair and proper.

8. In that light, the petitioner-Corporation had tendered evidence before the Labour Court seeking to establish the charge. In any event, the Labour Court has ultimately arrived at the conclusion that the charge as alleged against the respondent was proved. In that light, the consideration is as to whether the ultimate relief thereafter granted by the Labour Court would be justified. To the said extent, it is seen that the Labour Court has exercised the discretion under

Section 11(A) of the Industrial Disputes Act.

9. It is no doubt true that as contented by the learned counsel for the petitioner, exercise of discretion would not be automatic and when no victimisation was pointed out, the Labour Court should be slow in exercising the said discretion. But, what is necessary to be kept in view is that while exercising such discretion, the Labour Court can mould the relief if it finds that the punishment imposed is the extreme punishment which ought not to have been imposed in a particular case and an opportunity to reform also should be provided.

10. In the instant case, it is no doubt true that the unauthorized absence is for a long period. Though that aspect of the matter has been accepted by the Labour Court, the Labour Court has also referred to the documents relied on by the respondent-Workmen to come to a conclusion with regard to whether there was some justification at least for the respondent to remain absent during the said period. It is in that circumstance, the Labour Court has arrived at the conclusion. When the respondent had not only suffered some setback in his health but, had also lost his father, a consideration is required to be made in regard to put him back into service. No doubt in a normal circumstance, when such moulding of the relief is made by the Labour Court an alternate punishment at least ought to have been imposed.

11. However, in the instant facts, it is stated that the respondent has presently attained the age of superannuation. Prior to the same, since the Labour Court had granted the relief of reinstatement and the petitioner-Corporation is before this Court in this petition, this Court the order dated 26.02.2013 has stayed the operation of the award subject to reinstatement of the respondent. In that light, on being reinstated subject to result of this petition, the respondent has worked for some time thereafter, superannuated from the service.

12. Therefore, in a circumstance where the respondent is not presently in service and in a circumstance where the Labour Court has granted the benefit of reinstatement and continuity of service without any monetary benefits for the period while he was out of service due to his dismissal, in the facts of the present case, I find that it may not be appropriate for this Court to interfere with the award at this juncture. It is also made clear that the above consideration is made in the facts and circumstance of this case and the same shall not be treated as a precedent for other cases.

13. Petition disposed of accordingly.