

(2015) 12 KAR CK 0126

In the Karnataka High Court

Case No : Writ Petition No. 77047 of 2013 (L-KSRTC)

The Divisional Controller North West Karnataka Road
Transport Corporation

APPELLANT

Vs

Mahantesh

RESPONDENT

Date of Decision : 10-12-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(4-A), 17B

Citation : (2016) 149 FLR 70 : (2016) 1 KarLJ 307

Hon'ble Judges : R.S. Chauhan, J.

Bench : Single Bench

Advocate : Veena Hegde, Advocate, for the Appellant; S.K. Hegde, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—With the consent of both the learned counsel for the parties, this case is being decided at this stage itself.

2. Being aggrieved by the award dated 30-6-2011 passed by the Additional Labour Court, Hubli, whereby the learned Labour Court has set aside the dismissal order dated 24-7-2010 passed against the respondent workman, and has directed the petitioner Corporation to reinstate the respondent workman, with continuity of service, and with a direction to pay 50% of backwages from the date of dismissal till he is reinstated into service and to give other consequential benefits, and with a direction to treat the period of his absence from 25-3-2009 to 16-4-2010 as any kind of leave to the credit of the workman, and in case, he has no leave at his credit, the same to be treated as leave without pay, the North West Karnataka Road Transport Corporation has approached this Court.

3. The brief facts of the case are that in 2003 the respondent workman was appointed as a Driver in the petitioner corporation. From 2003 to 2010, he

worked to the satisfaction of the petitioner corporation. However, he was allegedly absent from his duties from 25-3-2009 to 16-4-2010. Therefore, the petitioner had served a charge-sheet upon him. After holding a due enquiry, by order dated 24-7-2010, the respondent workman was dismissed from his service.

4. Since the respondent workman was aggrieved by the order dated 24-7-2010, he filed a petition under Section 10(4-A) of the Industrial Disputes (Karnataka Amendment Act, 1987) Act, 1947, (for short, "the Act"). The petitioner corporation filed its objection to the pleadings. The learned Labour Court framed three issues as under:

"1. Whether the enquiry held against the 1st party is fair and proper?

2. Whether the respondent-management is justified in dismissing the petitioner-claimant from service by its order dated 24.7.2010?

3. If not to what relief the claimant-petitioner is entitled?"

5. The Labour Court gave a categorical finding that the enquiry held by the petitioner was an unfair and improper one. Therefore, the petitioner was asked to lead evidence to establish its case against the respondent workman. The petitioner examined the Depot Manager, M.W.1. The respondent workman examined himself as W.W.1 and submitted six documents to support his case. After going through the oral and documentary evidence, the Labour Court has passed the impugned award. Hence, this petition before this Court.

6. Mrs. Veena Hegde, the learned counsel for the petitioner, has vehemently contended that according to medical certificate issued by the Dr. Sharad G. Inamdar, the petitioner was well enough to join the service of petitioner corporation on 10-4-2010. Yet, he did not join the service till 16-4-2010. Therefore, he has not offered a proper explanation for his absence of seven days. Hence, the petitioner was justified in dismissing the respondent from service.

Secondly, there is no evidence to show that the Management is required to send the Labour and Welfare Officer to the residence of the workman to enquire regarding the reason as to why the workman failed to attend duty for long time. Yet, the Labour Court has concluded that it was the duty imposed upon the Management, but the Management has failed to discharge its duty.

Lastly, according to the previous record of the respondent workman, he has been absent on four different occasions earlier. Yet, the Labour Court has ignored this piece of evidence while passing the impugned award. Hence, the impugned award deserves to be interfered with.

7. On the other hand, Mr. S.K. Hegde, learned counsel for the respondent, has raised the following contentions before this Court:--

Firstly, the petitioner has victimised the respondent workman since the workman was the member of the trade union, since he had complained to the Lokayukta against his superior officers. Since on the basis of his complaint, first information

report was registered against the superior officers, the Management decided to get rid of the workman by any means.

Secondly, the victimisation has gone to the extent that despite the award being in favour of the workman, he is yet to be reinstated by the petitioner.

Thirdly, immediately, on 25-3-2009, the workman had sent a leave application to the Depot Manager; even subsequently, on 15-5-2009, he has sent another leave application. Therefore, the Management was unjustified in claiming that the respondent's absence was unauthorised one. Most importantly, since the workman was suffering from bilateral sciatica i.e. suffering from severe pain in the lower back, and behind the thighs, he was unable to sit properly. According to Dr. Sharad G. Inamdar, the workman was suffering from medical difficulties from 25-3-2009 till 9-4-2010. Thus, the workman had a valid reason for his absence.

Lastly, even if the workman was absent for one week, even then, the punishment of dismissal is shockingly disproportionate. Hence, the learned counsel has supported the impugned order.

8. Heard the learned counsel for the parties, and perused the impugned award.

9. While accessing the punishment order, the Court has to keep in mind the conduct of both the parties. In the present case, the petitioner has not denied the fact that the workman was an active member of the Trade Union, that he had lodged certain complaints with the Lokayukta. On the basis of these complaints, F.I.R. was registered against the superior officers. In order to support this stand, the respondent had submitted both copies of his complaint and the F.I.R. as Ex. W.5 and 4 respectively before the Labour Court. Thus, the workman was seen as a whistle blower in the corporation who exposed the underbelly of the corporation. Obviously, the superior officers, would be annoyed by their workman who revealed their corruption in public. Therefore, there is an ulterior motive on behalf of the Management to get rid of the workman as soon as possible.

10. A bare perusal of the award clearly reveals that on 25-3-2009 and on 15-5-2009, the workman had submitted leave applications along with medical certificate in order to inform the Management that he is unable to attend the duties as he is suffering from severe pain in the lower back and behind the thighs. Naturally, a person suffering from back pain and pain in the thighs cannot be expected to discharge his duties as Driver. After all, the Driver needs to sit and drive the bus for long distances. According to Dr. Sharad G. Inamdar, the workman was suffering from the said medical difficulty from 25-3-2009 to 9-4-2010. Thus, the workman had valid reasons for his absence. In fact, the same was informed to the Management. Hence, the petitioner is not justified in concluding that the workman was absent without any rhyme or reasons.

11. As far as question of his absence for one week is concerned, suffice to say that dismissal from service for absence of merely one week would certainly be shockingly disproportionate punishment. Even if previous records were taken into

account, even then, the punishment will be disproportionate to the alleged misconduct. Moreover, considering the fact that the workman was disliked by the Management as he had exposed their corruption to the public, this case is a classic example of victimisation of a workman by the Management.

12. Needless to say, the petitioner is an instrumentality of the state; it is expected to be an ideal employer. As an exemplary employer, the petitioner is expected to be fair and reasonable to its workman. But the action of the petitioner in victimising the respondent for he is a active member of the Trade Union, for victimising because he has exposed certain amount of corruption within the petitioner corporation, the dismissal order is clearly unjustified.

13. Since the Labour Court has dealt with all these aspects of the case, since it has minutely examined both the oral and documentary evidence, this Court does not find any illegality or perversity in the impugned order.

14. For the reasons stated above, this Court does not find any merit in the petition. It is, hereby, dismissed.

15. Since the petitioner corporation has failed to implement the award for the last four years, this Court directs the petitioner corporation to implement the award within a period of four weeks from the date of receipt of a certified copy of this order, failing which the respondent workman shall be at liberty to file a contempt petition against the petitioner corporation before this Court.

Since the writ petition is decided by this order, no order needs to be passed on the application filed by the respondent under section 17B of the Act.