

(2015) 11 KAR CK 0042

In the Karnataka High Court

Case No : Writ Petition No. 60957/2012 (L-KSRTC)

The Divisional Controller, NWKRTC, Belgaum Division

APPELLANT

Vs

Deepak

RESPONDENT

Date of Decision : 27-11-2015

Acts Referred:

Citation : (2015) 11 KAR CK 0042

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

Bench : Single Bench

Advocate : C.B. Patil, Advocate, for the Appellant; S.K. Hegde, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—The North West Karnataka Road Transport Corporation is aggrieved by the award dated 25.11.2010, passed by the learned Additional Labour Court, Hubli, whereby the learned Labour Court has allowed the petition filed under Section 10(4-A) of the Industrial Disputes (Karnataka Amendment Act, 1987) Act, 1947, and set aside the removal order dated 27.03.2008, and has directed the petitioner-Corporation to reinstate the respondent and grant him other consequential benefits except for backwages for the period of his absence from work.

2. Briefly the facts of the case are that the respondent, Mr. Deepak, was working as Junior Assistant in the petitioner-Corporation. The respondent joined as Junior Assistant in 2002 with the petitioner-Corporation. During his period of service, he was unauthorisedly absent from 20.10.2005 to 30.10.2006, i.e. for the period of 378 days. The petitioner was served with a charge-sheet; departmental enquiry was held against him. Subsequently, by order dated 27.03.2008 the respondent was removed from his service. Since he was aggrieved by the said punishment order, he filed a petition under Section 10(4-A) of the Act before the learned Addl. Labour Court, Hubli. After hearing both the parties, by award dated 25.11.2010, the learned Labour Court granted the award in favour of the

respondent as mentioned herein above. Hence, this petition before this Court.

3. The learned Counsel for the petitioner has pleaded that since the respondent was a trainee, he does not even come within the definition of the word "workman" as he is not a "Corporation servant". Thus, he is not entitled to seek any relief under the Industrial Disputes Act. In order to buttress this contention, the learned Counsel has relied on the case of Management of NEKRTC vs. Raju S. Jaydi, (W.A. 100383/14, decided by this court on 15.10.2014). Secondly, the respondent has not given any cogent reasons for his absence during the period of 378 days. Thirdly, even on earlier occasion he was absent for 54 days. Thus, the petitioner was justified in removing the respondent from the service.

4. On the other hand, the learned Counsel for the respondent, has pleaded that no evidence has been led by the petitioner to establish the fact that the respondent was undergoing a training programme. In fact, the respondent was appointed as Junior Assistant by the Corporation. Therefore, he cannot be termed as a "trainee". Thus, the ratio of the case of Raju S. Jaydi (Supra), is inapplicable to the present case. Secondly, the respondent has given ample reasons for his absence by both submitting a Medical Certificate and by examining the treating doctor, who was none other than the doctor engaged by the Corporation itself. Therefore, the learned Counsel has supported the impugned award.

5. Heard the learned Counsel for the parties and perused the record.

6. Both in the writ petition as well as before the learned Labour Court, the petitioner has not pleaded the fact that the respondent was in fact working as a "trainee". Since the respondent was appointed as Junior Assistant on 18.09.2002, even if he were initially a trainee, there is no evidence to show that his training period was extended for four years. Hence, the learned Counsel for the petitioner is unjustified in claiming that the respondent was working as "a trainee" on the date when the impugned order of dismissal was passed against him, namely, on 27.03.2008. Therefore, the judgment of Raju S. Jayde does not come to the rescue of the petitioner-Corporation.

7. A bare perusal of the impugned award clearly reveals that the respondent had clearly taken that stand, that on 20.10.2005 his mother had suffered a fracture of a leg. He had informed his immediate superior officer and had left the work. He further claimed that his mother was constantly under treatment of Dr. Kanthirav R. Kullolli who was examined as D.W. 2 on behalf of the respondent. In his testimony, Dr. Kullolli has stated that he had treated the respondent's mother from 20.10.2005 till 28.02.2006. He had further buttressed the stand of the respondent, that respondent himself was suffering from hepatitis and was under his treatment from 01.03.2006 till 26.10.2006. Dr. Kullolli had also proven the medical certificates issued by him as Ex. W. 1 and Ex. W. 2. The learned Labour Court has noticed the fact that Dr. Kullolli is 67 years old Senior Medical Practitioner who was working under the Corporation. Thus, the Labour Court was

justified in relying on Dr. Kullolli's testimony. Therefore, the respondent had given cogent reasons for his absence for the period from 20.10.2005 till 26.10.2006.

8. The learned Labour Court has also noticed the fact that on the previous occasion the respondent was absent for 54 days. However, mere absence for the first time does not lead to the conclusion that the respondent is in the "habit" of being absent from his work.

9. Considering the fact that the respondent has given cogent and convincing reasons for his absence, considering the fact that he was absent only due to cogent reasons, the dismissal from service is certainly shockingly disproportionate punishment imposed by the petitioner. Thus, the learned Labour Court was certainly justified in setting aside the punishment order. While passing the impugned award, the learned Labour Court has also been just and fair with the petitioner-Corporation by denying the benefit of back wages to the respondent for the period of his absence from 28.10.2005 till 26.10.2006. Thus, the impugned award is a balanced one, having balanced the interest of the respondent, and the interest of the petitioner-Corporation.

For the reasons stated above, this Court does not find any illegality or perversity in the impugned order. The petition, being devoid of any merit, is hereby dismissed.