

(2013) 04 KAR CK 0120

In the Karnataka High Court

Case No : Writ Petition No. 47865 of 2012 (L-TER)

The Divisional Manager, Sullia Rubber Division KFDCL

APPELLANT

Vs

Smt. Jeeva Jyothi

RESPONDENT

Date of Decision : 16-04-2013

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2013) 139 FLR 353 : (2013) 3 LLJ 743

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : M.V. Charati, for Sri G.S. Kannur, for the Appellant; G. Ravishankar Shastry, for the Respondent

Final Decision : Allowed

Judgement

D.V. Shylendra Kumar, J.—Writ petition by the Management of Karnataka Forest Development Corporation Limited being aggrieved by the Award passed by the Labour Court, Mangalore, in IDA No. 1/2008 [copy at Annexure-G] allowing the reference at the instance of the respondent, setting aside the order of dismissal passed by the Management on the respondent-worker and directing her reinstatement with continuity of service etc., but restricting the back wages to 50%. The respondent had been charged of offence of committing theft of rubber scrap on 7.10.2005 and quantity of 4.50 kilograms of rubber scrap was sought to be stolen by the respondent through her minor daughter by name Renuka by carrying out of the premises of the estate of the Corporation and carried in eight litre bucket.

2. It is the version of the Management that the daughter of the respondent-employee was caught in the act and one A B Jattappa-Task Supervisor caught daughter of the respondent while carrying out the rubber scrap; that mahazar was prepared for seizing the stolen articles in the presence of panch witnesses and inquiry followed. The respondent was issued with a charge memo. The departmental enquiry was initiated against the respondent The Inquiry Officer

was appointed. The Inquiry Officer held an inquiry and found that the respondent guilty of the charges leveled against her and on such finding submitted a report. Petitioner issued show cause notice to the respondent calling upon her to explain as to why she should not be dismissed from service based on the inquiry report. The explanation submitted by the respondent-worker was considered and an order of dismissal dated 6.8.2007 was passed [copy at Annexure-E]. The charges having been proved, the respondent preferred an appeal and this appeal having been dismissed by the appellate authority, claim petition was filed. The respondent claimed before the labour court that the order of dismissal should be set aside and she should be directed to be reinstated on service with full back wages and other benefits etc.

3. The labour court framed preliminary issue as to the legality and validity of the departmental inquiry. The Management led evidence on this aspect Arguments were heard by the learned Presiding Officer of the Labour Court and the learned Judge of the labour court found that the departmental inquiry was neither fair nor proper. The Management was given opportunity to adduce evidence. On behalf of the respondent-worker, she deposed as AW. 1, but no document was marked. On behalf of the petitioner-Management, three witnesses were examined and documentary evidence Ex. M1 to Ex. M19 were marked.

4. The labour court framed the other issues, namely,

2] Whether I Party proves that the dismissal order passed against her by the II Party is illegal and arbitrary?

3] Whether I Party is entitled for reinstatement with full back wages, continuity of service and other benefits?

Exhibits. M8 to M18 were marked by confronting the same to the applicant through her cross examination.

5. On appreciating the evidence and examining the arguments submitted on behalf of the parties, the labour court held issue No. 2 in the affirmative and issue No. 3 partly in the affirmative and partly in the negative and passed the order of reinstatement with 50% of back wages.

6. It is aggrieved by this Award, the present writ petition by the Management.

7. Notice had been issued to the respondent and respondent is represented by counsel.

8. It is contended on behalf of the petitioner-Management that the labour court has committed a grave error in not appreciating the evidence in a proper manner; that the learned Judge of the labour court was prejudiced only for the reason that the petitioner had not filed a police complaint regarding theft committed by the respondent; that the non filing of the complaint cannot vitiate the departmental inquiry which is conducted independently; that apart from other things, when the worker had admitted the act of committing theft and had

in fact sought for apology as per Ex. M18-letter dated 4.8.2006, nothing else was required to be proved and this letter admitting the act of theft by the respondent having been marked before the labour court, the labour court could not have ignored such admission to hold that the Management has failed to prove the case of charge being made good against the respondent-employee etc.

9. Appearing on behalf of the writ petitioner, Sri. M.V. Charati, learned counsel appearing for Sri. G.S. Kannur, Advocate for the petitioner, has vehemently contended that the admission letter dated 4.8.2006-Ex. M18 had been addressed after completion of inquiry and report; that it was a conscious act on the part of the respondent in admitting the guilt and therefore the labour court could not have ignored this material evidence on record to conclude that the charge was not proved.

10. It is also submitted that when daughter of the respondent-employee had been caught red handed and the Task Supervisor having been examined before the Inquiry Officer, the labour court should have accepted their evidence, particularly, when they were not even cross examined by the employee and therefore should not have interfered with the order of dismissal etc.

11. On the other hand, submission of Sri. Ravishankar Shastry, learned counsel for the respondent is that the labour court found sufficient discrepancies in the inquiry; that in the mahazar drawn it was found that it was earlier to the incident as mahazar was drawn at 8.30 am whereas the incident is said to have taken place at 9.30 to 10 am; that it was obviously a case of fixing the respondent; that the letter at Ex. M18 cannot be made much use of as it was only an appeal for mercy, in the sense, the respondent had been threatened of dismissal and therefore to save her family and livelihood for her family she had written the letter; that the letter is not proved by any one and therefore the labour court having found several discrepancies in the manner of holding of the inquiry and the charge having not been proved either in a reasonable manner or after giving proper opportunity; that in fact the respondent was not allowed to examine the witnesses who were co-workers on the premise that it will be very time consuming; that the entire inquiry was vitiated as found by the labour court and material placed before the court having not made good the charge, the labour court set aside the order of dismissal and directed reinstatement.

12. The charge is committing theft through the respondent's daughter who is a minor. Except for Ex. M18, there is nothing on record even to suggest that something is proved against the respondent. The person who had drawn the mahazar is Task Supervisor who was instrumental in apprehending the daughter of the respondent and by saying that she was caught red handed in the act is not examined before the labour court. In Ex. M18, the respondent does not admit her guilt but only says that she will ensure that such acts will not be repeated and her family members will not commit any acts to the detriment of the Corporation etc.

13. In a matter of this nature, charges are quite serious of committing theft. The Management failed to prove that the respondent-worker herself had committed the act of theft and had placed heavy reliance on the so called admission which is also not trustworthy did not inspire the confidence of the labour court, which in my considered opinion, rightly so and on such clear discrepancies, the labour court finds that the Management had not made good the charges before it and even on cursory glance of the order of the labour court, the order being quite reasonable and justified, I am of the opinion that the matter does not call for interference in the exercise of writ jurisdiction under Article 227 of the Constitution of India at the instance of the Management. Therefore, this writ petition is dismissed.