

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF NOVEMBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE C.M. POONACHA

WRIT PETITION NO.31883 OF 2019 (L-RES)

BETWEEN

KPTCL

...PETITIONER

(BY SRI SHIRISH KRISHNA, ADVOCATE)

AND

SRI. S. KIRAN

AGED ABOUT 33 YEARS

...RESPONDENT

(BY SRI S B MUKKANNAPPA, ADVOCATE)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED MARCH 21, 2019 PASSED BY THE PRINCIPAL DISTRICT JUDGE AND PRESIDING OFFICER, LABOUR COURT, SHIVAMOGGA IN I.D.NO.02/2016 (ANNX-A) AND ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 27.10.2022, COMING ON FOR 'PRONOUNCEMENT OF ORDER' THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Though the above Writ Petition is coming on for Preliminary Hearing in 'B' Group, with the consent of the learned Counsel for the parties, the same is taken up for final hearing.

2. The above Writ Petition is filed seeking quashing of the order dated 21.3.2019, passed in ID No.2/2016, by the Principal District Judge and Presiding Officer, Labour Court, Shivamogga (hereinafter referred to as the 'Labour Court').

3. The claim in ID No.2/2016 was filed by the Respondent before the Labour Court under Section 2(A)(1) read with Section 10(1)(c) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'ID Act') challenging the order dated 3.1.2014 passed by the Petitioner dismissing the Respondent from service. Vide the said order dated 21.3.2019, the Labour Court set aside the order dated 3.1.2014 passed by the Petitioner and directed the Petitioner to reinstate the Respondent into service. It

was further ordered that the Respondent was not entitled for backwages, but was entitled for continuation of service.

4. The case of the Petitioner is that, the Respondent commenced work as a permanent employee with the Petitioner as a Station Attendant (Grade-2) on 30.1.2008. That he began unauthorizedly absenting himself from work without obtaining prior permission from the year 2010. Since the Respondent was unauthorisedly absent on various occasions, for a total period of 632 days, the Respondent was dismissed from service, vide order dated 3.1.2014. The Respondent had challenged the same by filing a Claim Petition bearing ID No.2/2016. The said proceedings was contested by the Petitioner. Before the Labour Court, the Respondent/workman was examined as PW.1 and Exs.P1 to P11 were marked in evidence. The Petitioner examined its representative as MW.1 and Exs.M1 to M44 were marked in evidence. After considering the oral and documentary evidence on record, the Labour Court passed the order dated 21.3.2019 re-instating the

Respondent into service without backwages but with continuity of service, which order is impugned in the present Writ Petition.

5. It is the contention of the learned Counsel for the Petitioner that the Respondent was absent on 9 different occasions for a total period of 632 days; that various warnings have been issued to the Respondent and the Respondent on 24.8.2012 had undertaken that he would not absent himself henceforth and in the event he absents himself, he could be removed from service. Despite the said undertaking, since the Respondent continued to remain unauthorisedly absent, he was dismissed from service on 3.1.2014. Hence, he seeks for allowing the above Writ Petition and setting aside the order passed by the Labour Court.

6. In support of his submissions, the learned Counsel has placed reliance on the following judgments:

- i) *State of Punjab and Ors. v. Sukhwinder Singh*¹;
- ii) *Delhi Transport Corporation v. Sardar Singh*²;
- iii) *V.Ramana v. APSRTC*³;
- vi) *Mahindra & Mahindra Ltd., v. N.B.Narawade*⁴;
- v) *North-Eastern Karnataka RT Corpn., v. Ashappa*⁵;
- vi) *State of Rajasthan v. Mohd. Ayub Naz*⁶;
- vii) *L & T G.S.S.Maryadeet v. T.K.Vishwe*⁷;
- viii) *State of U.P v. Sheo Shanker Lal Srivastava*⁸;
- ix) *A Sudhakar v. Postmaster General, Hyderabad*⁹;
- x) *Hombegowda Educational Trust v. State of Karnataka*¹⁰

7. The learned Counsel for the Respondent justified the order passed by the Labour Court and further submitted that the Respondent was suffering from mental depression, as a result of which he was under constant medication; that on various occasions even his family members were unable to trace him; various details and

¹ 1999 SCC (L&S) 1234

² (2004) 7 SCC 574

³ (2005)7 SCC 338

⁴ (2005) 3 SCC 134

⁵ (2006) 5 SCC 137

⁶ (2006) 1 SCC 589

⁷ 2006 (1) LLN 420

⁸ (2006) 3 SCC 276

⁹ (2006) 4 SCC 348

¹⁰ (2006) 1 SCC 430

particulars of dates and events regarding his medical condition when the Respondent had remained absent were referred to. In substance, it is contended that the absence of the Respondent was not willful. Hence he seeks for dismissal of the Writ Petition.

8. In support of his submissions, the learned Counsel for the Respondent relied on the following judgments:

- i) *Jitendra Singh Rathor v. Shri Baidyanath Ayurved Bhawan Ltd., & Anr.*,¹¹;
- ii) *Krushnakant B. Parmar v. Union of India*¹²;
- iii) *Sri R.H.Mokashi v. The Divisional Controller*¹³;
- iv) *Smt P Latha v. The Assistant General Manager (Personnel)*¹⁴

9. I have given my anxious consideration to the contentions put forth by the learned Counsel for the parties and have perused the material on record. The question that arises for consideration is,

¹¹ (1984) 3 SCC 5

¹² (2012) 3 SCC 178

¹³ W.P.No.29503/2018, DD 16.11.2021

¹⁴ W.P.Nos.24012/2014 c/w 34905/2014, DD 6.10.2015

Weather the order dated 21.3.2019 passed by the Labour Court is liable to be interfered with?

10. The material facts are not in dispute, inasmuch as the Respondent commenced work as a permanent employee i.e., Station Attendant (Grade-2) on 30.1.2008. That the Respondent remained unauthorizedly absent for a total period of 632 days. The details of the dates and periods during which the Respondent was unauthorizedly absent are forthcoming at paragraphs 9 and 10 of the order of the Labour Court. Due to continuous unauthorized absenteeism of the Respondent, the Petitioner issued notices and effected paper publications upon the Respondent directing him to report to duty and further seeking for explanations. The Respondent had given an undertaking on 24.8.2012 that he would not absent himself henceforth and in the event he absents himself, he could be removed from service. Thereafter, since he once again remained unauthorizedly absent, a final show cause notice dated 30.9.2013 was issued to the Respondent, pursuant to which the Respondent was

dismissed from service. The Respondent filed an Appeal before the Superintending Engineering/Appellate Authority against the order of dismissal and the said Appeal was also dismissed as barred by limitation. Thereafter, the Respondent approached the Labour Court raising a dispute under Section 2A(i) of the ID Act. In essence, the defence of the Respondent/workman is that he is suffering from mental depression and sufficient medical evidence in that respect has been produced and marked before the Labour Court. The Labour Court, upon an appreciation of the entire material on record has, noticed that the reasons for his absence from duty are valid. Further, the Labour Court has recorded a categorical finding as follows:

"23. It is not the case of the 2nd party that at the time of working hours, it is not possible for the 1st party to discharge his work. The allegations of loss of interest in the work is only due to his unauthorised absent. Therefore, even though, the absence of duty continuously is a misconduct and major punishment is dismissal, but considering the facts and circumstances of the present case, dismissal order passed by the 2nd party is required to be interfered and 1st party is entitled for reinstatement."

(emphasis supplied)

11. In the case of **Sardar Singh** (*supra*), the Hon'ble Supreme Court has held that habitual absence is a *factum* which establishes lack of interest in the work.

12. In the case of **Ashappa** (*supra*), it was held that remaining absent for a long time cannot be said to be a minor misconduct.

13. In the case of **Mohd. Ayub** (*supra*), the Hon'ble Supreme Court was considering a case where the government servant was willfully absent for a period of 3 years.

14. In the case of **Sheo Shanker Lal Srivastava** (*supra*), the Hon'ble Supreme Court was dealing with a case where the *doctrine of proportionality* was examined and held that the High Court shall be slow in interfering with the quantum of punishment unless it is found to be shocking to one's conscience.

15. The case of **Sudhakar** (*supra*) arose out of a situation where the procedural requirements under Article 311(2) of the Constitution was considered.

16. In the case of **Hombe Gowda Educational Trust** (*supra*), the Hon'ble Supreme Court was dealing with a case of interference in a punishment awarded by the Labour Court, which also the question that arose for consideration in the case of **Ramana** (*supra*) and in the case of **Mahindra and Mahindra Ltd.,** (*supra*).

17. The Hon'ble Supreme Court in the case of **Jitendra Singh Rathor** (*supra*), has held as follows:

"4. Under Section 11-A of the Act, advisedly wide discretion has been vested in the Tribunal in the matter of awarding relief according to the circumstances of the case. The High Court under Article 227 of the Constitution does not enjoy such power though as a superior court, it is vested with the right of superintendence. The High Court is indisputably entitled to scrutinise the orders of the subordinate tribunals within the well-accepted limitations and, therefore, it could in an appropriate case quash the award of the Tribunal and thereupon remit the matter to it for

fresh disposal in accordance with law and directions, if any. The High Court is not entitled to exercise the powers of the Tribunal and substitute an award in place of the one made by the Tribunal as in the case of an appeal where it lies to it. "

18. The Honorable Supreme Court in the case of **Krushnakant** (*supra*) has held as follows:

"16. In the case of the appellant referring to unauthorised absence the disciplinary authority alleged that he failed to maintain devotion to duty and his behaviour was unbecoming of a government servant. The question whether "unauthorised absence from duty" amounts to failure of devotion to duty or behaviour unbecoming of a government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances.

17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant.

(emphasis supplied)

19. A Co-ordinate Bench of this Court, in the case of **Smt P.Latha** (*supra*), noticing the judgment of the

Hon'ble Supreme Court in the case of **Krushnakant** has held as follows:

"7. The unauthorized absence of the workman is not in dispute. In the written statement at Annexure 'B' filed by the workman before the disciplinary authority, she has stated that her absence was not intentional. She has given detailed reasoning for her absence. It is on account of domestic problems and health reasons, the workman has remained unauthorisedly absent from duties. The disciplinary authority has not considered the reasons assigned by the workman for her absence.

8.

9. It is clear from the aforesaid decision that in a departmental proceeding, if allegation of unauthorized absence from duty is made, the disciplinary authority is required to hold that the absence is wilful. In the absence of such finding, the absence will not amount to misconduct."

20. Although there is no quarrel to the principle of law laid down by the judgments relied upon by the learned Counsel for the Petitioner, it is clear and forthcoming from the facts of the present case that, the Respondent was not willfully absent from his duty and there was sufficient ground made out for his remaining absent. Further, the Labour Court, after noticing that it was also not the case of

the Petitioner that at the time of working hours it was not possible for the Respondent to discharge his duties and has recorded a categorical finding in that regard. Having regard to the fact that the Respondent was dismissed from service by the Petitioner although sufficient cause was made out for him not being able to report for duty and all the aspects of the matter were considered by the Labour Court while passing the order dated 21.3.2019, I find no ground to interfere with the order dated passed by the Labour Court.

21. In view of the aforementioned, the Writ Petition fails and is accordingly dismissed.

**SD/-
JUDGE**

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