IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 29TH DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR JUSTICE R.NATARAJ

WRIT PETITION NO.202223 OF 2018 (L-KSRTC)

BETWEEN:

SHARANAPPA
S/O AMARAPPA TIDIGOAL,
AGE:47 YEARS, OCC:NIL,
(EX.DRIVER CUM CONDUCTOR OF MANVI DEPOT),
R/O SULTANPUR, POST : JAWALGERA,
TQ.SINDHANOOR, DIST.RAICHUR.

...PETITIONER

(BY SRI. P. VILAS KUMAR, SR. COUNSEL APPEARING FOR
SRI. P. NITESH VILAS KUMAR, ADVOCATE)

AND:

Digitally signed by SACHIN
Location: High Court Of Karnataka

THE DIVISIONAL CONTROLLER,
NORTH EAST KARNATAKA
ROAD TRANSPORT CORPORATION,
RAICHUR, DIVISION RAICHUR-584101.

...RESPONDENT

(BY SRI. DEEPAK V. BARAD, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI FOR SETTING ASIDE THE ORDER OF LABOUR COURT, GULBARGA PASSED ON ISSUE NO.1 DATED 23.07.2009 IN KID NO.92/2007 WHICH IS AT ANNEXURE-A AND CONSEQUENTLY SET ASIDE THE AWARD OF LABOUR COURT, GULBARGA PASSED IN KID NO.92/2007

DATED 18.06.2010 WHICH IS AT ANNEXURE-B AND ORDER FOR REINSTATEMENT OF THE PETITIONER INTO SERVICE AND ALL OTHER CONSEQUENTIAL BENEFITS.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE R.NATARAJ

ORAL ORDER

The workman has filed this writ petition challenging an order dated 18.06.2010 passed by the District Judge and Presiding Officer, Labour Court, Kalaburagi in K.I.D.No.92/2007 by which his claim petition challenging an order of the Disciplinary Authority dismissing him from service was also dismissed.

2. The petitioner was employed as a driver-cum-Conductor. The petitioner absented from duty unauthorizedly from 16.04.2005 to 25.02.2006 without submitting a leave application. Thus, a show cause notice dated 08.04.2006 was issued. The petitioner did not submit any reply to the show cause notice. The petitioner again absented from work between 26.02.2006 to

16.08.2006, which prompted the employer-Corporation to issue another notice dated 16.08.2006 calling upon him to show cause why he had unauthorisedly absented from 26.02.2006 to 16.08.2006. The petitioner did not reply to the notice which compelled the disciplinary authority to appoint an Enquiry Officer, who conducted an enquiry and submitted his report that the petitioner accepted the charges and therefore the charges were proved. The disciplinary authority forwarded a copy of the enquiry to the petitioner for his remarks. However, the petitioner did not submit any remarks and thereafter the disciplinary authority passed an order dismissing him from service. The petitioner has challenged the order before the Labour Court.

3. The Labour Court framed the following issues:

1) Whether the D.E.held against the first party by second party is fair and proper ?

2) Whether the 1st party/claimant is guilty of charges leveled against him ?

3) What order ?

4. The petitioner was examined as WW.1 and he marked exhibits Ex.M.17 to 19. The Corporation examined the Enquiry Officer as MW-1 and marked exhibits Ex.M1 to M16. The Labour Court after considering the material on record held that the petitioner was on leave from 10.04.2005 without leaving any intimation or seeking leave and had abstained from duties from 16.04.2005 to 16.08.2006. The Labour Court held that the petitioner did not produce any material to justify that he had submitted a leave application and he did not produce any document to establish that he was suffering from tuberculosis and was under treatment for one year 4 months. It perused Exs.M-16 and M-17 which apparently were show cause notices issued by the Corporation which indicated that the petitioner had involved in two absenteeism cases and nine cases of pilferage of the revenue of the Corporation which were all closed by imposing minor punishment. It also noticed that the petitioner did not deny his involvement in past cases. Therefore, the Labour Court held that the petitioner is a habitual absentee and therefore, it was not

a fit case for exercise of discretion under Section 11A of the Industrial Disputes Act. Being aggrieved by the said order, the petitioner is before this court.

5. The learned Senior counsel for the petitioner submitted that even if everything is assumed against the petitioner, the punishment of dismissal from service is disproportionate. He submits that dismissal from service is an extreme punishment that can be imposed in serious cases where an employee is found to indulge in activities such as grave insubordination, financial misappropriation etc., In the instant case, he submits the petitioner was prevented from attending to duty and that there is no procedure in the Corporation for submission of leave application. As a matter of fact, he contends that in the Corporation there is no procedure for acknowledging receipt of application for leave. He contends that the petitioner had applied for leave which was neither acknowledged nor granted and since the petitioner was not in a position to attend to duties, he was forced by

circumstances to abstain from duty. Therefore, he contends that the petitioner was prevented from sufficient cause from attending to duty. Thus, he prays that the impugned order of the disciplinary authority removing him from service be interfered with and this Court may exercise jurisdiction and impose any other punishment commensurate to the alleged misconduct.

6. Learned counsel for the respondent on the other hand submitted that the petitioner was a Driver-cum-Conductor appointed on permanent basis. He submits that if persons such as the petitioner abstain from work, it would cause immense hardship to the Corporation as it has to deploy men from other sectors, which in turn would affect the functioning of the Corporation. Therefore he submits that frequent absenteeism would cause not only monetary loss, but also inconvenience and discomfort to the Corporation. He further submits that since the petitioner has a habit of frequently abstaining from duties unauthorisedly and without prior intimation, continuing the

petitioner in employment was felt to be inappropriate by the disciplinary authority and therefore the extreme punishment of dismissal from service was imposed. He invited the attention of the Court to Ex.M-16 and Ex.M.17 and submitted that the petitioner has also indulged in similar conduct in the past and therefore the disciplinary Authority was justified in imposing a major penalty of dismissal from service.

7. I have considered the submissions of the learned Senior counsel for the petitioner and the learned counsel for the respondent/Corporation.

8. The petitioner was served with the notice to show cause why he had remained unauthorisedly absent for the period 16.04.2005 to 25.02.2006. The petitioner had all the wherewithal to respond to this notice and if he had submitted a leave application, he must have mentioned the same. However, he chose not to reply to the said notice. Following this, since he remained absent from 26.02.2006 to 16.08.2006, another notice was issued

on 16.08.2006. The petitioner did not respond to this notice also. Before the Enquiry Officer the petitioner admitted his guilt, following which the Enquiry Officer submitted a report stating that the charges were proved against the petitioner. Therefore there can be no exception to the finding of the Enquiry Officer and the Disciplinary Authority that the charges against the petitioner were proved. However, insofar as the imposition of punishment is concerned, the Disciplinary Authority must have been more pragmatic while imposing a major punishment of dismissal from service. The Disciplinary Authority must have been alive to the fact that such punishment could be imposed in the rarest of the rare cases where the Corporation considers it inappropriate on all footings to continue the employment of that workman. The extreme punishment of removal can be imposed in cases where the workman is accused of grave insubordination or is accused of grave misappropriation or defalcation of the funds of the Corporation etc.

9. In the instant case, except that the petitioner had abstained from duty unauthorizedly, there are no allegations of misappropriation or defalcation of the accounts of the Corporation. Therefore, the Labour Court must have been more considerate while exercising discretion under Section 11A of the Industrial Disputes Act.

10. Having regard to the above, this Court is the opinion that the punishment of dismissal from service is thoroughly disproportionate to the charges levelled against the petitioner and it is only appropriate to visit the petitioner with a lesser punishment so as to strike a balance between the petitioner and the respondent Corporation. Consequently, the following :

ORDER

i) The writ petition is allowed in part.

ii) The impugned order passed by the Disciplinary Authority, dismissing the petitioner from service is modified to withholding of two increments

with cumulative effect. However, the petitioner shall not be entitled for any pay during the period of unauthorised absence. Consequently, the petitioner is entitled to all other consequential benefits;

iii) The respondent-Corporation shall comply with the above within a period of 3 months from the date of receipt of a copy of this order.

Sd/-
(R.NATARAJ)
JUDGE

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List No.: 1 Sl No.: 35