NC: 2024:KHC:46703
WP No. 17087 of 2023

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 19TH DAY OF NOVEMBER, 2024**

**BEFORE**

**THE HON'BLE MS. JUSTICE JYOTI MULIMANI**

**WRIT PETITION NO. 17087 OF 2023 (L-KSRTC)**

**BETWEEN:**

THE DIVISIONAL CONTROLLER,
B.M.T.C., EAST ZONE,
CENTRAL OFFICE, B.M.T.C.,
BANGALORE,
HEREIN REPRESENTED BY
THE CHIEF LAW OFFICER,
B.M.T.C., CENTRAL OFFICES,
K.H.ROAD, SHANTHI NAGAR,
BANGALORE-560 027.

...PETITIONER

(BY SRI. SANJEEV.B.L., ADVOCATE)

**AND:**

SRI. RAFIQ
S/O SHEIK IBRAHIM SAB,
AGED ABOUT 46 YEARS,
REPRESENTED BY THE
VICE PRESIDENT,
KARNATAKA RASTHE SARIGE
MAZDOOR SANGH OKKUTA (R)
NO.458, O.T.C.ROAD,
COTTONPET, BENGALURU-560 053.

...RESPONDENT

(SERVED AND UNREPRESENTED)

Digitally signed by
THEJASKUMAR N
Location: High
Court of
Karnataka

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, SEEKING CERTAIN RELIEFS.

THIS WRIT PETITION IS LISTED FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, AN ORDER IS MADE AS UNDER:

**ORAL ORDER**

Sri.B.L.Sanjeev., counsel for the petitioner has appeared in person.

2. Notice to the respondent was ordered on 11.09.2023. A perusal of the office note depicts that respondent is served and unrepresented. The respondent has neither engaged the services of an advocate nor conducted the case as a party in person.

3. The short facts are these:

The respondent was a Driver cum Conductor in the establishment of the Corporation. He remained unauthorizedly absent from duties from 05.11.2016 onwards without prior permission or without sanction of leave. The Depot Manager submitted a report in this regard. He was issued with Call letters on 17.01.2017 calling upon him to report to duty, but he did not report to duty. He was issued with articles of charge. He did not reply to the same. The disciplinary authority appointed an inquiry officer. The inquiry officer conducted a detailed

inquiry and submitted his findings holding that the charges are proved. The respondent was issued with a second show cause notice along with the findings of the inquiry officer, but he did not reply to the same. The disciplinary authority taking note of the material on record and the past conduct of the workman, passed an order of punishment on 31.08.2018 and dismissed him from service.

The respondent raised a dispute before the II Addl. Labour Court, Bengaluru in I.D.No.07/2020. The Labour Court held that the domestic inquiry conducted by the Corporation was fair and proper. The Labour Court vide award dated 15.03.2023 set-aside the order of dismissal and directed reinstatement with continuity of service and consequential benefits for the purpose of terminal benefits subject to withholding two annual increments without cumulative effect. The Labour Court also ordered that the respondent is not entitled for backwages. It is this award that is called into question in this Writ Petition on several grounds as set-out in the Memorandum of Writ Petition.

4. Counsel for the petitioner has urged several contentions. Heard the arguments and perused the Writ papers with care.

5. The short point that arises for consideration is whether the award of the Labour Court requires interference.

6. The facts are sufficiently stated and do not require reiteration. Suffice it to note that the respondent came under a disciplinary inquiry proceedings for an act of misconduct i.e., unauthorized absence and was visited with an order of punishment i.e., dismissed from service on 31.08.2018.

The issue revolves around unauthorized absence. The charge made against the respondent was that he remained absent unauthorizedly from duty from 05.11.2016 onwards.

It is the specific contention of the Corporation that, no leave application was submitted, even if it is submitted that should be accompanied by Medical Certificate if the leave is sought on the health grounds.

The workman attempted to contend before the Labour Court that he was suffering from chronic ulcerative and hence,

he could not attend the duty. The workman furnished a Medical Certificate dated 05.11.2016 to 14.12.2017 and Fitness Certificate dated 15.12.2017 for the first time before the Labour Court and the same were marked as Ex.W.2 and W3. The Labour Court placed reliance on these documents and concluded that his absence is not willful. This is untenable. It is not in dispute that the delinquent was issued with articles of charge and he did not reply to the same, however he participated in the inquiry proceedings, but he did not furnish any medical documents before the inquiry officer. The contention about the illness was not put forth before the inquiry officer and nothing prevented him from furnishing the medical documents before the inquiry officer. Moreover, the Labour Court held that the domestic inquiry conducted by the Corporation as fair and proper. Hence, the Labour Court has erred in placing reliance on Ex.W.2 and W3 to conclude that the absent is not willful.

An employee is under an obligation not to absent himself from work without good cause during the time at which he is required to be at work. Absence without leave is a misconduct in industrial employment warranting disciplinary punishment.

No employee can claim leave of absence as a matter of right and remaining absent without leave will constitute violation of discipline. The absence without leave constitutes a misconduct justified disciplinary action against the delinquent workman. The quantum of punishment in cases of misconduct of absence from duty without leave would depend upon the facts of each case. In the present case, the delinquent remained absent unauthorizedly from duty without submitting a leave application or without prior permission from the higher authority.

The Labour Court has also erred in placing reliance on the order of punishment passed in respect of employee which was produced as Ex.W4 to conclude that the order of dismissal is discriminatory in nature. The Labour Court has failed to notice that there cannot be a similar yardstick in all cases of disciplinary matters. Each case differs as the misconduct also varies from case to case. It is perhaps well to observe that each case depends on the gravity of the misconduct coupled with the history of the worker.

Needless to observe that taking note of the past conduct is a mandate requirement as per Regulation 25 of the KSRTC

(Conduct & Discipline) Regulations, 1971. In the present case, the workman was involved in almost seventeen unauthorized absenteeism cases in the past. The disciplinary authority took note of the material on record and rightly passed the order of dismissal. Hence, the Labour Court could not have viewed the unauthorized absenteeism lightly. Furthermore, exercise of discretionary power under Section 11A is also not proper. When the domestic inquiry is held as fair and proper, what is required to be considered is victimization and perversity. In the present case, there is no victimization and perversity. I may venture to say that the Labour Court has failed to have regard to relevant considerations and disregarded relevant matters. In my considered opinion, the award passed by the Labor Court is unsustainable in law.

Lastly, counsel Sri.B.L.Sanjeev., submits that a memo has been filed furnishing the copy of call letters stating that pursuant to the interim order granted by this Court on 11.09.2023, the Corporation has issued Call letters on 02.10/11.2023 and 04.12.2023 calling upon the respondent to report to duty, but the respondent did not report to the duty.

Counsel therefore, submits that the memo along with the copy of Call letters may be placed on record.

Submission is noted. Memo along with the copy of Call letters is placed on record. A perusal of the same reflects that despite issue of Call letters, the respondent has failed to report to duty. The conduct of the respondent depicts that he is not interested in discharging his professional duties diligently. Therefore, he does not deserve any sympathy, much less misplaced sympathy. For the reasons stated above, the award passed by the Labour Court is liable to the set-aside. Accordingly, it is set-aside.

7. The Writ of Certiorari is ordered. The award dated 15.03.2023 passed by the II Addl. Labour Court, Bengaluru in I.D.No.07/2020 vide Annexure-E is quashed. The order of dismissal dated 31.08.2018 is confirmed.

8. Resultantly, the Writ Petition is ***allowed***.

Because of confirmation of the order of dismissal, the interim order granted by this Court stands discharged.

**Sd/-**
**(JYOTI MULIMANI)**
**JUDGE**

TKN
List No.: 1 Sl No.: 30