

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 31ST DAY OF MARCH, 2022

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

W.P.NO.207249/2014 (L-KSRTC)

BETWEEN:

Malkappa S/o Yallappa Talwar,
Age: 39 years, Occ: Nil,
(Ex. Driver Cum Conductor),
R/o. Post: Hiremasali,
Tq. Indi, Dist: Bijapur.

.... Petitioner

(By Sri Krupa Sagar Patil, Advocate)

AND:

The Divisional Controller,
NEKRTC, Gulbarga Division,
Gulbarga-585 102.

... 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 quashing the award passed by the Presiding Officer, Labour Court at Gulbarga in REF No.02/2013 dated 06.08.2013, at Annexure-D to the writ petition and allow the claim petition as prayed for.

This petition coming on for Preliminary Hearing in 'B' Group, this day, the court made the following:-

ORDER

Heard the learned counsel for the petitioner as well as learned counsel for the respondent.

2. The petitioner in this case is challenging the order passed by the Presiding Officer, Labour Court, Kalaburagi in Reference No.2/2013. It is the case of the petitioner that he was appointed as Driver-cum-Conductor in the respondent-Corporation in the year 2008. On 25.11.2010 the respondent-Corporation dismissed the petitioner from the service on the charge that he remained absent for 98 days without leave being sanctioned to him. Aggrieved by the order of dismissal the petitioner approached the Labour Court under Section 2A of the Industrial Disputes Act. The Labour Court, Kalaburagi in Reference No.2/2013 dismissed the reference and upheld the order of dismissal of the present petitioner. Aggrieved by the said order the present petitioner is before this court.

3. The learned counsel for the petitioner would submit that the enquiry conducted by the respondent-Corporation is not in accordance with law and sufficient opportunity is not given to him. It is also the contention of the learned counsel for the petitioner that the finding of the Labour Court is also not correct and in addition to that he would submit that assuming that the charges of unauthorized absence is proved, still the order of dismissal is disproportionate to the misconduct alleged against the petitioner and he prays to set-aside the order of the Labour Court as well as order of dismissal issued by the respondent-Corporation.

4. The learned counsel appearing for respondent-Corporation would justify the order of the respondent-Corporation dismissing the employee as well as the order of the Labour Court. It is the submission of the learned counsel for respondent-Corporation, that 98 days unauthorized absence is a serious misconduct and under the relevant provisions of law the respondent-Corporation

is empowered to impose the punishment of dismissal against the delinquent employee. Under these circumstances he prays for dismissal of the writ petition.

5. Learned counsel for the petitioner has brought to the notice of this court the judgment dated 05.04.2018 rendered by the Division Bench of this Court in Writ Appeal No.200279/2017 (L-KSRTC) wherein an employee was dismissed from the service for unauthorized absence of 110 days and this court in the said judgment has allowed the appeal filed by the dismissed employee and ordered for reinstatement as a fresh trainee subject to the other conditions being satisfied by the employee. The facts of this case and the facts of the case decided in Writ Appeal No.200279/2017 are similar. Under the circumstances, this court is of the considered opinion that the petition has to be allowed.

6. The impugned orders are set-aside and the respondent-Corporation is directed to reinstate the present

petitioner as a fresh trainee subject to fitness of the petitioner.

With these observation the writ petition is allowed in part.

**Sd/-
JUDGE**

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