
(2013) 01 KAR CK 0149

Karnataka High Court (Gulbarga Bench)

Case No: Writ Petition No. 85472 of 2012 (L-K)

Chandrashekhar

APPELLANT

Vs

The Divisional
Controller NEKRTC,
Raichur Division
Raichur

RESPONDENT

Date of Decision: Jan. 3, 2013

Acts Referred:

Industrial Disputes Act, 1947 " Section 33(2)(b), 33A

Citation: (2013) 01 KAR CK 0149

Hon'ble Judges: S. Abdul Nazeer, J

Bench: Single Bench

Advocate: Krupasagar Patil, for the Appellant; Subhash Mallapur, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S. Abdul Nazeer

1. This writ petition is directed against the award in Ref. No. 11/2009 dated 28.12.2010 passed by the Presiding Officer, Labour Court,

Gulbarga. The petitioner had been working with the respondent Corporation as a Conductor. Disciplinary proceedings was initiated against him

and it was alleged that he had failed to issue tickets and collect fare from ten passengers. After holding an enquiry, the Corporation dismissed him

from service on 7.4.2007. The petitioner challenged the said order by filing a claim petition before the Labour Court in Ref. No. 11/2009. The

Labour Court has dismissed the said petition by its order at Annexure-B dated 28.12.2010.

2. I have heard the learned Counsel for the parties.

3. It is not in dispute that an industrial dispute relating to charter of demands in I.D. No. 148/2005 in which the workman is concerned is pending

before the Industrial Tribunal at Bangalore. The workman was dismissed from service during the pendency of the said dispute. It is also not in

dispute that the Corporation has not complied with the statutory requirements contained in the proviso to Section 33(2)(b) of Industrial Disputes

Act, 1947 (for short "the Act") before passing the order of dismissal.

4. In North West Karnataka Road Transport Corporation Vs. Sadashiv (W.P. No. 63003/2011 disposed of on 7.8.2012), this Court has

considered an identical matter. Relying on the decision of the Constitution Bench of the Apex Court in Jaipur Zila Sahakari Bhoomi Vikas Bank

Ltd. Vs. Ram Gopal Sharma and Others, and the decision of this Court in Sanjay and Others Vs. The Management of NWKRTC in W.P. No.

65378/2011 and other connected matters disposed of on 26.6.2012, it was held that the termination of the workman from service without

compliance of the statutory requirements contained in the proviso to Section 33(2)(b) of the Act is void and inoperative.

5. In M.M. Narayana and Others Vs. The Management of KSRTC (W.P. Nos. 24118-120/2009 and other connected matters disposed of on

13.7.2012), this Court has held that an order of discharge or dismissal passed against a workman without obtaining approval u/s 33 (2)(b) would

be nonest. If the management/employer does not seek approval of the Board, Arbitrator, Court/Tribunal, etc., as required u/s 33(2)(b) on the

ground that such aggrieved workman has a remedy u/s 33A of the Act, it would not validate such order of discharge or dismissal and in such

cases, order of discharge or dismissal would be nonest and void.

6. Therefore, the award of the Labour Court at Annexure-B dated 28.12.2010 in Ref. No. 11/2009 cannot be sustained.

7. Learned Counsel for the petitioner-workman submits that the petitioner is not insisting for payment of any backwages provided the Corporation

reinstates him within a time frame. The submission of the learned counsel for the petitioner-workman is placed on record. In the light of the above

discussion, I pass the following order:

The award of the Labour Court at Annexure-B dated 28.12.2010 in Ref. No. 11/2009 is hereby quashed. The respondent Corporation is

directed to reinstate, the petitioner into service within a period of eight weeks from the date of receipt of a copy of this order with continuity of

service and other consequential benefits However, the petitioner is not entitled for any backwages. Writ petition is disposed of accordingly. No

costs.