

KAHV010009542021



IN THE COURT OF PRINCIPAL DISTRICT & SESSIONS
JUDGE & (PRESIDING OFFICER-LABOUR COURT)
AT: HAVERI.

PRESENT:

SRI. K. C. SADANANDSWAMY
B.Com., LL.M,
Prl. District & Sessions Judge, Haveri.
(Presiding Officer, Labour Court, Haveri).

DATED THIS THE 12th DAY OF SEPTEMBER, 2024

K.I.D. No.3/2021

First Party/Claimant/Workman:

Ravi,
S/o Tippanna Mankanur,
R/o Hanumanahalli,
Post: Mudenur,
Taluk: Ranebennur,
District: Haveri.
(By K.C. Pawali, Advocate)

V/s

Second Party/Respondent/Management:

The Divisional Controller,
NWKSRCTC,
Haveri Division,
Haveri.
(By Shri. A.S. Patil, Advocate)

ORDER ON PRELIMINARY ISSUE NO-1 DATED
03.05.2023

The petitioner/first party/ workman has filed this claim petition Under Section 10 (4-A) of I.D.Act against respondent.

2. It is averred in petition that 1st party workman was appointed as a mechanic (skilled labour) under the 2nd party management. He was permanent employee under 2nd party/respondent. He worked to the entire satisfaction of management till the date of illegal order of dismissal. The respondent-management has appointed the inquiry officer before passing the dismissal order. This workman was remained unauthorisedly absent for duties from 09.06.2019 to 16.03.2020 as per charge sheet. 1st party workman has submitted his reply. He was under treatment. He was suffering from jaundice disease. He has suffered damages to his testicles. 1st party workman has remained absent due to unavoidable circumstances. His mother was seriously ill during the relevant period. The claimant took his mother for treatment. The claimant has suffered mental depression due to death of his mother. The doctor has advised claimant to take full rest. He was unable to perform his duty. The absence of 1st party for duty in respect of said period is beyond his control. The inquiry conducted by inquiry officer

is against the principles of natural justice and in violation of regulations 23-C and D. The inquiry officer has not conducted inquiry in a fair and impartial manner. The findings and report of inquiry officer is perverse. The disciplinary authority has not applied its mind before imposing major punishment. The dismissal order passed by the management is illegal and opposed to law. It is prayed that this reference petition is to be allowed. The dismissal order dated 26.03.2021 passed by the 2nd party management is to be set aside. 1st party workman is entitled for reinstatement into service with full back-wages, continuity of service and other consequential benefits.

3. The 2nd party management has appeared through its counsel before this Court and filed counter statement contending that this petition is not tenable under law. This respondent has denied the averments made in para No.2 to 10 of petition as false. The respondent has admitted that petitioner is employee of respondent prior to his dismissal. The petitioner was unauthorised absent for his duties from 09.06.2019 to 16.03.2020 without taking prior permission from his superiors. The respondent/management has appointed the inquiry officer, who has conducted inquiry as per regulations. The claimant has participated in inquiry. The inquiry has been conducted in accordance with regulations and

in conformity with the principles of natural justice. The disciplinary authority has considered the gravity of charges and dismissed the claimant from service. The imposition of dismissal order is legal and valid. It is prayed that this petition is to be dismissed.

4. The following issues No.1 to 3 have been framed by predecessor-in-office on 11.10.2022 based on above pleadings and materials:

1. Whether the second party/management proves that enquiry held by it against the first party/workman is fair, just and in accordance with law?
2. Whether the claimant/workman proves that dismissal order No. NWKT/HVR/STF/ABS/C-7/92 (2020) 2059 dated 26.03.2021, passed against him by the second party is against law and unjust?
3. Is the claimant/workman entitled for relief as prayed for?

5. Inquiry officer is examined as RW-1 to prove issue No.1 and got marked Ex-R-1 and Ex-R-2.

6. This Court has heard arguments on both sides and perused records carefully.

7. My answer to preliminary issue No.1 is in negative and as per following:

REASONS

8. **Issue No.1**: The inquiry officer is examined as RW-1, who has deposed and reiterated objection statement and contents of Ex-R-1 and Ex-R-2. RW-1 is admitted and stated in cross-examination made by learned counsel for petitioner that in Ex-R-1, period of unauthorised absent is not found. Ex-R-1 is not original. There is no endorsement on Ex-R-1 as true copy. There is no signature of me and claimant on inquiry sheet dated 18.09.2020. I have not produced any records to show that charge was reached and served to claimant/petitioner.

9. I have gone through the evidence of RW-1, inquiry report and other documents produced on behalf of respondent to prove preliminary issue. It is mentioned in inquiry proceedings dated 18.09.2020. In 1st page, it is mentioned that enquiry is posted for next date for submission of defence statement of workman. The signature of workman, inquiry officer, date of adjournment is not found place. There is no proper opportunity given to workman to participate in inquiry proceedings and to submit his defence statement. In another written order sheet disclosed that from 30.09.2020, 15.10.2020, 06.11.2020 and 10.12.2020 in all hearing dates, inquiry officer is present. The presenting officer is absent. Except on 10.12.2020, workman is absent. It

is taken as there is no defence statement. The computerized proceedings dated 18.09.2020 in back page has not signed by inquiry officer, workman and presenting officer. This is one of the violation of principles of natural justice while conducting inquiry proceedings. Therefore, the proceeding conducted by inquiry officer RW-1 and admissions given by him is falsified the case of respondent. Ex-R-1 is a copy of attendance sheet. It disclosed only name of this claimant/workman. It does not disclose the names of other conductor and driver of NWKSRTC. Ex-R-1 is only produced by respondent itself pertaining to workman only. Normally and naturally, the attendance of the co-workers like conductors, drivers, mechanics and others must be available in attendance register. Ex-R-1 is not authenticated copy of attendance register. There is no explanation offered by RW-1 or respondent/management that why it has not produced true copy of attendance register. Therefore, this court is of the opinion that the respondent/management has failed to establish and prove before this court that inquiry conducted by respondent/management is fair and just and in accordance with law.

10. Therefore, I find no merits in contention of learned counsel for respondent/management as regard to there is a fair and just inquiry conducted by respondent/management.

I find some force in the contention of learned counsel for petitioner/workman/claimant that respondent/management has violated principles of natural justice and inquiry conducted by it is not fair and proper. Therefore, respondent/management has failed to prove issue No.1. I have constrained to answer issue No.1 in negative.

11. In result, I proceed to pass following:

ORDER

Respondent/management has not proved issue No-1. Inquiry conducted by respondent-management is not fair and proper. It is answered against respondent and in favour of 1st party/workman.

It is directed to both parties to lead evidence on other issues.

(Dictated to the Stenographer Grade-I, transcribed and typed by him, corrected and signed by me and then pronounced in the open court on 12th day of September-2024.)

(K. C. SADANANDSWAMY)
PRINCIPAL DISTRICT & SESSIONS JUDGE,
& PRESIDING OFFICER, LABOUR COURT,
HAVERI.

ANNEXURE:

Witnesses examined on behalf of Claimant/ Workman: -Nil-

Witnesses examined on behalf of Respondent/Management:

RW-1: R. Keshavamurthy

Documents marked on behalf of Claimant/ Workman: -Nil-

Documents marked on behalf of Respondent/ Management:

- | | | |
|--------|---|---|
| Ex-R-1 | - | Attendance register sheet from December 2018 to February-2021 |
| Ex-R-2 | - | Inquiry report along with charge and other documents is commonly marked |

**PRL. DISTRICT & SESSIONS JUDGE, HAVERI
& PRESIDING OFFICER, LABOUR COURT,
HAVERI.**

stp.*

