



IN THE COURT OF THE PRL. DISTRICT & SESSIONS
JUDGE & PRESIDING OFFICER,
LABOUR COURT (KID), AT: HAVERI

DATED THIS THE 3rd DAY OF NOVEMBER, 2025

PRESENT: Sri.Biradar Devindrappa N.,
B.A., LL.B.,(Spl)
Prl. District & Sessions Judge &
Presiding Officer Labour Court
(KID), Haveri.

K.I.D. No.12/2017

First Party Workman:

**Zabivulla Shukuru Saheb Harihar
dead by LRs.**

- 1(A) Smt. Reshma,
W/o Zabiulla Harihar,
Age: 33 years, Occ: Nil,
 - 1(B) Mubarak Husain,
S/o Zabulla Harihar,
Age: 11 years, Occ: Student,
 - 1(C) Bibi Ameena,
D/o Zabiulla Harihar,
Age: 6 years, Occ: Student,
- Claimant Nos.1(B) & (C) are minors,
represented by their mother i.e.,
claimant No.1(A) Smt. Reshma W/o
Zabiulla Harihar as minor guardian.

All are residents of
Rajarajeshwari Nagar,
Ranebennur, Taluk: Ranebennur,
District: Haveri.

(By Shri.K.C. Pawali, Advocate)

V/s

Second Party Management:

The Divisional Controller,
NWKSRTC, Haveri Division,
Haveri.

(By Shri. S.R.Patil, Advocate)

ORDER ON PRELIMINARY ISSUE NO.2

Being aggrieved by the order dated 28.04.2017 passed by the 2nd party management, the 1st party workman has filed a claim petition U/s 10(4-A) of I.D Act (Amendment) 1987 praying to set aside the order of dismissal with a direction to reinstate his service with full back wages, continuity of service and other benefits.

2. In the meanwhile, first party workmen died and his LRS come on record.

3. Brief facts leading to this petition are that, 2nd party management appointed the first party workman as a trainee conductor-cum-driver on 17.05.2000. He was brought on probation on 05.01.2012 and thereafter, it was confirmed and working to the satisfaction of the management. He was not felling well and remained absent to the duties but the management did not consider the medical

records but recorded his absence, conducted an inquiry, issued charge sheet on 29.09.2015 alleging that, he remained absent to the duties from 13.06.2015 to 09.10.2015 without permission and application. He submitted reply to the charges, appeared before the inquiry officer and produced medical records. Inquiry report was obtained and he was dismissed from the service. In fact, inquiry was in violation of principles of natural justice and Regulation 23 of C & D Regulation, 1971 particularly, Regulations No.11 and 16 to 19 of said Regulation. Inquiry report is perverse and not based on material records. Second party management passed the dismissal order and imposed the major punishment on the said report. Order of punishment is also illegal and bad in law. He is 39 years old person and not employed anywhere. He has no source of income to maintain himself and his family members. Accordingly, it is prayed to allow the claim petition.

4. Notice was issued. Respondent management appeared and filed objections.

5. According to the 2nd party management, first party workman is in the habit of remaining absent to the duties. Twelve similar cases were there against him. A proper

and fair inquiry was conducted in accordance with Regulation 23 C & D of Regulation 1971 and misconduct is proved. Penalty was imposed in view of the habitual absent and same is proportionate. Accordingly, its prayed to dismiss the claim petition.

6. Dismissal order was passed on 28.04.2017 and claim petition was filed on 13.06.2017 within limitation.

7. This court/tribunal has framed following issues:

1. Whether the claimant- first party proves that his dismissal order passed by the second party management dated 28.04.2017 at No.NWKT/HVR/EST/C-7/696/2015/192 is illegal and opposed to the principles of natural justice, therefore the same is liable to be set aside by this Tribunal?
2. Does the second party management prove that the claimant – first party is a chronic absentee to his duties, therefore on holding proper enquiry through the authorized enquiry officer and on following the principles of natural justice, they have passed the impugned order of dismissal of the petitioner, therefore the same is binding on him?
3. Is the petitioner entitled for re-instatement with back wages as prayed in the petition?
4. What order or award?

Note: Issue No.2 has been treated as Preliminary issue.

8. Issue No.2 was treated and tried as preliminary issue. Burden to prove said issue was upon the 2nd party management.

9. 2nd party management has produced the evidence of RW-1 and Ex.R-1 to Ex.R-41 documents and closed its side. Claimant did not produce evidence on the said issue.

10. Heard the arguments and perused records, thereafter, my finding to the issue No.2 is as under:

Issue No.2: In the Negative &
for the following reasons;

REASONS

11. **Issue No.2:** According to the first party workman, no proper and fair inquiry was conducted, inquiry conducted is in violation of principles of natural justice and Regulation 23 of C & D Regulation 1971. According to the 2nd party management, inquiry is proper and fair and in accordance with law.

12. In order to prove the issue No.2, the 2nd party management produced the evidence of RW.1 and Ex.R1 to R41 documents.

13. RW.1-Channabasappa Channagoudra,
Establishment Superintendent of NWKRTC, Haveri Division,

Haveri states that, Sri. S.N.Hajeri the then Administrative Officer was appointed as inquiry officer of the case. He is retired from service and suffering from ill health. Said officer is not in a position to give evidence. Documents regarding his incapacity to attend the court are produced in another case in KID NO.35/2017 on the file of this court. Therefore, 2nd party management authorised him to give evidence. RW.1 reiterates the respondent's case in his chief examination.

14. In his cross-examination RW.1 admits that, Sri.S.N.Hajeri the inquiry officer conducted the inquiry and he has not participated in the inquiry. He also admits that, first party workman submitted reply to the charge sheet and Ex.R27 and R28 are medical records but he denies a suggestion that, the first party workman submitted medical records during inquiry. Ex.R41 is xerox copy of the attendance. According to the said attendance extract, first party workman was absent from 13.06.2015 to 11.10.2015. However, said document does not disclose the absence on 09.08.2015, 10.08.2015 and 11.08.2015. Therefore, his absence to the duties from 13.06.2015 to 11.10.2015 is not continues but there is a break.

15. Though, it is not a rule that, if a person is not capable to give evidence his report shall not be looked into but report needs to be looked into on the basis of other material on record. Therefore, mere non-examination of the inquiry officer due to his ill health and inability to appear before the court is not a ground to hold that, inquiry report is not proper and fair. However, evidence of RW.1 is not sufficient to believe the case made out by the 2nd party management because, said witness had not opportunity to gain the information. Therefore, now I proceed to discuss the material on record.

16. Ex.R1 order sheet of inquiry, Ex.R2 charge sheet, Ex.R3 history sheet of the employee, Ex.R4 copy of history sheet, Ex.R5 and 6 postal track consignments, Ex.R7 order of appointment of inquiry officer, Ex.R8 order having changed the inquiry officer and presenting officer. Ex.R9, 10, 12, 14 to 19 inquiry notices, Ex.R11 and 13 copy of postal acknowledgment and postal acknowledgment, Ex.R20 preliminary inquiry details, Ex.R21 report of Depot Manager to initiate disciplinary action due to absence of first party workman for a period of 124 days, Ex.R22 & 23 inquiry notices, Ex.R24 and 25 inquiry proceedings, Ex.R26

representation of first party workman dated 08.09.2015, Ex.R27 medical certificate issued by Shivakrupa hospital, Ranebennur with prescriptions, Ex.R28 another medical certificate, Ex.R29 inquiry report, Ex.R30 order in question, Ex.R31 intimation to the workman, Ex.R32 & 33 postal acknowledgments, Ex.R34 workman's representation dated 24.09.2015, Ex.R35 explanation dated 09.10.2015 regarding absence, Ex.R36 permission dated 09.10.2015 to join duties, Ex.R37 and 38 show cause notices both dated 23.12.2016 that, why penalty shall not be imposed on the basis of inquiry report and history of employee, Ex.R39 returned postal cover having forwarded inquiry notice, Ex.R39(a & b) inquiry notices, Ex.R40 order on serial application No.220/2017 and Ex.R41 extract of attendance for the months of June 2015 to October 2015 are the 41 documents produced by the 2nd party management.

17. Above discussed material particularly, Ex.R26 dated 08.09.2015, Ex.R34 dated 24.09.2015 and Ex.R35 dated 09.10.2015 coupled with Ex.R36 permission to join duties establish that, the workman submitted explanation and sought permission. Though, Ex.P29 inquiry report dated 20.12.2016 discloses that, the first party workman explained

his absence on medical grounds, it was observed that, no documents of mother's ill health are produced and thereby it was held that, charge is proved. Said finding of the inquiry officer is against the material on record particularly, Ex.R27 dated 31.08.2015 coupled with prescriptions and Ex.P28 dated 14.09.2015. Therefore, it cannot be held that, a proper and fair inquiry was conducted before passing dismissal order. No other material is produced by the 2nd party management thus, 2nd party management has failed to prove issue No.2. Accordingly, said issue is answered in the negative. Hence, following:

ORDER

Issue No.2 is answered in the negative holding that, inquiry was not fair and proper and it is necessary to try other issues.

Call on 19.11.2025 for evidence of LR's of first party workman 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 3rd day of November-2025.)

(BIRADAR DEVINDRAPPA N.)
Principal District & Sessions Judge,
& Presiding Officer, Labour Court,
Haveri.