

KAHV010031962016



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

**PRESENT:**

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

**DATED THIS THE 12<sup>th</sup> DAY OF JUNE, 2024**

**K.I.D. No.23/2016**

**First Party/Claimant/Workman:**

Sri Murageshappa,  
S/o Gadigeppa Reddy,  
Age: 35 years, Occ: Nil,  
At & Post: Chikkabasur,  
Taluk: Hirekerur,  
District: Haveri.  
(By K.C. Pavali, Advocate)

V/s

**Second Party/Respondent/Management:**

The Management of NWKRTC,  
Haveri Division,  
Represented by the Divisional Controller,  
Haveri Division, Haveri.  
(By Shri. S.S Khaji, Advocate)

**ORDER ON PRELIMINARY ISSUE NO-2 DATED**  
**03.11.2017**

First party/ workman has filed this claim petition Under Section 10 (4-a) of I.D.ACT seeking permission of this court to set aside the dismissal order dated 22.12.2015 and also sought for reinstatement of 1<sup>st</sup> party into service with full back wages, continuity of service and other reliefs.

2. It is averred in petition that 1<sup>st</sup> party workman was appointed as a job trainee conductor-cum-driver by 2<sup>nd</sup> party/management on 01.10.2010. He has discharged his duty to the satisfaction of management till dismissal of order dated 22.12.2015. 2<sup>nd</sup> party management has conducted inquiry by appointing inquiry officer. 1<sup>st</sup> party workman has suffering from serious illness. He could not attend duty. He has submitted leave application along with medical certificate. 2<sup>nd</sup> party has not considered his application, medical grounds and others. He has got aged mother, who was suffering from ill-health. 1<sup>st</sup> party workman has to maintain and look after her during said period. Inquiry conducted by inquiry officer is against the principles of natural justice and in violation of C & R Rules and Regulations. The findings of inquiry officer is also perverse. Inquiry officer has not conducted proper inquiry. Sufficient opportunity has not given to this workman. Disciplinary authority has not applied its mind. It has passed

major punishment without application of mind. He is aged about 35 years. There are no chance of getting employment. It is prayed that this petition is to be allowed.

3. 2<sup>nd</sup> party management has appeared through its counsel before this Court and filed counter statement contending that petition is not tenable under law. 1<sup>st</sup> party workman was appointed as a job trainee conductor-cum-driver attached to Hirekeur depot in Haveri division. It was reported by depot manager Hirekerur contended that 1<sup>st</sup> party workman was unauthorised absent from his duties from 26.11.2013 to 27.03.2014 i.e., 122 days. He has not taken prior permission before applying leave. The depot manager has issued notice to 1<sup>st</sup> party. The same was served to him. He has not submitted explanation. The appointing authority has issued show-cause notice on 17.03.2014. There is no response from the 1<sup>st</sup> party. Inquiry officer has conducted enquiry on different dates. The sufficient opportunity was given to claimant/workman to contest inquiry proceedings. Inquiry conducted by inquiry officer is according to C & D rules and regulations. There is no violation of principles of natural justice. Disciplinary authority has considered the unauthorised absent for a period of 08 times and dismissed the claimant from duty, which is legal and justified. This respondent has denied para No.4 to 8 are false and incorrect.

The respondent has admitted the appointment of 1<sup>st</sup> party as conductor-cum-driver and issuance of notice conducting enquiry and others. It is prayed that this petition is to be dismissed.

4. My predecessor-in-office has framed issues No.1 to 4 on 03.11.2017 based on above pleadings and issue No.2 is tried and treated as preliminary issues, which are as under:

1. Whether the claimant 1<sup>st</sup> party proves that the dismissal order passed by 2<sup>nd</sup> party management on 22.12.2015 is illegal and opposed to law and principles of natural justice, therefore the same is liable to be set aside by this tribunal?
2. Whether the respondent management proves that 1<sup>st</sup> party claimant being temporary workman was a chronic absentee to his duty, therefore, on holding proper enquiry by following principles of natural justice, they have passed dismissal impugned order on 22.12.2015 and same is binding on the claimant 1<sup>st</sup> party?
3. Whether the claimant is entitled for the reliefs as claimed in the petition?
4. What order or award?

5. One administrative officer on behalf of respondent is examined as RW-1 and got marked Ex-R-1 to Ex-R-22 to prove this preliminary issue. Another EST supervisor, NWRTC is examined as RW-2 in support of contention of respondent.

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

7. My answer to preliminary issue No.2 is in negative and as per following:

### REASONS

8. Preliminary Issue No.2: This Court has carefully and meticulously considered the contents of claim petition and objections of respondent. One administrative officer K.M. Shiva Prasad is examined as RW-1 to prove issue No.2, who has deposed and reiterated contents of counter statement in detail by way of examination-in-chief through affidavit. He has produced Ex-R-1 to Ex-R-22 documents. RW-1 is admitted and stated in cross-examination made by learned counsel for 1<sup>st</sup> party/workman that "ನಿಆರ್-1, 2 ಮತ್ತು 3 ನೇ ಸಾಲುಗಳಲ್ಲಿ ಶಬ್ದಗಳನ್ನು ಕಾಟು ಹಾಕಲಾಗಿದೆ ಮತ್ತು ದಿನಾಂಕ ತಿದ್ದುಪಡಿ ಮಾಡಲಾಗಿದೆ ಅಂದರೆ ಸರಿ. ದಿನಾಂಕ 28.04.2015ರ ನಂತರ ಯಾವ ಪ್ರಕ್ರಿಯೆ ನಡೆಯಿತು ಎಂಬ ಬಗ್ಗೆ ನಮೂದಾಗಿಲ್ಲ ಅಂದರೆ ಸದರಿ ದಿನದಂದೇ ವಿಚಾರಣೆ ಮುಕ್ತಾಯಗೊಂಡಿದ್ದರಿಂದ ಮುಂದಿನ ಯಾವುದೇ ನಡವಳಿಗಳನ್ನು ಬರೆದಿಲ್ಲ ಅಂತಾ ಹೇಳುತ್ತಾರೆ. ದಿನಾಂಕ 28.04.2015ರ ನಡವಳಿಯಲ್ಲಿ, ಸಂರಕ್ಷಣಾ ಹೇಳಿಕೆ ನೀಡಲು ಕಾಲಾವಕಾಶ ನೀಡುವ ಕುರಿತು ಇರುತ್ತದೆ ಅಂದರೆ ಸರಿ. ಆ ರೀತಿ ಸಂರಕ್ಷಣಾ ಹೇಳಿಕೆ ನೀಡಲು ಕಾಲಾವಕಾಶ ನೀಡಿದ್ದರೋಲ ಇಲ್ಲವೋ ಎಂಬ ಬಗ್ಗೆ ನಿಆರ್-1ರ ಪುಟ ಸಂಖ್ಯೆ -2ರಲ್ಲಿ ನಮೂದಾಗಿಲ್ಲ ಅಂದರೆ ಸರಿ. ನಿಆರ್-8ರ ಜೊತೆಗೆ ಹಾಜರುಪಡಿಸಿದ ದಾಖಲೆಯಲ್ಲಿ ಅಜಿರ್ದಾರರ ವೈದ್ಯಕೀಯ ಪ್ರಮಾಣ ಪತ್ರ ಇರುತ್ತವೆ ಅಂದರೆ ಸರಿ. ವೈದ್ಯಕೀಯ ಪ್ರಮಾಣ ಪತ್ರ ಮತ್ತು ದಾಖಲೆಗಳ ಬಗ್ಗೆ ವಿವರಣೆಯನ್ನು ನಿಆರ್-8ರಲ್ಲಿ ನಮೂದು ಮಾಡಿಲ್ಲ ಅಂದರೆ ಸರಿ. ದಿನಾಂಕ

**07.05.2015 ರವರೆಗೆ ಯಾವ ನಡಾವಳಿಗಳು ನಡೆದವು ಎಂಬ ಬಗ್ಗೆ ನಿಆರ್-17 ರಲ್ಲಿ ವಿವರಣೆ ಇಲ್ಲ ಅಂದರೆ ಸರಿ.**

9. One Mallkarjunappa Hinchigeri, EST Supervisor, NWRTC Divisional Office, Haveri is examined as RW-2 to prove issue No.2, who has stated in his affidavit that one Nanjundaswami, who is now retired from service, is not feeling well to give evidence. He has given evidence on behalf of respondent management mentioning that 1<sup>st</sup> party claimant was unauthorised absent for duties from 26.11.2013 to 27.03.2014 without applying for leave. Workman has not taken prior permission.

10. RW-2 is admitted and stated in cross-examination made by learned counsel for 1<sup>st</sup> party workman that “ಸದರಿಯವರು ಇಲ್ಲಿ ವಾಸವಾಗಿದ್ದಾರೆ ಅಂತಾ ನಿಖರವಾಗಿ ಹೇಳಲು ಬರುವುದಿಲ್ಲ.”

11. By considering entire contents of Ex-R-1 to Ex-R-22, oral evidence of RW-1 and RW-2, pleadings of parties, admissions given by them and on careful appreciation of oral and documentary evidence, the respondent management has failed to establish that inquiry conducted by management is fair and proper. The inquiry is commenced on 23.01.2015. It is posted on 24.02.2015 without any progress. On 24.03.2015 revealed some progress in inquiry. Next, it is posted on 28.04.2015. On that day, inquiry is completed and posted to

give defence statement of workman on 17.05.2015. In the 2<sup>nd</sup> page of inquiry proceedings, there is no date fixed on 17.05.2015.

12. Inquiry officer has not recorded any proceedings on 17.05.2015. Whether workman has filed the defence statement or not, which is not forthcoming. Admittedly, RW-1 and RW-2 are not presenting officer or inquiry officer. There is no reference in Ex-R-1, whether defence statement of workman is filed or not. True copy of attendance register does not disclosed the presence of workman in the month of November 1<sup>st</sup> and 25<sup>th</sup>. It is a format. It is not true copy of attendance register. The procedure adopted by inquiry officer in conducting the inquiry is not in guidelines and regulations of corporation. The procedure adopted by Inquiry Officer is against principles of natural justice. There is no fair opportunity given to workman to submit his defence statement as mentioned in inquiry proceedings.

13. In inquiry proceedings, claimant/1st party has produced the medical certificate and other documents, which are available in the inquiry proceedings records. Medical certificate issued by Senior Medical Officer, Dr.S.R. Naik, District Hospital, Davanagere clearly disclosed that claimant/workman was absent from 28.11.2013 to 12.03.2014 due to ill-health. The workman has appointed in year 2010. He

has continued his job till dismissal. There is no observation reference about medical certificate produced by workman in inquiry report. Therefore, this court is of the opinion that entire inquiry proceedings conducted and adopted procedure is not in accordance with regulations and rules. Inquiry officer has violated principles of natural justice. RW-1 and RW-2 have only deposed based on documents. They have not participated in inquiry proceedings as a presenting officer or inquiry officer. Therefore, evidence of RW-1 and RW-2 is not helpful for respondent for proving fair and proper inquiry conducted by respondent. The inquiry proceedings and records of inquiry have not established that respondent/management has conducted inquiry in fair and proper manner known to law. Merely claimant/workman was absent from duty itself is not a ground to observe about chronic absence without viewing and verifying his grounds of absence for duty.

14. I find no merits in contention of learned counsel for respondent as regard to inquiry conducted by respondent/management is fair and proper. I find some force in the contention of learned counsel for petitioner/workman as regard to inquiry officer has not followed proper procedure. Inquiry conducted and report submitted by inquiry officer is in violation of principles of natural justice. There is

no fair opportunity given to workman during the inquiry proceedings. Respondent-management has failed to prove issue No.2. I have constrained to answer issue No.2 in negative.

15. In result, I proceed to pass following:

**ORDER**

Inquiry conducted by respondent-management is not fair and proper.

Opportunity is given to both parties to adduce evidence on other issues by next date of hearing.

(Dictated to the Stenographer Grade-I, transcribed and typed by him, corrected and signed by me and then pronounced in the open court on 12<sup>th</sup> day of June-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: K.M. Shivaprasad

RW-2: Mallikarjunappa Siddappa Hinchigeri

**Documents marked on behalf of Claimant/ Workman: -Nil-****Documents marked on behalf of Respondent/ Management:**

- Ex-R-1 - Order sheet relating to enquiry
- Ex-R-2 - Noting sheet of Divisional Controller
- Ex-R-3 - Absent report by Deport Manager
- Ex-R-4 - Calling letter to join the duty to the 1<sup>st</sup> party
- Ex-R-5 - History sheet regarding absent
- Ex-R-6 - Show-cause notice dated 17.03.2014
- Ex-R-7 - Request letter dated 25.08.2014
- Ex.R.8 - Forwardal letter annexing Ex-R-7
- Ex-R-9 - Permission letter issued by D.C
- Ex-R-10 - Letter of appointment of Inquiry officer
- Ex-R-11 - Enquiry notice
- Ex-R-12 - Enquiry notice
- Ex-R-13 - Enquiry notice
- Ex-R-14 - Enquiry notice
- Ex-R-15 - Preliminary Enquiry proceedings
- Ex-R-16 - Enquiry notice dated 11.04.2015
- Ex-R-17 - Enquiry proceedings dated 28.04.2015
- Ex-R-18 - Enquiry findings
- Ex-R-19 - Show-cause notice dated 23.09.2015
- Ex-R-20 - Removal order dated 22.12.2015
- Ex-R-21 - Appellate Authority order dt. 17.01.2022
- Ex-R-22 - Office order

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

