

KAHV010036552018



**IN THE COURT OF PRINCIPAL DISTRICT & SESSIONS JUDGE**  
**AT HAVERI.**

**(LABOUR COURT, HAVERI)**

**PRESENT:**

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

**DATED THIS 14<sup>th</sup> DAY OF AUGUST, 2024**

**K.I.D. No.16/2018**

**Petitioner/claimant**

**first party Workman :**

Rafiqahamad s/o Mehanuddin Borgi,  
Age 51 years, Occ:Nil  
Jumma Masjid Road,  
Bir Moria Compound, Vijayapur.

(Sri.M.H.Bhat, Advocate.)

V/s

**Respondent/second party**

**Management:**

The Management of NWKRTC,  
Haveri Division,  
Represented by its Divisional Controller,  
Haveri Division, Haveri.

(By Sri S.R. Patil, Advocate)

**ORDER ON PRELIMINARY ISSUE NO:1**

First party-workman has filed this claim petition under Section 10(4-A) of ID Act, against second party-management challenging dismissal order passed by second party-management dated 6.7.2018.

2. It is mentioned in claim petition that first party workman was appointed as security guard under second party-management on 05.11.1992. His post was confirmed as permanent on 11.07.1995. He worked to entire satisfaction of second party management till passing illegal order of dismissal. Second party-management has ordered for appointment of inquiry officer. Charge sheet was supplied to first party-workman. He has not submitted his reply. First party- workman was not keeping well. He has suffered liver problem and severe pain on account of accident. Inquiry officer has not conducted inquiry in fair and proper manner. It has violated principles of natural justice and C & D Regulations. Inquiry conducted by inquiry officer is perverse. The disciplinary authority has not applied its mind before imposing major punishment. First party workman has no source of income to maintain himself and his family members. It is case of absenteeism. The punishment imposed by management is too harsh and disproportionate to facts and circumstances of case. First party-workman is aged about 51 years of age. There are no chance of getting employment. It is

prayed that claim petition is to be allowed. The dismissal order dated 06.07.2018 is to be set aside. He has further prayed that second party-management is to be directed to reinstate first party-workman into service with full back wages and other consequential benefits.

3. The respondent-management has appeared before this court through its counsel and filed objection to above petition contending that petition is not tenable under law. First party-workman was remained absent unauthorisedly from 26.05.2017 on-words without taking prior permission from his superior or submitting any leave application. The Depot Manager Savanur Depot reported said fact of incident to Disciplinary authority. Second party management has appointed inquiry officer, who has conducted inquiry in accordance with law by following principles of natural justice and C & D Regulations. First party workman has participated in proceedings. Inquiry conducted by inquiry officer against first party-workman is fair and proper. Disciplinary authority has passed dismissal order by considering entire records . The respondent has admitted that first party-workman was working as security guard. He remained unauthorised absent from 26.5.2017 to 09.10.2017. This respondent-management has denied para 4 to 8 of claim petition as false and incorrect. The petition is not tenable under law. It is prayed that petition is to be dismissed.

4. The following issues No.1 to 3 were framed based on above pleadings and other materials by my predecessor in office.

1. Whether the second party/ Management proves that the inquiry 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/HD/DFL/ABS/C7/456/17/849 dated 06.07.2018, passed against him by the second party is against law and unjust?
3. Is the claimant/ workman entitled for relief as prayed for?

Issue No.1 is treated as preliminary issue.

5. To prove preliminary issue, inquiry officer of respondent-management is examined as RW-1 and got marked Ex-R-1 to Ex-R-42.

6. This court has heard arguments on preliminary issue on both sides and perused records carefully.

7. The following points of arguments canvassed by learned counsel for respondent :

It is specifically argued by learned counsel for respondent Mr.S.R.P that second party management has appointed inquiry officer to conduct inquiry against first party workman. Inquiry officer has conducted inquiry proceedings in accordance with law. It

has not violated any principles natural justice. It has followed regulations C and D of the corporation. First party workman has participated in proceedings. He has continuous absent for duties without any reasons. He has not applied leave. He has not intimated to his higher authorities. Therefore, inquiry officer has conducted inquiry proceedings in accordance with law. The charges framed against first party workman is proved during inquiry. The respondent has proved issue No.1 through evidence of RW-1 and documents produced. It is prayed that issue No.1 is to be answered in favour of second party.

**8.** The following points of arguments canvassed by learned counsel for first party workman :

It is specifically argued by learned counsel for claimant/first party that inquiry officer has not conducted inquiry in a fair and proper manner. It has violated principles of nature justice and regulations. There is no inquiry report produced and exhibited on side of respondent in this case. There are so many illegalities and irregularities committed by respondent-management in conducting inquiry proceedings. Learned counsel claimant/first party has drawn my attention to documents produced in support of his contention. It is prayed that issue No.1 is to be answered against second party management.

9. My answer to above preliminary issue No.1 is in negative for following:

**:REASONS :**

10. Preliminary issue No.1: I have carefully gone through evidence of RW-1, Ex-R-1 to R-42 and other documents produced by respondent to prove this preliminary issue. The inquiry officer for second party-management is examined as RW-1, who has deposed and reiterated contents of inquiry report and objection statement. He has produced Ex-R-1 to R-42. RW-1 has admitted and stated in cross examination made by learned counsel for first party-workman that " ನಿ.ಆರ್-4 ನ್ನು ಅರ್ಜಿದಾರ ಕೊಟ್ಟ ಪತ್ರ ಅಂದರೆ ಸರಿ. ಸದರಿ ಪತ್ರದಲ್ಲಿ ಅರ್ಜಿದಾರ ಕರ್ತವ್ಯಕ್ಕೆ ಹಾಜರಾಗದೇ ಇರುವುದಕ್ಕೆ ಏನು ತೊಂದರೆ ಆಗಿತ್ತು ಎಂಬ ಬಗ್ಗೆ ತಿಳಿಸಿರುತ್ತಾನೆ ಅಂದರೆ ಸರಿ. ನಿ.ಆರ್-5 ಅರ್ಜಿದಾರನಿಗೆ ಸಂಬಂಧಿಸಿದ ವೈದ್ಯಕೀಯ ಪ್ರಮಾಣಪತ್ರ ಅಂದರೆ ಸರಿ. ಮೂಲ ಹಾಜರಾತಿ ಪುಸ್ತಕದ ದೃಢೀಕೃತ ನಕಲು ಹಾಜರುಪಡಿಸಿಲ್ಲ. ನಿ.ಆರ್-16 ರಲ್ಲಿ ಅರ್ಜಿದಾರ ಆಪಾದನಾ ಪತ್ರಕ್ಕೆ ಉತ್ತರಿಸುತ್ತಾ ತಾನು ಗೈರು ಹಾಜರಿದ್ದ ಕಾರಣ ಮತ್ತು ಚಿಕಿತ್ಸೆ ಪಡೆದು ಕೊಂಡ ಆಸ್ಪತ್ರೆಯ ವಿವರ ತಿಳಿಸಿದ್ದಾನೆ ಅಂದರೆ ಸರಿ. ಅರ್ಜಿದಾರ ತನ್ನ ಸಂರಕ್ಷಣಾ ಹೇಳಿಕೆ ನಿ.ಆರ್-19 ರಲ್ಲಿ ತನ್ನ ಗೈರು ಹಾಜರಿಗೆ ಕಾರಣ ಕೊಟ್ಟಿದ್ದಾನೆ ಅಂದರೆ ಸರಿ. "

11. By considering entire contents of claim petition, objection, evidence of RW-1, documents produced on side of respondents to prove issue No.1, on careful appreciation of oral and documentary evidence, this court is of opinion that inquiry conducted by inquiry officer against first party/workman is not fair and proper. First party/workman has submitted application along with medical

certificate issued by KLE Hospital, Jamakhandi dated: 13.06.2017. It is mentioned in inquiry report, Ex-R-19 and R-17 that first party/workman has not appeared for duty due to ill health. He has not submitted any application in support of leave application about ill health. This order was passed on 16.05.2018 by inquiry officer. But, Ex-R-5 medical certificate is very much available with inquiry officer. The said document has not given consideration and application of mind at time of passing inquiry report. True copy of attendance register is not produced. They have submitted only attendance sheet, which is not document used for attendance register. These important aspects are clearly in violation of principles of natural justice while conducting fair inquiry by respondent-management. Therefore, I am of considered opinion that management has not conducted inquiry in fair and proper manner. It is against principles of natural justice. Therefore, respondent has not proved issued No.1 satisfactorily. The respondent- management has failed to prove issue No.1. Issue No.1 is answered against management and in favour of workman. I have constrained to answer issue No.1 in negative. In result, I proceed to pass following;

### ORDER

Inquiry conducted by respondent-management is not fair and correct. It is in violation of principles of natural justice.

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

(Dictated to the Stenographer Grade-I, transcribed and typed by her, printout taken, corrected and signed by me and then pronounced in open court on 14<sup>th</sup> day of August, 2024.)

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

**ANNEXURE:**

**Witnesses examined on behalf of Claimant/ Workman:**

-Nil-

**Witnesses examined on behalf of Respondent/ Management:**

RW-1 : Mallikarjunappa Siddappa Hinchigeri

**Documents marked on behalf of Claimant/ Workman:**

-Nil-

**Documents marked on behalf of Respondent/ Management:**

- Ex-R- 1 - Noting Sheet (In 2 pages),
- Ex-R- 2 - Recalling for employment,
- Ex-R-3 - Findings of inquiry and dismissal order by disciplinary authority,
- Ex-R- 4 - Application by claimant for permission to join,
- Ex-R- 5 - Medical certificate,

- Ex-R- 6 - Attendance register extract,
- Ex-R- 7 - Charge-sheet of Depot. Manager and  
History Sheet of claimant,
- Ex-R- 8 - Show-cause notice dtd:21/5/2018,
- Ex-R- 9 - Case pending sheet,
- Ex-R-10 - inquiry notice
- Ex-R-11 - Notice dtd:21/5/2018,
- Ex-R-12 - Another Show-cause notice dtd:21/5/2018,
- Ex-R-13 - Letter dtd:1/6/2018,
- Ex-R- 14 - Reply to the show-cause notice,
- Ex-R-15 - Extract of the attendance register,
- Ex-R-16 - Reply to the charge-sheet given by claimant,
- Ex-R-17 - inquiry findings,
- Ex-R-18 - inquiry proceedings sheet,
- Ex-R-19 - Defensive statement of claimant
- Ex-R- 20 - Proceedings sheet,
- Ex-R- 21 - Copy of the permission letter,
- Ex-R- 22 - Revised Charge-sheet,
- Ex-R- 23 - Appointment letter of inquiry officer,
- Ex-R- 24 - Notice dtd:21/02/2017,
- Ex-R-25 - Postal cover with acknowledgment,
- Ex-R-26 - Notice dtd:11/01/2018,
- Ex-R-27 - Postal acknowledgment,
- Ex-R-28 - Postal cover,
- Ex-R-29 - inquiry status,
- Ex-R-30 - Notice dtd:25/01/2018,
- Ex-R-31 - Postal acknowledgment,
- Ex-R-32 - Notice dtd:23/02/2018,
- Ex-R- 33 - Postal acknowledgment,
- Ex-R-34 - Letter dtd:19/03/2018,
- Ex-R-35 - Notice dtd:23/02/2018,

- Ex-R-36 - Copy of the notice dtd:08/03/2018,
- Ex-R- 37 - Dismissal Order,
- Ex-R-38 - Copy of service of Dismissal order,
- Ex-R- 39 - Postal cover,
- Ex-R- 40
- & 41 - Postal acknowledgments,
- Ex-R- 42 - Certified copy of Order passed in S.A.No.214/2018 before Industrial Tribunal, Bengaluru.

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

(GNR)

