North Eastern Karnataka R.T. Corpn vs Ashappa on 12 May, 2006

Equivalent citations: AIR 2006 SUPREME COURT 2164, 2006 (5) SCC 137, 2006 AIR SCW 2644, 2006 LAB. I. C. 2262, 2006 (3) AIR JHAR R 290, 2006 (4) AIR KANT HCR 192, (2006) 110 FACLR 80, (2006) 3 LAB LN 180, (2007) 1 MAD LW 193, (2006) 3 RAJ LW 2495, (2006) 5 SCJ 501, (2006) 6 SCALE 89, (2006) 3 SCT 102, (2006) 2 LABLJ 865, (2006) 8 SERVLR 645, (2006) 3 JCR 193 (SC), (2007) 1 SERVLJ 52, (2007) 3 KANT LJ 157, 2006 LABLR 744, (2006) 4 SUPREME 415, (2006) 43 ALLINDCAS 50 (SC), (2006) 2 CURLR 1069, 2006 (5) ALLMR (NOC) 5

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Bench: S.B. Sinha, P.K. Balasubramanyan

CASE NO.:
Appeal (civil) 2637 of 2006

PETITIONER:
North Eastern Karnataka R.T. Corpn.

RESPONDENT:
Ashappa

DATE OF JUDGMENT: 12/05/2006

BENCH:
S.B. Sinha & P.K. Balasubramanyan

JUDGMENT:

J U D G M E N T [Arising out of S.L.P. (Civil) No.9644 of 2005] S.B. SINHA, J :

Leave granted.

This appeal is directed against a judgment and order dated 2.03.2005 passed by the Karnataka High Court in Writ Appeal No. 3976 of 2002 whereby and whereunder the writ appeal filed by the Appellant herein from a judgment and order dated 11.06.2002 passed by a learned Single Judge of the said High Court in W.P. No. 25259 of 1999 was dismissed.

The Respondent was working as a conductor. He remained unauthorisedly absent from 27.11.1990 to 02.12.1990. He did not report for duty with effect from

16.05.1992. His leave records were seen and it was found that he had repeatedly remained unauthorisedly absent. On the aforementioned charges, a departmental proceeding was initiated against him. He was found guilty of commission of the said misconduct and was directed to be dismissed from service by an order dated 6.08.1994. He raised an industrial dispute in relation to the said order of dismissal from service culminating in a reference being made by the Government of Karnataka to Labour Court, Gulbarga for resolution of the said dispute. A preliminary issue was raised before the Labour Court and by a judgment and order dated 30.04.1996, it was found that the disciplinary proceedings held as against the Respondent was not fair and legal. The parties thereafter adduced their respective evidence before the Labour Court. By an award dated 28.06.1996, it was held that the Respondent remained absent from 27.11.1990 to 02.12.1993 and, thus, committed a misconduct. It was, however, opined:

"23. In a normal course the reasonable punishment would be to disallow the back wages and continuity of service from the date of dismissal to till the date of reinstatement. But in this case the D.E. has been set aside and the claimant has been granted interim relief. If the back wages and continuity of service are disallowed from the date of dismissal to the date of reinstatement the punishment would be somewhat unreasonable one. I am of the opinion that it is a fit case to disallow the back wages and continuity of service from the date of dismissal, i.e., 6-8-94 till the date of granting the interim relief, i.e., 29.1.95 as a lesser punishment."

It was, however, directed:

"The Respondent is directed to reinstate the claimant I-Party to his original post. The claimant I-Party is entitled for back wages at the rate of 75% of the wages what he was getting at the time of dismissal or 75% of the wages in the current rate whichever is more from the date of granting the interim relief 30.1.95. The claimant is deemed to have been continued in servie from the said date.

It is hereby ordered that the claimant I-Party is not entitled for back wages and continuity of service from the date of dismissal i.e., 6.8.94 to till the date of granting the interim relief i.e., 29.1.95 as a lesser punishment. I direct both the parties to bear their respective costs."

A writ petition was filed thereagainst by the Appellant which was dismissed by a learned Single Judge of the High Court holding:

"When a worker has remained unauthorisedly absent for such a long duration in the normal circumstances, Labour Court was not justified in interfering with the order of punishment imposed by the management but in the facts of the case, the workman was awarded some interim relief in the year 1995 and by an interim order of this court in the year 1999 he has been reinstated and has been working.

> Taking these factors into consideration and having regard to the long absence of the workman, it is a fit case that he should be denied the payment of backwages from the date of dismissal till the date of reinstatement."

As noticed hereinbefore, the writ appeal filed by the Appellant has been dismissed.

The learned counsel appearing on behalf of the Appellant would submit that the Labour Court as also the High Court committed a serious error in arriving at a finding that absenting oneself from duty for such a long time can be treated to be a minor misconduct and remaining absent from duty for 129 days should not have been treated leniently and as such, the impugned judgment cannot be sustained. He also pointed out that the finding of the Labour Court in paragraph 19 of its award was that the absence was from 27.11.1990 to 2.12.1993, a period of three years and five days.

The charges against the Respondent were proved. Even the Labour Court, before whom the parties adduced evidences, found that the Respondent was absent for over three years. The Labour Court, however, proceeded on the basis that over-staying on leave or absence from duty partook to the nature of a minor offence.

Remaining absent for a long time, in our opinion, cannot be said to be a minor misconduct. The Appellant runs a fleet of buses. It is a statutory organization. It has to provide public utility services. For running the buses, the service of the conductor is imperative. No employer running a fleet of buses can allow an employee to remain absent for a long time. The Respondent had been given opportunities to resume his duties. Despite such notices, he remained absent. He was found not only to have remained absent for a period of more than three years, his leave records were seen and it was found that he remained unauthorisedly absent on several occasions. In this view of the matter, it cannot be said that the misconduct committed by the Respondent herein has to be treated lightly.

In Delhi Transport Corporation v. Sardar Singh [(2004) 7 SCC 574], this Court opined:

> "11. Conclusions regarding negligence and lack of interest can be arrived at by looking into the period of absence, more particularly, when same is unauthorised. Burden is on the employee who claims that there was no negligence and/or lack of interest to establish it by placing relevant materials. Clause (ii) of para 4 of the Standing Orders shows the seriousness attached to habitual absence. In clause (i) thereof, there is requirement of prior permission. Only exception made is in case of sudden illness. There also conditions are stipulated, non-observance of which renders the absence unauthorised."

Yet recently in State of U.P. v. Sheo Shanker Lal Srivastava and Others [(2006) 3 SCC 276], it was opined that the Industrial Courts or the High Courts would not normally interfere with the quantum of punishment imposed upon by the Respondent stating:

> "It is now well-settled that principles of law that the High Court or the Tribunal in exercise of its power of judicial review would not normally interfere with the

> quantum of punishment. Doctrine of proportionality can be invoked only under certain situations. It is now well-settled that the High Court shall be very slow in interfering with the quantum of punishment, unless it is found to be shocking to one's conscience."

The said principle of law has been reiterated in A. Sudharkar.v. Post Master General, Hyderabad and Anr.[2006 (3) SCALE 524] stating:

> "Contention of Dr. Pillai relating to quantum of punishment cannot be accepted, having regard to the fact that temporary defalcation of any amount itself was sufficient for the disciplinary authority to impose the punishment of compulsory retirement upon the Appellant and in that view of the matter, the question that the third charge had been partially proved takes a back seat.
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> In Hombe Gowda Educational Trust and Another v. State of Karnataka and Others [(2006) 1 SCC 430], this Bench opined:
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> "The Tribunal's jurisdiction is akin to one under Section 11A of the Industrial Disputes Act. While exercising such discretionary jurisdiction, no doubt it is open to the Tribunal to substitute one punishment by another; but it is also trite that the Tribunal exercises a limited jurisdiction in this behalf. The jurisdiction to interfere with the quantum of punishment could be exercised only when, inter alia, it is found to be grossly disproportionate.
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> This Court repeatedly has laid down the law that such interference at the hands of the Tribunal should be inter alia on arriving at a finding that no reasonable person could inflict such punishment The Tribunal may furthermore exercises its jurisdiction when relevant facts are not taken into consideration by the Management which would have direct bearing on the question of quantum of punishment.
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> Assaulting a superior at a workplace amounts to an act of gross indiscipline. The Respondent is a teacher. Even under grave provocation a teacher is not expected to abuse the head of the institution in a filthy language and assault him with a chappal. Punishment of dismissal from services, therefore, cannot be said to be wholly disproportionate so as shock one's conscience.
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> A person, when dismissed from services, is put to a great hardship but that would not mean that a grave misconduct should go unpunished. Although the doctrine of proportionality may be applicable in such matters, but a punishment of dismissal from service for such a misconduct cannot be said to be unheard of. Maintenance of discipline of an institution is equally important. Keeping the aforementioned principles in view, we may hereinafter notice a few recent decisions of this Court."

In State of Rajasthan and Another v. Mohd. Ayub Naz [(2006) 1 SCC 589], this Court held:

> "For the foregoing reasons, we are of the opinion that a government servant who has willfully been absent for a period of about 3 years and which fact is not disputed even by the learned Single Judge of the High Court, has no right to receive the monetary/ retrial benefits during the period in question. The High Court has given all retrial benefits which shall mean that a lump sum money of lakhs of rupees shall have to be given to the respondent. In our opinion, considering the totality of the circumstances, and the admission made by the respondent himself that he was willfully absent for 3 years, the punishment of removal imposed on him is absolutely correct and not disproportionate as alleged by the respondent "

For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. The appeal is allowed. No costs.