

IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH
DATED THIS THE 15TH DAY OF APRIL 2024
BEFORE

THE HON'BLE MR JUSTICE SHIVASHANKAR AMARANNAVAR
WRIT PETITION NO. 105424 OF 2023 (L-KSRTC)

BETWEEN:

THE DIVISIONAL CONTROLLER (SOUTH),
N.W.K.R.T.C. BELAGAVI DIVISION,
BELAGAVI,
R/BY AUTHORIZED SIGNATORY,
CHIEF LAW OFFICER,
N.W.K.R.T.C. CENTRAL OFFICE,
GOKUL ROAD, HUBBALLI-580030.

... PETITIONER

(BY SRI. S.L. MATTI, ADVOCATE)

AND:

SRI. VASANT B. JOGI S/O BYRAPPA,
AGE. 58 YEARS,
OCC. DISMISSED DRIVER,
R/O. KAITHOTLU VILLAGE,
UMBLE BYLU,
TQ. SHIVAMOGA,
DIST. SHIVAMOGA-577115.

... RESPONDENT

(BY SRI. R.H. ANGADI, ADVOCATE)



THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI BY QUASHING AN AWARD PASSED BY THE INDUSTRIAL TRIBUNAL, BENGALURU IN COMPLAINT NO.38/2014 (IN ID NO.148/2005) DATED: 04/01/2023 VIDE ANNEXURE-H, IN THE ENDS OF JUSTICE AND EQUITY.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 05/04/2024 AND COMING ON FOR PRONOUNCEMENT, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner has prayed to quash the award dated 04.01.2023 passed by Industrial Tribunal, Bengaluru in Complaint No.38/2014. The certified copy of the same is at Annexure-H.

2. The facts in brief are that the respondent who was working as a driver in petitioner-Corporation was remained absent for duties from 01.06.2007 onwards without taking prior permission from his superiors or submitting leave application. On the report of Depot Manager dated 22.06.2007, a call notice dated 17.09.2007 came to be issued to the respondent directing him to report for duty. The respondent neither replied to the said notice nor reported to the duty and therefore, Article of Charges dated 24.04.2008 was issued to him along with statement of imputation. After receipt of Article of Charges, respondent did not submit his reply and therefore, the disciplinary authority appointed enquiry officer for domestic enquiry of unauthorized absence of respondent and also appointed Presenting Officer. The enquiry notice

was issued to the respondent through paper publication in 'Vijaya Karnataka' daily news paper. The enquiry officer held enquiry and submitted enquiry report. The copy of which is at Annexure-A. A show cause notice came to be served on the respondent but he did not chose to give any reply to the said show cause notice. The disciplinary authority by its order dated 21.08.2008 has dismissed the respondent from service of the Corporation. The respondent filed a complaint under Section 33-A of Industrial Dispute Act, 1947 (hereinafter for short "ID Act") for setting aside the order of dismissal dated 21.08.2008. The copy of the said complaint is at Annexure-'B'.

3. The petitioner-Corporation pursuant to the notice appeared and filed statement of objections. The copy of which is at Annexure-C. The Industrial Tribunal after recording the evidence of both the parties allowed the said complaint in part and set aside the dismissal order dated 21.08.2008 with effect from 28.03.2014 and directed the petitioner-Corporation to reinstate the respondent in his

original post with continuity of service with effect from 28.03.2014 on the ground that approval is required under Section 33(2)(b) of Industrial Dispute Act and the same has not been obtained by the petitioner-Corporation. The said order of the Industrial Tribunal has been questioned by the petitioner-Corporation in this writ petition.

4. Heard learned counsel Sri.S.L.Matti, for petitioner-Corporation and learned counsel Sri.R.H.Angadi, for respondent.

5. The learned counsel for the petitioner would contend that the respondent-workman kept quiet for six long years after dismissal order. The period of limitation for raising a dispute under Section 2-A(3) is three years from the date of discharge, dismissal or retrenchment. He further contended that as per Section 33-A(b) the complaint made under Section 33-A has to be adjudged as if it was a dispute referred to or pending before it in accordance with the provisions of the ID Act and therefore, the limitation contained in Section 2-A(3) of ID Act is applicable and the complaint is beyond the period of limitation of 3 years. He

further contended that the Tribunal held that the dismissal order is Non-est as there is no compliance of Section 33(2)(b) and has allowed the complaint by the impugned order and it has not gone into the merits of the Article of Charges/misconduct of the respondent.

6. Learned counsel for the petitioner placing reliance on the decision of the Hon'ble Apex Court in the case of **Managing Director, NEKRTC Karnataka Vs. Shivasharanappa** in **Civil Appeal No.9956/2017** contends that the validity of the dismissal is required to be gone into by the tribunal. The tribunal has not considered the validity of the dismissal on merits and only on the ground of non-compliance of Section 33(2)(b) of the Act, has allowed the complaint.

7. Learned counsel for the respondent would contend that the Constitution Bench of the Hon'ble Supreme Court of India in the case of **Jaipur Zila Sahakari Bhoomi Vikas Bank Vs. Ram Gopal Sharma and Others** reported in **AIR 2002 Supreme Court 643** has held that not making an application under Section 33(2)(b) seeking

approval is a clear case of contravention of the provisions to the Section 33(2)(b) and dismissal order becomes inoperative or void. He further contends that the said **Jaipur Zila Sahakari Bhoomi Vikas Bank(supra)** has not been considered by the Hon'ble Apex Court in **Shivasharanappa case(supra)** and therefore, the said decision in **Shivasharanappa(supra)** would be treated as per-incuriam, as previous decision of the Constitution Bench would cover the case before it has not been referred to.

8. Having heard the learned counsel for the parties, this court has perused the material on records.

9. The crucial question that arise for consideration is whether non-compliance of provisions of Section 33(2)(b) of the Act, by the petitioner-Corporation before placing the order of dismissal would render the order of dismissal void and non-est.

10. This issue is no more *res integra* in view of the decision of the Constitution Bench of the Hon'ble Apex Court in the case of **Jaipur Zila Sahakari Bhoomi Vikas**

Bank(supra). The Division Bench of this court has considered and distinguished the decision of the Hon'ble Apex Court in **Shivasharanappa's** case(supra), in the case of **Divisional Controller, NEKRTC, Vs. Raghavendra** in **Writ Appeal No.200112/2016** and connected matters reads thus:

"25. Similarly, in the case of Shivasharanappa supra, the Hon'ble Apex Court while considering the case of a workman relating to the validity of the proceedings of the domestic enquiry in the background of the Labour Court deciding the question, whether the order of dismissal is proportionate to the legal misconduct, answering the same in favour of the management interfered by the High Court in the writ petition proceedings filed by the management inasmuch as the punishment imposed by the Labour Court, held that the High Court ought not to have interfered with the punishment imposed without considering the findings of the Labour Court merely on the ground that the requirement under Section 33(2)(b) of the Act had not been complied with and prior approval had not been taken, more particularly when the correctness of the

charges brought against the workman have not been assailed by the workman."

12. In the case of ***Divisional Controller, NEKRTC, Bidar division, Bidar Vs. Venkat reported in 2015(4) AKR 857*** as well as the ***Managing Director, Management of NWKRTC and others Vs. Rupasingh R. Chavan and others in W.A.Nos.101511/2016 and 101192/2016*** held that the order of dismissal of the workman contravening the Section 33(2)(b) of the Act would render the dismissal order inoperative considering and distinguishing the judgment of Hon'ble Apex Court in the case of ***Shivasharanappa(supra)***.

13. ***In Rupasingh R. Chanvan and others(supra)***, the Division Bench of this has observed in paragraph No.7 as under:

"7. The argument of the learned counsel that no writ petition can be dismissed for not complying with Section 33(2)(b) of the Act cannot be countenanced in view of adjudication made on the validity of dismissal by the Labour Court and in the writ petition proceedings. In the case of Shivasharanappa (supra), the Hon'ble Apex Court was dealing with the case, wherein this Court had interfered with the punishment

imposed without considering the findings of the Labour Court on the correctness of the charges brought against the workman. The findings of the Labour Court on that issue was not challenged by the workman. In such circumstances, the High Court interfering with the punishment imposed held, is contrary to the view expressed by the Hon'ble Apex Court in Management of Karur Vysya Bank Limited (supra), the situation herein is entirely different, Corporation has challenged the award of the Labour Court. In the said proceedings, keeping in view of the fact that the approval required under Section 33(2)(b) of the Act had not been taken due to mistaken notion of the legal position by the officers and considering the status of the Corporation being a public sector, in the interest of the public at large, the order of the Labour Court has been modified restricting the back-wages to 50%. In the circumstances, the judgments referred to by the learned counsel for the Corporation is not applicable to the facts of the present case. The evidence of MW1 does not prove the charges levelled against the respondent as viewed by the Tribunal. Reasonability and credibility of material which are the relevant factors requires to be examined to reach the conclusion supports the case of the workman, it is not on mere violations of departmental instructions, a conclusion is reached by the Labour Court. It is also observed that no principles of natural justice was followed by the Enquiry Officer and the same has been accepted by the disciplinary authority. The judgment of the Constitutional Bench of Jaipur Zila (supra) being

not overruled, reliance placed by the learned Single Judge on the said judgment cannot be said to be irregular or illegal.”

14. In the case of **Management of Karur Vysysa Bank Ltd. Vs. Balakrishanan** reported in **(2016) 12 SCC 221**,

reads thus:

"12. Before parting, there are two other issues that need to be addressed. The first is with regard to the views expressed by the Constitution Bench of this Court in para 14 of the decision in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma [(2002) 2 SCC 244]. The views expressed by the Constitution bench in para 14 of the aforesaid decision came up for consideration before this Court coincidentally and the issues dealt with in the said paragraph, we clarify, have nothing to do with what arose for decision in the present case. However, in this regard, our attention was drawn to certain published works in which a view seems to have been taken that the opinion of the Constitution Bench expressed in para 14 in the aforesaid decision needs reconsideration. Beyond recording what has been brought to our

notice as stated above, we do not consider it necessary to deal with the matter any further.”

Thus, the judgment of Constitution Bench of Hon'ble Supreme Court in the case of **Jaipur Zila Sahakari Bhoomi Vikas Bank(supra)** case is not overruled and still holds field.

15. Admittedly, in the Industrial Dispute No.148/2005 relating to the charter of Demands was pending as on the date of dismissal of the respondent and the said dispute is raised by KSRTC Staff and Workers Federation. In view of the pendency of the said Industrial Disputes, the petitioner-Corporation ought to have obtained approval of the Tribunal for dismissal of the workman in compliance of Section 33(2)(b). The petitioner-Corporation did not seek approval as required under Section 33(2)(b) of the Act and therefore, order of dismissal of workman is void and non-est.

16. The Division Bench of this Court in the case of **Divisional Controller, Bidar Vs.Ravi S/o**

Basavarajappa Huded in **W.A. No.50351/2013**

decided on 21.08.2019 considered the decision of the Hon'ble Apex Court and Division Bench of This Court referred to supra and held that the **Jaipur Zila Sahakari Bhoomi Vikas Bank(supra)** case is not overruled and still holds the field and affirmed the order of the learned single Judge quashing the award of the Labour Court and directed the petitioner-Corporation to reinstate the workman into service holding that the order of dismissal is void and non-est for non-compliance of the statutory requirements contained in the proviso to Section 33(2)(b) of the Industrial Dispute Act.

17. The complaint made by the respondent was under Section 33-A of the Act. There is no limitation provided for filing the complaint under Section 33-A of the Act. To consider the contention of the learned counsel for the petitioner, it is necessary to extract Section 2(A) and Section 33-A of the Industrial Dispute Act. They reads thus;

"2-A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.— (1) *Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.*

(2) *Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.*

(3) *The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of*

discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).”

33-A. Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceedings.—

Where an employer contravenes the provisions of section 33 during the pendency of proceedings (before a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal), any employee aggrieved by such contravention, may make a complaint in writing, [in the prescribed manner,—

(a) to such conciliation officer or Board, and the conciliation officer or Board shall take such complaint into account in mediating in, and promoting the settlement of, such industrial dispute; and

(b) to such arbitrator, Labour Court, Tribunal or National Tribunal and on receipt of such complaint, the arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate Government and the provisions of this Act shall apply accordingly.

18. Sub section (3) of Section 2-A of the Act provides limitation of three years to make an application as referred to in Sub Section (2) from the date of discharge, dismissal, retrenchment or otherwise termination from service as specified in the Sub section(1). The said limitation of three years is for filing an application under Sub section (2) of Section 2-A. There is no limitation provided for raising the Industrial Dispute under Sub section (1) of Section 2-A. The limitation provided under Sub section (3) is with regard to filing of an application by the workman under Sub section (2) of Section 2-A. What is referred in Clause (b) of Section 33-A by the term "shall adjudicated upon the complaint as if it were a dispute referred to or pending before it". There is no limitation for referring a dispute. The term "shall adjudicated upon the complaint as if it were a dispute referred to or pending before it is in accordance with provisions of this Act" only indicates the procedure to be followed by the Tribunal / Labour Court. Therefore, the contention of the learned counsel for the petitioner-Corporation that the limitation contained under Sub Section (3) of Section 2-A of the Act

is also applicable to the complaints under Section 33-A of the Act has no merit.

19. In view of the aforesaid, the Industrial Tribunal is justified in passing the impugned order and accordingly, the writ petition deserves to be dismissed and it is dismissed.

**Sd/-
JUDGE**

Hmb
Ct:bck