



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF OCTOBER, 2023



PRESENT

THE HON'BLE MR PRASANNA B. VARALE, CHIEF JUSTICE

AND

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

WRIT APPEAL NO. 217 OF 2023 (L-RES)

BETWEEN:

KARNATAKA POWER TRANSMISSION
CORPORATION LIMITED.,
M.R.S DIVISION, SHIVAMOGGA 577 203,
REPRESENTED BY B R YOGEESSHA
EXECUTIVE ENGINEER (ELECTRICAL)

...APPELLANT

(BY SRI. SHIRISH KRISHNA.,ADVOCATE)

AND:

S. KIRAN,
AGED ABOUT 35 YEARS,
S/O SUBBACHARY,
NO 3587, MALIYAMMA KRUPA,
HEMAVATHINAGAR, HASSAN 573 201.

...RESPONDENT

THIS WRIT APPEAL FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO ALLOW THE INSTANT WRIT APPEAL AND THEREBY SET ASIDE THE IMPUGNED ORDER DATED 10.11.2022 RENDERED BY THE Ld. SINGLE JUDGE OF THIS HONBLE COURT IN WP No-31833/2019 AND CONSEQUENTLY ALLOW THE WP BEARING WP No-31883/2019 AS PRAYED FOR AND GRANT OTHER SUCH RELIEFS, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL COMING ON FOR PRELIMINARY HEARING, THIS DAY, **CHIEF JUSTICE** DELIVERED THE FOLLOWING:



**JUDGMENT**

This intra-Court seeks to call in question a learned Single Judge's order dated 10.11.2022 whereby appellant's W.P.No.31833/2019 having been dismissed, the Labour Court award dated 21.03.2019 for reinstatement of the respondent herein has been sustained.

2. Learned counsel for the appellant vehemently argues that the respondent workman had remained unauthorisedly absent for a period of 632 days, on various occasions; unauthorised absence of an employee breeds a lot of indiscipline and therefore the punishment of dismissal could not have been set aside by the Labour Court which committed the error and that the learned Single Judge also committed a concurrent error. That being the position, the impugned order is liable to be invalidated, argues the counsel for the appellant.



3. Having heard the learned counsel for the appellant and having perused the appeal papers, we decline indulgence in the matter inasmuch as the Labour Court, after due appreciation of facts, in its accumulated wisdom, has set aside the dismissal and directed the reinstatement of the workman; the same has been deeply examined the learned Single Judge who concurred with the findings of the Labour Court, after referring to as many as ten Rulings cited at the bar. Both they have held the explanation offered by the workman for remaining absent, as plausible. There is absolutely no material for us to take a different view of the matter.

4. The respondent workman has specifically stated that he was undergoing a serious distress of mind and as a consequence, was not able to evince interest in the accomplishment of the job. That is why he had remained absent with no culpable intent to cause any inconvenience to the employer. Distress and depressions are the by-products of modern life, whichever be the calling. Stress is



the product of the psychological or emotional pressure that we experience both in our personal and occupational lives. Often it is difficult to insulate the stress, and to determine its impact on day to day activities. There may come a point that the 'stressors' encountered in the work place lead to the inability to function in a work environment. A decision to lay an employee off work, with or without just cause, may well escalate the level of depression. What the Apex Court in *RAVINDER KUMAR DHARIWAL vs. UOI*, (2023) 2 SCC 209, observed at para 79 is profitably reproduced:

"International conventions like the CRPD recognise mental health disorders as psychosocial disabilities. Psychosocial disability is sometimes characterised as an "invisible disability" because it is not always obvious, unlike other disabilities... Employees often do not disclose their mental health disorders, which leads to the invisibilisation of psychosocial disabilities. The World Health Organisation and the World Psychiatric Association identify stigma as a major cause of discrimination against persons with mental health disorders. Many people with mental health disorders are willing and able to work. However, socio-structural barriers impede their participation in the workforce... Exclusion from the workforce not only creates conditions of material deprivation,



but it also impacts self-confidence, and results in isolation and marginalisation which exacerbates mental distress. To escape stigma and discrimination, persons with mental health issues painstakingly attempt to hide their illnesses from co-workers and managers..”

These realities of life cannot be lost sight of while adjudging the woes of workmen; after all, life being what it is, spares none from its kiln. What P.B. Shelley (1792-1822) poetically wrote is the reality of life: '*I fall on the thorns of life, I bleed..*'. The appellant being an entity under Article 12 of the Constitution of India, has to conduct itself as a model employer; that is how a Welfare State should be; it has to treat its employees with fairness & empathy; by that, it wins the heart of work force and that eventually results in increased productivity. Otherwise, where would we locate the line that bifurcates a Welfare State and a Colonial Regime..?

5. It is not that the respondent workman is holding a high office and that his remaining absent, of course arguably for a long period, has caused miseries to the Management; he is only a Station Attendant (Grade II)



who had gained entry to the employment way back in January 2008, on permanent basis. It is not the case of appellant that after his removal from service, a new incumbent has occupied the resultant vacancy. A Court has to do justice keeping in view a host of factors that propelled the grieving workman to its portals. The Labour Court did its job and the Writ Court too, did its. We cannot deny justice to the deserving just by quoting some jurisprudential theories. More than a century ago, in ***DAVIS vs MILLS, 194 U.S. 451 (1904)***, Holmes J., alarmed:

"Constitutions are intended to preserve practical and substantial rights, not to maintain theories..."

The impugned order of the learned Single Judge inarticulately echoes the same. It is just & reasonable, to say the least. Therefore, it does not warrant our interference.

6. There is yet another aspect which comes in the way of appeal of the kind being entertained: a Seven



Judge Bench of this Court in **TAMMANNA vs RENUKA, 2009 SCC ONLINE KAR 123** said that an intra-Court appeal against the orders of a Single Judge passed under Article 227 ordinarily does not lie, the other provision namely Article 226 of the Constitution having been ornamentally employed in the pleadings of the Management.

In the above circumstances, the writ appeal being devoid of merits, is liable to be and accordingly dismissed, costs having been made easy.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

Snb,
List No.: 1 Sl No.: 19