

A.M. Eshwarachar Vs. Executive Engineer (Electrical)

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Court : Karnataka

Decided On : Sep-30-1994

Reported in : ILR1994KAR3461; 1995(4)KarLJ705; (1995)ILLJ1065Kant

Judge : M.F. Saldanha, J.

Appeal No. : W.P. No. 23859 of 1993

Appellant : A.M. Eshwarachar

Respondent : Executive Engineer (Electrical)

Judgement :

ORDER

M.F. Saldanha, J.

1. The petitioner's learned Counsel has advanced a very strong plea to this Court which is based on a two fold submission, the first being that the petitioner had remained absent over a long period of time though without prior approval due to illness for which certain medical certificates have been produced. His second contention is that even if the petitioner is to be penalised for his unauthorised absence, that it was not a case of such gravity of misconduct that would justify the order of dismissal which virtually in real terms has often been categorised as economic death. He submits that but for the illness, there is not valid reason why the petitioner would have remained absent and in these circumstances, he

submits that the order of dismissal in the absence of any enquiry being held is liable to be struck down straightaway. Learned Counsel has also relied on the observations of the Supreme Court in the cases of Union of India and Others v. Giriraj Sharma : (1994)ILLJ604SC and B. R. Singh and Others v. Union of India and Others 1989 II CLR 619 whereby the Supreme court had expressed the view that an order of dismissal in a case of unauthorised absence would constitute too harsh a punishment. Furthermore, the learned counsel submits that the petitioner is willing to undertake that he will work faithfully and correctly and that he should be given one chance.

2. As against this, on behalf of the Board, it is demonstrated that this is an extremely gross case, that the petitioner had earlier in the year 1989 remained absent unauthorisedly and the Board was required to send notice after notice to him to resume his duties and it was only after several months that he turned up. He gave an undertaking not to repeat such acts after which once again he remained absent without any authorisation. As a result of this, the Board was put to the unnecessary exercise of having to send as many as three notices to him apart from trying to contact him telephonically and there after to publish a final notice in the press. After following all these procedures, the competent officer of the Board passed an order dismissing the petitioner from service. The Officer has observed in that order that the petitioner is virtually untraceable and that it is, therefore, not practicable to hold an enquiry against him. This is one of the grievances made in the present petition, namely, the technical plea that an order of dismissal could not have been passed in absentia. In law this submission is quite untenable insofar as if the errant employee virtually disappears and if after all reasonable steps have been taken, he is not traceable, it would be absurd to insist on the officers of the Board going through the empty exercise of holding an enquiry against a person who is virtually non-existent at that enquiry. The procedure adopted by the Board in this circumstance was perfectly justified.

3. Mr. Rao, on behalf of the Board, has pointed out to me that instances of such gross indiscipline are rampant and that in these circumstances, orders such as the present one ought not to be interfered with under any circumstance. He has also canvassed the plea that it would become impossible to maintain any degree of

discipline or efficiency or to even keep the normal operations of the Board going if employees are permitted to absent themselves from duty over long periods of time as in the present case. Mr. Rao has submitted that the ground of illness is absolutely sham in so far as the medical certificates themselves do not inspire any confidence. To my mind, even if the petitioner was ill as sought to be pleaded, the illness was of an extremely trivial nature and he was requested to submit an application to his employer pointing out the ground that had prevented him from attending to his duties and he ought to have obtained leave or prior permission. In the absence of having done this and having regard to the fact that he has persistently absented himself from duties, the gravity of the misconduct gets grossly aggravated. I am in total agreement with the contention canvassed on behalf of the Board that instances of such misbehaviour require to be very firmly dealt with and that it is very much in the public interest that they should not be permitted to continue. Under the guise of sympathy, there can be no compromise in cases of gross indiscipline. sympathy will be shown in appropriate cases and the Courts in this Country have frequently observed that misplaced sympathy results in miscarriage of justice.

4. It is in this background, that to my mind, the plea of the petitioner that the orders of the Board be set aside requires to be totally rejected. There is only one area in which the argument canvassed by the petitioner's learned Counsel appeals to me and that is with regard to the gravity of the punishment that was imposed. Though a strong plea was advanced that some minor penalty be awarded and the petitioner be reinstated, to my mind, having regard to the nature of the misconduct of the petitioner he would be totally disqualified from any such relief. However, the order of dismissal does appear to be too harsh in so far as the petitioner would be deprived of whatever few benefits might have accrued to him by virtue of his earlier service and more importantly it may act as a bar for employment elsewhere. In these circumstances, the order of dismissal shall stand modified to one of termination from service with effect from the same date.

5. The Petition accordingly succeeds partially. In the circumstances of the case, there shall be no order as to costs.

