

**IN THE COURT OF PRESIDING OFFICER,
LABOUR COURT, HUBBALLI.**

PRESENT

Sri. KIRAN S. GANGANAVAR

B.Com., LL.B.(Spl),
PRESIDING OFFICER,
LABOUR COURT, HUBBALLI.

KID. No.01/2018

DATED THIS THE 05th DAY OF APRIL, 2019

Ist Party Workman /

Petitioner

: Sri.Vasant S/o.Venkatraman Naik,
Age: 42 years, Occ: Nil,
R/o. At : Taribagilu
Post: Hegade, Tq: Kumta,
Dist: Uttara Kannada.

(By Sri. S.K. Hegde, Advocate.)

-Vs-

IIInd Party Management

RESPONDENT :

The Management of NWKRTC.,
Hubballi Division, Represented by
The Divisional Controller,
Hubballi Division, Hubballi.

(By Smt.R.S. Bagali, Advocate)

ORDER ON PRELIMINARY ISSUE No.1
(DOMESTIC ENQUIRY)

Petitioner herein is challenging the order of dismissal order bearing No. VAKARASA / HUVI / SHIKRASHA /GAIHA/689(16)/3914 dated 24.10.2017 and seeking reinstatement of his services with back wages, continuity of service and consequential benefits.

2. According to the petitioner-workman, for the unauthorised absence from 05.06.2016 to 15.08.2017 onwards was sought to be explained by the workman. During the said period the petitioner was suffering from mental disorder and he was under medical treatment for which he has submitted the medical leave application with medical certificate to the Depot Manager. Thus the absence was beyond his control and was not a deliberate one and without considering the explanation, said explanation was sought to be inquired. Accordingly, Inquiry Officer was also appointed. The said Inquiry Officer has not complied the provisions of C. & D. Regulations, 1971 and while conducting the inquiry, no proper opportunity of being heard was given to the Claimant to put forth his case in a proper perspective manner. The Inquiry Officer has concluded the inquiry in the absence of Claimant placing him exparte, which is contrary to the principles of natural justice. The Disciplinary Authority without properly examining the inquiry and its findings has recorded a wrong conclusion.
3. On the contrary, the Respondent Management relying upon the report has contended that based on the report of the misconduct by the petitioner, call notices dated 16.07.2016 and 31.08.2018 were issued to the petitioner. Even after receiving the call notices, the

petitioner failed to appear for duty. Further charge-sheet dated 28.10.2016 was issued and explanation was also sought. But the Claimant failed to submit his written explanation to the said charge-sheet. The Disciplinary Authority in order to find out the truth appointed the Assistant Administrative Officer as Inquiry Officer to inquire the allegations, who based on the report had issued notice to the petitioner, but the petitioner failed to attend the inquiry on many occasions. Further the Inquiry Officer examined the witnesses offered by the management. Based on the evidence available on record, the report is submitted by the Inquiry Officer by following the due procedures, the said report of Inquiry Officer is in compliance with all the requirements of natural justice and fair procedure. There are no any reasons to interfere with the said report. Hence submitted to accept the inquiry report.

4. In consideration of the above pleadings, following issue was framed by my learned predecessor and the said issue was sought to be treated as preliminary issue. Hence, the parties were called upon to lead evidence if any.

- 1) Whether the domestic inquiry held against the Claimant is fair and proper ?

5. Respondent Management having burden of establishing the fairness of inquiry has examined Inquiry Officer as MW.1 and got marked the documents at Exs. M.1 to M.39 and closed the side. The petitioner did not lead any evidence but only cross-examined the MW.1.
6. Heard the arguments. Perused the materials.
7. My answer to the above issue is in the affirmative for the following : **REASONS**
8. The witnesses examined for the Respondent Management was none other than the Inquiry Officer, who has stated about the procedures of conducting the inquiry and also refers to the document relating to the inquiry wherein Ex.M.11 is the inquiry order sheet, Ex.M.29 and M.30 are the inquiry proceedings and Ex.M.31 is the inquiry report, whereas the other documents relates to notices issued to the petitioner and other relevant orders of concerned authorities in proceeding against the petitioner.
9. As appearing from Ex.M.11 inquiry order sheet, the delinquent official - the petitioner herein did not appear and participate in the inquiry dated 28.03.2017, 12.04.2017, 28.04.2017 and thereafterwards. Therefore, Inquiry Officer was constrained to proceed with the inquiry. In view of the petitioner being absent, there was no challenge to the claim of the

management. The proceedings prima facie appear for complying the conditions of inquiry. The obligations arising of the official would have been discharged, had the petitioner appeared before the Inquiry Officer. Any amount of explanation at this stage by the petitioner for his absence in the inquiry does not invalidate the proceedings. It is not obligatory for the employer to withhold from domestic inquiry when the employee is absent for inquiry. Even now when specific reasons for the absence during the inquiry are not coming out, such inquiry being vitiated by any just reasons could not be appreciated. As such, in the absence of any reasons made known to the Inquiry Officer while conducting the inquiry for the absence of the petitioner cannot be examined at this stage. Hence, the plea of inquiring official not being fair and proper cannot be appreciated. Accordingly, the above point is answered in the affirmative and proceed to pass the following:

ORDER

Issue No.1 is answered in the affirmative. The domestic inquiry held against the Claimant is found fair and proper.

(Dictated to the Judgment Writer, transcript is revised and computerised by her, prints taken out and then corrected, signed and pronounced by me in the open Court on 05.04.2019).

Sd/-

(K.S. Gangannavar),
Presiding Officer,
Labour Court, Hubballi.