

(2003) 08 KAR CK 0091

In the Karnataka High Court

Case No : Writ Petition No"s. 35736 to 35741 of 1998

A. Achutha and Others

APPELLANT

Vs

Sri Rama Sahakara Sakkare Karkhane Limited

RESPONDENT

Date of Decision : 29-08-2003

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226
Industrial Disputes Act, 1947 — Section 10

Citation : (2003) ILR (Kar) 3826 : (2003) 4 KCCR 378 SN : (2004) 2 LLJ 755

Hon'ble Judges : S.R. Nayak, J;K. Ramanna, J

Bench : Division Bench

Advocate : N.S. Srinivasan, for the Appellant; P.S. Manjunath, for the Respondent

Final Decision : Allowed

Judgement

Nayak, J .

1. These Writ Petitions are placed before the Division Bench, on reference, consequent upon a preliminary objection raised by the Respondent Co-operative Society before the learned Single Judge that writ would not lie against the respondent sugar factory which is a Co-operative Society registered under the Karnataka Cooperative Societies Act. This contention is not tenable because, this very Bench in W.P.No. 13524 of 1999 dated 25.2.2003 held that Bhadra Sahakari Sakkare Karkhane Niyamita which is also a Cooperative Society is a "State" within the meaning of Article 12 as well as an "authority" for the purpose of issuing writs and/or orders under Article 226 of the Constitution of India. The reasons stated by us in the said Judgment, equally apply to the facts of this case also to hold that the Respondent - Sri Rama Sahakara Sakkare Karkhane Limited is a "State" within the meaning of Article 12 and an "authority" for the purpose of issuing writs and/or orders under Article 226 of the Constitution. Therefore, we hold that the Writ Petitions are maintainable against the Respondent-Co-operative Society.

2. The facts of the case, in brief, are as follows: The petitioners were appointed as Field Assistants during the period from 2.8.1982 to 11.02.1983 and worked continuously as such till 14.7.1987. It is alleged that on 14.7.1987, their services were dispensed with without complying with the mandatory provisions of the Industrial Disputes Act, 1947. That led to the reference of the dispute between the Trade Union representing the workmen and the management of the Respondent-Society to the Labour Court by Government of Karnataka vide reference Nos.113/98, 155/98, 29/92 and 123/88 u/s 10 of the Industrial Disputes Act, 1947.

3. The Labour Court, on adjudication, passed an award dated 20th December, 1995, directing the reinstatement of the workers with continuity of service with 25% of the backwages in the case of the Petitioners 1, 2 and 4, whereas the backwages was awarded to the extent of 50% in the case of Petitioner No. 3.

4. In terms of the award of the Labour Court, the petitioners were reinstated into service but on daily -wages only. In the circumstances, the petitioners approached this Court in the year 1997 by filing Writ Petition Nos. 33196 and 33197 of 1997 and 34777 to 34780 of 1997 seeking "mandamus" to the management to grant full backwages and treat them as permanent employees on par with others who have been regularized in service in pursuance of the award passed by the Labour Court. Those Writ Petitions were opposed by the Management. However, the learned Single Judge of this Court while disposing of the above Writ Petitions on 13th July, 1998 in para 3 of the Judgment observed and directed thus:

" 3. I have heard Mr. Manjunath, learned Counsel for the workers. In view of the circumstance that the Management has not challenged the award of reinstatement, the same has become final. The only question would be regarding the quantum of back wages to be awarded. I feel the award of 50% backwages in all other cases is just and proper. It does not call for any interference except in W.P.No. 33196/97 where the award is only 25%. The backwages payable to the worker in W.P.No. 33196/97 is enhanced to 50%. But I would make it clear that the petitioners-workers, who were similarly placed at the time of their termination in 1987, should have been given the benefits granted to their juniors. Similar benefits shall be extended to them also. Merely because they were out of service, they do not lose their seniority. As pointed out by the learned Counsel, many of the workers who were juniors to the petitioners, have been regularized. If that be so, from the date of regularisation of the services of their juniors, the services of the petitioners will also be regularized. Proper orders will be issued by the Management (As prayed for by them) within a period of 3 months from today. With this modification of the award, the Writ Petitions are disposed of".

5. After the judgment, the management considered the claims of the writ petitioners for regularisation and by its order dated 5.10.1998 produced as Annexure F, declined to regularise the services of the petitioners on the ground

that no daily wager who is junior to the writ petitioners has been regularized in terms of Memorandum of Settlement dated 15.11.1989 filed in Reference AID 25/85 before the Labour Court. Since according to the petitioners, the mandamus issued by the Court was not complied with by the management, they have again approached this Court byway of these Writ Petitions.

6. In para 6 of the Writ Petition, it is stated that the services of five persons, namely, S. Vasanthamma, Rajanna Naika P.S. Renukesha, S.S. Vijayakumar and M.L. Basappaji who are juniors to the petitioners as per the seniority list of the daily-wagers prepared by the Management produced as Annexure-"C", were regularized whereas the Management refused to regularise the services of the petitioners despite the mandamus issued by this Court in Writ Petition Nos. 33196 and 33197 of 1997 and 34777 to 34780 of 1997. It is also contended by the petitioners in paragraph 7 that apart from the aforesaid five employees, the management also regularized the services of another person, H.R. Aswatha by name, who is junior to the petitioners. It is stated that H.R.Aswatha was appointed as daily-wager on 4.9.1982.

7. Assailing the validity of Annexure-F and seeking mandamus to the management to regularise their services on par with their juniors, the present Writ Petitions are filed.

8. We are heard Sri N.S. Srinivasan, learned Counsel for the petitioners and Sri P.S. Manjunath, learned Standing Counsel for Respondent-Society.

9. It is contended by the learned Counsel for the petitioners that even in the earlier Writ Petitions, it was specifically contended that during the pendency of the proceedings before the Labour Court, about 8 employees who are juniors to the petitioners and who are daily-wagers were regularized in service. The Court appreciating the above contention of the petitioners, recorded a finding in their favour and issued the direction contained in para 3 of the judgment. The learned Counsel would maintain that the management having suffered that order, is estopped from now contending that the above five persons are seniors to the Writ petitioners. Alternatively, the learned Counsel would contend that Annexure-C is the seniority list prepared by the management itself and there is absolutely no evidence whatsoever to show that the said list was modified or altered or ranks assigned to the employees were subsequently altered, and in that view of the matter, what is reflected in Annexure C should be taken to be correct fact and on that basis, the right claimed by the writ petitioners has to be examined by this Court.

10. Sri P.S. Manjunath, learned Counsel for the Respondent - Society, on the other hand, at the threshold, would point out that this Court in its order dated 13.7.1998 passed in Writ Petition Nos. 33196 and 33197 of 1997 and 34777 to 34780 of 1997, did not direct the management to regularise the services of the petitioners and the only direction of this Court was to consider the claim of the petitioners for regularisation of their services and this position is made quite

clear by the words, " if that be so" occurring in the operative portion of the judgment. Sri P.S. Manjunath, learned Counsel for the petitioners would contend, as a matter of fact, all the aforesaid five persons are senior to the writ petitioners and this position is very much reflected by the records maintained by the management. Looking from any angle, the learned Counsel would maintain, no prejudice is caused to the writ petitioners and they are not entitled to seek regularisation in terms of the settlement arrived at between the parties before the Labour Court.

11. Having heard the learned Counsel for the parties, the only question that arises for our consideration and decision is whether the petitioners are entitled to a mandamus commanding the management of the Respondent-Co-operative Society to regularise their services also in terms of the settlement entered into between the parties before the labour Court.

12. In dealing with the above question, it needs to be noticed that the plea that the aforesaid five persons are seniors to the petitioners, was very much available to the management when these very petitioners filed W.P. Nos. 33196 and 33197 of 1997 and 34777 to 34780 of 1997 in this Court. For the reasons best known to the management, this defence was not taken to contest those Writ Petitions. We have carefully read the finding recorded by the learned Single Judge of this Court in para 3 as well as the direction issued to the management. The learned Single Judge, in unmistakable terms, has stated that the petitioners-workers who are similarly placed, at the time of their termination in 1987, should have been given the benefits granted to their juniors. Similar benefits shall be extended to them also. Having said, the learned Single Judge noticed an argument of the learned Counsel for the Writ Petitioners and accepted that contention. Having done so, the learned Single Judge has used the phrase "if that be so", the Writ Petitioners are entitled to regularization of their services. So, looking from any angle, it is quite apparent, the mandamus issued by the learned Single Judge mandates the management of the Sugar Factory to regularise the services of the Writ Petitioners. This position is further made clear by the learned Single Judge himself while directing the management to pass proper order "as prayed for". The writ issued by the learned Single Judge in the earlier Writ Petitions, was allowed to become final. It is well settled by the judgments of the Supreme Court and High Courts in *DARYAO vs. STATE OF U.P.* AIR 1961 SC 14572 , *K.P. Padmanabhan Nair Vs. State of Kerala* , *Kunwar Ram Nath and Others Vs. Municipal Board, Pilibhit* , *The Amalgamated Coalfields Ltd. and Another Vs. The Janapada Sabha, Chhindwara*, and *Grih Kalyan Kendra Workers" Union Vs. Union of India and others*, that both "res judicata" and "constructive res judicata" apply to writ proceedings. It is trite, therefore, that the management is bound to comply with the writ of mandamus.

13. Be that as it may, looking from another angle also, we do not find any merit in the defence Put forth before us by the management. Annexure C is the seniority list of the daily-wagers prepared by the management and not by any

third-party agency. In Annexure-C, Sriyuths M.L. Basappaji, S.S. Vijaykumar, Rajannanaika, P.S. Renukesha, and S.S. Vasantha have been assigned ranks at Sl. Nos. 231, 235, 236, 238 and 270 respectively and against their names, the date of entry into service is shown to be 09.02.1982, 24.09.1985, 21.08.85. 01.09.85 and 06.08.1982 respectively. Now under the impugned order-Annexure F, the management has claimed that Sriyuths Rajanna Naika, M.L. Basappaji, P.S.Renukesh, Sri S.T.Raja, and S.S. Vijayakumar entered the service as daily-wagers on 17.08.1981, 09.02.1982, 12.10.1981, 13.10.1981 and 02.04.1982 respectively. The dates now stated in the impugned order are quite contrary to what is stated in the seniority list, Annexure-"C". There is neither pleading nor proof that Annexure-"C" - seniority list got prepared by the management itself was subsequently altered, modified and the rankings assigned to the employees are modified or corrected by any lawful mode known to the law. It is trite that if as per Annexure-C, the aforesaid five persons are juniors to the Writ Petitioners and if that position has to be changed, whatever may be the cause or reason for doing so, the management ought to have taken necessary steps to correct the entries or alter the ranks assigned to the employees in conformity with the principles of natural justice and given them atleast an opportunity to state their opposition, if any, to the proposed alterations and change. At the time of hearing, we pointedly asked Sri P.S. Manjunath with regard to any such procedure followed by the management of the Society and Mr. P.S. Manjunath told us that there are no records to show that Annexure C - Seniority list was subsequently modified or altered by the management and the only thing he could tell us is that Annexure C is not accepted by the Trade Union and after necessary negotiation and mediation, they agreed to include only those employees whose names are included in Annexure-A appended to Annexure R-1 settlement.

14. There is no controversy between the parties that if the dates of entry into service shown in Annexure-C against the names of the aforesaid five persons-S. Vasanthamma, Rajanna Naika, P.S. Renukesha, S.S.Vijayakumar , and M.L. Basappaji are taken to be 06.08.82, 21.08.85, 01.09.85, 24.09.85 and 09.02.85 respectively are correct, undoubtedly, the petitioners are seniors to them and they are entitled to be regularised in the service. Since the dates of entry into service against the five persons are not subsequently altered or corrected by the management by any lawful method, the exclusion of the petitioners in Annexure-A appended to the settlement cannot be supported in law. The said exclusion smacks of arbitrariness and unreasonableness, whether it was done at the behest of the management or the Trade Union. In that view of the matter, the Court is left with no alternative but to take Annexure-C into decision-making. If we take Annexure-C into decision-making, it is trite, the action of the management in regularising the aforesaid five persons and denying the relief of regularization to the Writ Petitioners violates Article 14 postulates and tantamounts to an invidious discrimination.

In the result, and for the foregoing reasons, we allow the Writ Petitions with costs, and a "mandamus" shall issue to the management of the respondent -

Sugar Factory to regularise the services of the Writ petitioners with effect from the date on which their immediate juniors' services are regularised. We further direct that the petitioners are entitled to all benefits, pecuniary and otherwise, flowing from such regularisation and the same should be paid/extended to them within a period of 2 months from the date of receipt of a copy of this order. Advocate's fee is fixed at Rs. 1,000/- in each Writ Petition.